

RECENT VERDICTS

NEW YORK

QUEENS COUNTY

MOTOR VEHICLE

Pedestrian

Truck shouldn't have been in parking lane, plaintiff claimed

Verdict (P) \$1,050,000
Court Queens Supreme
Judge Patricia P. Satterfield
Date 6/17/2005

Plaintiff Attorney(s)

Jeffrey M. Blum
Mallilo & Grossman, Flushing, NY

Defense Attorney(s)

Donald Carlucci,
Carlucci, Giardano & Farrell, L.L.P., New York, NY

Defense

Facts & Allegations

At approximately 4:45 pm on Nov. 29, 2001, plaintiff, 69, a part-time cashier, was struck by a truck. The incident occurred in the parking lane of Northern Boulevard, at its intersection with 194th Street, in Queens. Plaintiff claimed that she sustained back, knee and neck injuries.

Plaintiff sued the truck's driver, Luis Gonzalez; the truck's lessor Elrac Inc.; and Gonzalez's employer, American Industrial Cleaning Co., Inc. She alleged that Gonzalez was negligent in the operation of his truck, that Elrac was vicariously liable for Gonzalez's actions, and that American Industrial Cleaning was liable because the accident occurred within the scope of Gonzalez's employment.

Plaintiff claimed that Gonzalez veered from a moving lane of traffic into the parking lane and struck her. She claimed that parking was not permitted between 4 p.m. and 7 p.m. on Northern Boulevard.

Gonzalez contended that plaintiff did not look for oncoming vehicles before she stepped into the street.

Injuries/Damages

fracture, tibial plateau, open reduction; internal fixation; screws; physical therapy; herniated disc at C4-5; herniated disc at C5-6; herniated disc at C6-7; herniated disc at L1-2; herniated disc at L2-3; herniated disc at L3-4; herniated disc at L4-5; herniated disc at L5-S1

Plaintiff was placed in an ambulance and transported to The New York Hospital Medical Center of Queens in Flushing, where doctors determined that she had sustained a fracture of her right leg's tibial plateau. Plaintiff also claimed that she sustained herniations at C4-5, C5-6, C6-7, L1-2, L2-3, L3-4, L4-5 and L5-S1. Her fracture was treated via open reduction and the internal fixation of two screws. She subsequently underwent six months of physical therapy.

Plaintiff claimed that she still experiences pain and that she limps. She sought recovery of damages for her past and future pain and suffering. Her husband presented a loss-of-service claim. The defense contended that if plaintiff does experience pain, it is caused by her preexisting arthritis.

Result

The jury rendered a plaintiff's verdict, but plaintiff was assigned 40% comparative negligence. It determined that the plaintiffs' damages totaled \$1.05 million, but the comparative-negligence reduction produced a net recovery of \$630,000.

Plaintiff(s)

\$600,000 past pain and suffering
\$400,000 future pain and suffering
\$1,000,000 plaintiff's total award

\$50,000 loss of services
\$50,000 total plaintiff's award

Ladder slipped into hold causing worker to become injured.

Settlement \$1,250,000
Court Kings Supreme
Date August 2005

Plaintiff Attorney(s)

Jeffrey M. Blum

Mallilo & Grossman, Flushing, NY

Worker on top rung of ladder was injured when ladder slipped into hole in floor. Worker required surgery to his neck and was unable to continue working. He was 48 at the time of the occurrence. Case settled during trial for \$1,250,000.

23 year-old girl involved in auto accident received knee surgery

Settlement \$300,000
Court Kings Supreme
Date November 2005

Plaintiff Attorney(s)

Jeffrey M. Blum

Mallilo & Grossman, Flushing, NY

As a result of auto accident 23 year-old school teacher received arthroscopic knee surgery and associated scarring. Case settled during trial for \$300,000.



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Volume 2

163-09 Northern Boulevard • Flushing, New York 11358 • 718-461-6633



Holiday Greetings to all of our clients. We hope this holiday season brings you warmth, health, happiness and prosperity throughout the year.

We at Mallilo & Grossman extend our best for a great 2006!



MALLILO & GROSSMAN - Answers To Your Questions

In last year's newsletter we told you that Mallilo and Grossman had expanded its Matrimonial and Family Law Department as well as its Criminal Law Department. As a result of that newsletter, many of you contacted us and asked us for further information in these areas. We hope this newsletter addresses your questions.

ACCIDENTS

If I am in an accident, what do I do?

If you are in an accident, the first thing you must do is contact the police and make a report. After a report is made, you should contact Mallilo & Grossman and have a consultation in order to find out what your rights are. Generally, if you have suffered an injury as a result of someone's negligence, you may have a case which could provide you with compensation for your injuries.

The amount of compensation depends upon your injury, who was responsible for your accident and insurance limits. If your action is against the City of New York, you will be required to file a Notice of Claim within 90 days of the date of the accident. Your failure to do so may bar your claim.

Contact Mallilo & Grossman immediately if you are involved in an accident, and we will provide all the answers you may need to resolve your claim.

TRIP & FALL ACCIDENTS

Trip and fall accidents occur when a person trips or slips and falls, due to dangerous conditions on property, and can result in a serious injury. There are many different forms of dangerous conditions, which include defective, broken, uneven, cracked sidewalks, unsafe or broken flooring, unsafe staircases or steps, debris on floors or steps, snow and ice, and faulty elevators.

The owner or possessor of property has a duty to use reasonable care to keep the property in a reasonably safe condition for the protection of all persons whose presence is reasonably foreseeable.

In order to recover money for an injury sustained as a result of a trip and fall accident, an injured party must prove that the premises were not reasonably safe, that the owner knew the premises were not safe, and that the owner's negligence in allowing the unsafe condition to exist was a substantial factor in causing the injury.

If the owner did not create the condition, then it must be shown that an owner knew or should have known that the premises were not safe. In order to hold the owner liable, an injured party must prove "notice". Notice can be either actual or constructive.

Actual notice exists when it can be proven that the owner knew of the unsafe condition long enough before the accident, and that the owner had a reasonable time in which to correct the defect, or give adequate warning of the defect.

Constructive notice exists when the owner did not know of the dangerous condition, but should have used reasonable care in discovering the defect and correcting it.

Plaintiffs will frequently encounter a problem in establishing actual or constructive notice in many trip and fall cases, especially cases involving debris, food, slippery substances or snow and ice.

If you are injured in a trip and fall accident, you should immediately report the accident and injury to the property owner or property manager. In addition, you should obtain the names and addresses of any witnesses, and take photographs of the condition that caused the fall. Early investigation is vital to all cases.

Remember, New York State Law requires an injured party to accurately identify where and what caused them to fall.

DIVORCE

When issues of Divorce arise, it is always wise to consult the advice of Professionals such as an attorney, Priest, Rabbi or mediator. By taking this action, you ensure that you do not waive your rights to assets you may be entitled to. Many people are unaware that once you are married your spouse is entitled to share in all of your assets regardless of whose name the asset is in. In addition, you may be entitled to financial assistance from your spouse, depending on your employment status and your income. Finally, debt incurred during the marriage in one party's name may be considered marital debt that your spouse will be required to pay half of.

CUSTODY/VISITATION

As a parent you are entitled to custody and visitation. If you do not have a custody/visitation order, you should obtain one immediately. Never hesitate when it comes to asserting or enforcing your rights.

Myths of Family Law

1. A father will never win custody.
2. You can never have a joint custody arrangement.
3. The Court always favors the woman.

At Mallilo and Grossman, we have dispelled these myths. Remember when choosing an attorney choose the law firm that cares about its clients.

DIRECTORY - In order to expedite your calls and minimize your wait and transfers, we are providing you with this handy directory. Please keep it for future reference:

Jean Brumgnach	Ext. 142	(Hi/Low Arb, UM Arb, Mediations)
Annmarie Losito	Ext. 129	(Calendar & EBT)
Mimi Andino	Ext. 150	(Homecard/Lost Wages/Property Damage/Transcripts)
Russ Gordon	Ext. 121	(Medical Reports)
Barbara Johnson	Ext. 124	(Paralegal)
Brett Solomon	Ext. 155	(Paralegal)
Alfie Gonzalez	Ext. 163	(Releases)
Jill Ibarra	Ext. 136	(IME's)

CHILD SUPPORT

Generally, in the State of New York, parents are responsible for paying a percentage of their income for child support. This percentage is based upon the number of children you have: 17% for one child; 25% for two children; and 29% for three children. In addition to child support, the parties are responsible for a portion of childcare and unreimbursed medical expenses. Always remember that the party with physical custody must be the one who files for child support. This support is not automatic and the portion contributed is determined by the parents' respective incomes. If you are not married, and you are asked to pay child support, immediately request a DNA test to ensure the paternity of the child. If you pay child support without taking a test, you will be stopped from claiming that you are not the father and you will be required to pay child support until the child reaches the age of twenty one.

ABUSE

All individuals have a right to be safe and free from abuse. If you feel that you are being verbally, mentally, or physically abused, you should call New York State Domestic Violence Hotline at **1-800-942-6906**. Someone is available at that number 24 hours a day and will be more than happy to assist you. However, if the abuse is at a stage where you fear for your life, go to Family Court immediately and obtain an Order of Protection. This may cause your spouse to be removed from the home. If you are in immediate physical danger call **911** for police assistance.

REAL ESTATE

Have you been searching for your dream home for some time? Is committing scary? Are you afraid of making a mistake? Here are some frequently asked questions:

1. How Do I Get Started?

Utilize a website called Oasis which will catalog the cities and open spaces. This website will provide you with an introduction on property ownership, parks, police precincts, and other features of locations you are looking at.

Contact a real estate broker and visit different areas until you get a feel for where you want to live.

2. Once I Find a Home

Once you choose a home, the first thing you must do is have it inspected. By using an inspector you will have a good idea of all problems you will encounter in your new house. Any problems that arise from the inspection will have to be repaired, or an adjustment made on the purchase price, prior to closing.

3. Going To Contract

Once a price is agreed upon and an inspection is conducted, you will be ready to go to contract. You will tell the sellers or their broker that Mallilo & Grossman is your attorney, and have them send the contracts to us. We will call you to come into the office, and thoroughly discuss the contract with you. Once all the parties agree to the terms of the contract, you will sign it and enclose a check in the amount of 10% of the purchase price. This money will then be held in escrow until closing.

4. Mortgage Contingency

Any contract a prospective purchaser signs will require a mortgage contingency clause so that if you fail to obtain a mortgage, you will get your down payment back.

5. Closing

When a closing date is set, you will receive a breakdown from Mallilo & Grossman indicating what monies you need to close. These monies will include attorney's fees, bank costs, title fees, and any other adjustments required to be made at closing. These costs will be similar to the costs indicated in your good faith estimate, given to you at the time you applied for a mortgage.

A closing will generally take two hours and will occur within 30 days of the time set forth in the contract.

CRIMINAL LAW

In order to best serve our client's needs, Mallilo and Grossman has established a 24-hour hotline, for all criminal emergencies. The hotline number is: **718-237-2362**. As the Holiday season is upon us, it is time to rejoice and celebrate. But beware! If you celebrate **Don't Drive!** This is the time of year when high traffic areas are selected for random road checks.

If the Police stop you, do not treat them as your enemy, be courteous and respectful and expect the same in response. Remember, the Police will use their observations, and anything else you do against you. Do not try to talk your way out of a situation. Once they have decided that you were drinking, their report will most likely say the following:

"I saw the Motorist driving in an erratic manner and asked for a license and registration. At that time I observed blood shot eyes and a strong odor of alcohol as well as slurred speech. I asked where the Motorist was coming from and I was told he was coming from a party where he had a few beers. I then conducted a Field Sobriety Test".

Only give pedigree information to the Police (name and address). Do not say how much you have drank, and tell them you want to talk to Mallilo and Grossman before giving any other information. If at the scene you are asked to take a breath alcohol test, and you refuse, the refusal, as well as your present state of intoxication will be videotaped. You will also automatically lose your driver's license because of your refusal, and your refusal will support a charge of DWI. However, if you consent to the test, your attorney can contest the results, as these tests are very susceptible to attack. In addition if you refuse the test many prosecutors will refuse to plea bargain, force you to go to trial and face stiffer penalties, if convicted.

IF THINGS GO WRONG

CALL MALLILO AND GROSSMAN

Again, here at the
Law Offices of Mallilo & Grossman,
we wish you the best this holiday season.
Please keep us in mind for all
your legal needs.

Sincerely,
Anthony Mallilo
& Jack Grossman