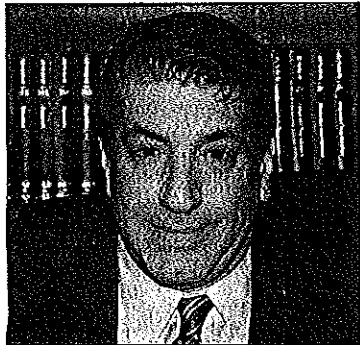




Jury Awards \$5M to Estate Over Biopsy That Caused Lung Damage

A Hudson County jury handed up a \$5 million verdict on Oct. 27 for the estate of a woman who died after a lung and lymph node biopsy that allegedly should not have been done, though the estate will recover only \$1 million of the award, due to pretrial settlements with some of the doctors.

According to the suit, *Vida v. Engel*, the procedure, performed by doctors at Bayonne Medical Center, damaged



SUIT LINKED BIOPSY TO DEATH: Christian LoPiano alleged that other procedures should have been used first on a patient who died four days later.

Cecille Vida's lungs and she died four days later, on Dec. 2, 2006, at age 48.

Vida had gone to the emergency room on Nov. 19 with shortness of breath and was admitted to the intensive care unit when a CT-scan and X-ray showed swollen lymph nodes and haziness in her lung, which might have been a sign of cancer. After the biopsy and resultant lung damage, Vida spent her last days on a ventilator, says the family's lawyer, Christian LoPiano of LoPiano, Kenny & Stinson in Hoboken.

LoPiano says a biopsy is a tool of last resort, because echocardiogram results consistent with severe pulmonary hypertension create as high as a 10 percent risk of death.

He says a failed attempt at a needle biopsy should have been repeated or Vida should have had a right heart catheterization, which would have required transferring her to another hospital.

At trial before Superior Court Judge Mary Costello, the jury found \$5 million in damages: \$750,000 for wrongful death, \$250,000 for survivor claims and \$4 million on the per quod claim of Vida's husband Vincent.

Fault was allocated among five doctors, four of whom had settled before trial on confidential terms, leaving only Vida's primary care physician, internist Margaret Engel, who was found 20 percent at fault, for \$1 million of the verdict. A pulmonologist was assessed 75 percent of the liability and a cardiologist 5 percent while no fault was found

\$250,000 share of his global \$1.25 million offer of judgment.

Engel's lawyer, Neil Reisman of Reisman Rosenberg Jacobs & Heller in Morris Plains, says he will seek to set aside the verdict based on various errors, including the admission of evidence concerning guidelines that apply to cardiologists and thoracic surgeons, and excessive per quod damages.

—By Mary Pat Gallagher

\$975,000 for Auto Injuries

Wong v. Luca: An Englewood woman accepted \$975,000 on Oct. 14 for back injuries she suffered when her car was hit from behind while stopped at a red light.

Cheri Wong, 42, was on North Washington Street at the intersection of Daggett Street in Bergenfield on March 24, 2005, when hit by a car driven by Rosario Luca of Woodcliff Lake. Wong suffered cervical and lumbar disc herniation and nerve damage, says her attorney, Kenneth Harrell, of Levinson Axelrod in Edison.

She underwent a discectomy, a cervical fusion and a lumbar fusion but has since been declared 100 percent disabled. Before the accident, Wong had been a social worker with the state Division of Youth and Family Services.

Harrell says Luca originally said the accident was caused when he was distracted by a phantom vehicle. Wong had sought damages from her carrier, First Trenton Indemnity Co., because of the phantom-driver allegations.

Middlesex County Superior Court Judge Phillip Paley dismissed the claim against First Trenton on summary judgment, and the case against Luca continued. Luca's carrier, New Jersey Manufacturers Insurance Co., agreed to make a \$975,000 lump-sum payment.

NJM retained John Camassa, of Manasquan's Connell, Connell, Camassa & Yuro, to represent Luca. He did not return a call.

—By Michael Booth

\$950,000 in Wrongful-Death Suit

Kickuth v. Penske Truck Leasing Co.: The estate of a truck driver killed in a fiery highway wreck settled its Bergen County wrongful-death suit on Sept. 17 for \$950,000.

On Oct. 11, 2006, Curtis Kickuth, 50, was driving a semitrailer for his employer, Central Garden & Pet Co. of Mahwah, on I-78 near Petryville when the front tire blew out and caused the truck to swerve to the shoulder and hit a bridge abutment. The truck jackknifed and burst into flames, killing Kickuth.

His estate claimed that the truck's owner, Penske Truck Leasing Co. of Reading, Pa., and Central Garden caused the accident by negligently maintaining

Penske destroyed the truck remains and Central Garden destroyed the truck's condition reports. Superior Court Judge Elijah Miller Jr. ruled that the estate was entitled to an adverse inference for evidence spoliation and allowed it to amend its complaint to include fraudulent concealment claims, Howard says.

The parties were both insured by

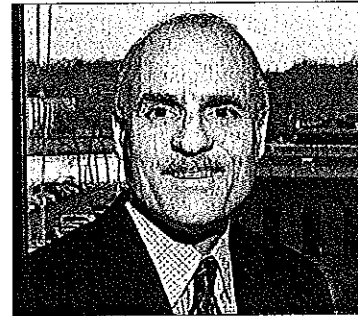


PHOTO BY CARMEN NATALE

NEGLIGENT MAINTENANCE ALLEGED:

Thomas Howard says a driver was killed in an accident because his employer and the owner of the truck didn't take care of it.

Liberty Mutual. Penske paid \$525,000, Central Garden, \$425,000.

George Helfrich of Marshall, Dennehey, Warner, Coleman & Goggin in Cherry Hill, who represented Penske, confirms the settlement.

John Fearn of Lamb, Kretzer, Reinman & Roselle in Jersey City, Central Garden's counsel, says the defense offered evidence that the truck was in good condition, but Miller ruled that in the absence of the condition reports, the truck's condition was a jury question. Those rulings helped prompt the settlement, Fearn says.

—By David Gialanella

\$600,000 for Workplace Electrocutation
Estate of Priliszh v. Cobra Construction: An Essex County judge approved a \$600,000 settlement on Oct. 8 in a wrongful death suit brought on behalf of a Roselle Park man who was electrocuted in a construction accident.

Clinton Priliszh, then 22, was killed while installing windows at McKinley Elementary School in Newark on March 26, 2007.

The general contractor, Cobra Construction of North Arlington, hired Architectural Windows of North Bergen to fabricate the windows.

That company, in turn, hired Priliszh's employer, Metro Glass of New Brunswick, to install the windows.

According to the suit, Priliszh was inside the building and his foreman was on a lift outside when the aluminum-framed window they were installing came in contact with a power line.

Priliszh, who was not grounded, died immediately.

The suit claimed that the defendants were negligent for failing to arrange for power to be shut down.

After mediation with former Superior Court Judge Daniel Mecca, now with Joseph Mecca's firm in Paramus, Cobra agreed to pay \$600,000. On Oct. 8, Judge Sebastian Lombardi approved the settlement and its distribution.

Priliszh was represented by David Fried of Blume, Goldfaden, Berkowitz, Donnelly, Fried & Forte in Chatham.

Cobra's lawyer, Robert Neff of Wilson, Elser, Moskowitz, Edelman & Dicker in Newark, did not return a call.

—By Charles Toutant

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