

MOTOR VEHICLE

Pedestrian — Left Turn — Crosswalk

Man struck by car, claimed driver executed wide turn**VERDICT** **\$183,269****CASE** Edsley Harding v. Linda Brill,
No. 151022/12**COURT** New York Supreme**JUDGE** Nancy M. Bannon**DATE** 6/8/2015**PLAINTIFF****ATTORNEY(S)** Adam M. Orlow, The Orlow Firm,
New York, NY**DEFENSE****ATTORNEY(S)** Edward Faranda, Kay & Gray, Westbury, NY

FACTS & ALLEGATIONS On Dec. 30, 2011, plaintiff Edsley Harding, 67, a social worker, was struck by a motor vehicle. The incident occurred in a crosswalk of Eighth Avenue, alongside its intersection at West 30th Street, in Manhattan. Harding claimed that he sustained injuries of his back and a knee.

Harding sued the vehicle's driver, Linda Brill. Harding alleged that Brill was negligent in the operation of her vehicle.

The accident occurred while Brill was executing a left turn onto Eighth Avenue, from West 30th Street. Harding's counsel noted that the impact occurred in the center of Eighth Avenue's three lanes. He claimed that Brill should have turned onto the left lane, that New York State Vehicle and Traffic Law § 1160(c) required her to do so, and that the accident would not have occurred if she had done so.

Defense counsel attempted to invoke the emergency doctrine, which prevents the attachment of liability to motorists who reasonably and prudently respond to a sudden, unexpected emergency that necessitates a speedy reaction. He claimed that Brill intended to end her turn in Eighth Avenue's left lane, but that she veered into the center lane to avoid a motorist who had unexpectedly entered her path. In response, Harding's counsel contended that Brill could have prevented the other motorist's actions by maintaining a steady path toward the left lane.

INJURIES/DAMAGES *anterior cruciate ligament, tear; arthroscopy; bulging disc, lumbar; herniated disc at L5-S1; lateral meniscus, tear; medial meniscus, tear; meniscectomy; physical therapy*

During the day that followed the accident, Harding presented to a hospital. He claimed that his back and left knee were painful. He underwent minor treatment.

Harding ultimately claimed that he sustained a tear of his left knee's anterior cruciate ligament, a tear of the same

knee's lateral meniscus, a tear of the same knee's medial meniscus, a herniation of his L5-S1 intervertebral disc, and trauma that produced bulges of his L3-4 and L4-5 discs.

Harding underwent physical therapy, but he claimed that he experienced ongoing pain. On March 5, 2012, he underwent arthroscopic surgery that addressed his left knee. The procedure included a meniscectomy, which involved excision of damaged portions of the knee's menisci.

Harding claimed that his injuries prevented his resumption of work. He claimed that he had intended to work two additional years.

Harding further claimed that his back and left knee remain painful, that the knee has not regained full stability, that the knee occasionally fails, that his residual effects are permanent, and that they hinder his performance of his household chores. He also claimed that his left knee may require additional surgery that could involve replacement of the knee.

Harding sought recovery of past lost earnings, damages for future loss of household services, and damages for past and future pain and suffering.

Defense counsel contended that Harding did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). The defense's expert orthopedist opined that Harding's left knee's injuries were pre-existing conditions caused by arthritis.

The parties negotiated a high/low stipulation: Damages could not exceed \$250,000, but they had to equal or exceed \$40,000.

RESULT Judge Nancy Bannon directed a verdict that established that Brill was liable for the accident. The jury found that Harding sustained a serious injury. It determined that Harding's damages totaled \$183,269.

EDSLEY

HARDING \$65,269 past lost earnings
\$18,000 future loss of services
\$70,000 past pain and suffering
\$30,000 future pain and suffering
\$183,269

DEMAND \$150,000**OFFER** \$40,000**INSURER(S)** Government Employees Insurance Co.

TRIAL DETAILS Trial Length: 5 days
Trial Deliberations: 1.5 hours
Jury Vote: 6-0
Jury Composition: 4 male, 2 female

PLAINTIFF

EXPERT(S) Conrad Berenson, Ph.D., economics,
Woodbury, NY
Steven J. Touliopoulos, M.D., orthopedic
surgery, Astoria, NY

DEFENSE

EXPERT(S) Alan J. Zimmerman, M.D., orthopedic surgery, Lido Beach, NY

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Jacqueline Birzon

QUEENS COUNTY

PREMISES LIABILITY

Negligent Repair and/or Maintenance — Dangerous Condition

Premises' owner, tenant rejected blame for passerby's fall

VERDICT **Defense**

CASE Margie Ford v. H.J. Investors Corp Solomon & S, Inc, No. 8835/11
COURT Queens Supreme
JUDGE Robert J. McDonald
DATE 6/18/2015

PLAINTIFF

ATTORNEY(S) Howard G. Frederick, Silbowitz, Garafola, Silbowitz, Schatz & Frederick, L.L.P., New York, NY

DEFENSE

ATTORNEY(S) Jerome D. Patterson, Patterson & Sciarrino, LLP, Bayside, NY

FACTS & ALLEGATIONS At about 11:30 a.m. on Feb. 3, 2011, plaintiff Margie Ford, 48, a pharmacy technician, fell while she was traversing the sidewalk that abutted the premises of 2404 34th Ave., in the Astoria section of Queens. She sustained an injury of an ankle.

Ford sued the adjoining premises' owner, H.J. Investors Corp., and the premises' tenant, Solomon & S Inc. Ford alleged that the defendants were negligent in their maintenance of the premises. She further alleged that the defendants' negligence created a dangerous condition that caused the accident.

Ford claimed that she slipped on an icy area that presented the appearance of a puddle. Ford's counsel claimed that the ice was a residual product of a snowstorm that occurred two days prior to the accident. He argued that the defendants had had ample opportunity to clear the sidewalk. Ford claimed that she did not notice sand or a melting agent, though she also acknowledged that municipal workers may have created mounds of snow during the evening that preceded the accident. Ford's snow-maintenance expert opined that the sidewalk had not been properly maintained, that the defendants had not

applied sand or a melting agent, and that the defendants had not established an adequate plan for snow removal.

Defense counsel presented Solomon & S' owner. The witness claimed that he had shoveled the sidewalk during the day that preceded the accident. Defense counsel contended that municipal workers may have later dumped snow into the area that the witness had cleared. He noted that some 2 feet of snow had fallen in the area, and he suggested that snow could have melted and refrozen during the hours that separated the accident and the shoveling that had been performed.

Defense counsel also contended that Ford had the last clear chance to avoid the accident, but that she chose to walk through what she perceived to be a puddle, rather than walking around it.

INJURIES/DAMAGES *cortisone injections; fracture, ankle; fracture, bimalleolar; fracture, malleolus; internal fixation; open reduction; physical therapy*

The trial was bifurcated. Damages were not before the court.

Ford sustained a bimalleolar fracture: a fracture of each of an ankle's malleoli, which are the bony protuberances. She was placed in an ambulance, and she was transported to a hospital. After one week had passed, her injury was addressed via open reduction and internal fixation. She subsequently underwent about 18 months of physical therapy. The treatment was typically rendered three times a week. She also underwent administration of an injection of cortisone. On May 7, 2013, she underwent surgical removal of the hardware that had been inserted during her prior surgery.

Ford claimed that her injury initially prevented her performance of about 20 weeks of work, and she also claimed that she was unable to work more than four days a week after resuming her job. She did not work during a period of about eight weeks after her second surgery was performed, and she retired soon thereafter. She claimed that she suffers residual pain and limitations that prevent her resumption of work. She also claimed that she requires additional physical therapy and that she may have to undergo ankle-replacement surgery.

Ford sought reimbursement of a medical-expenses lien in the approximate amount of \$37,000. She also sought recovery of \$975,000 for future medical expenses, a total of \$1.2 million for past and future lost earnings, and unspecified damages for past and future pain and suffering.

RESULT The jury rendered a defense verdict. It found that the defendants were not liable for the accident.

DEMAND \$850,000
OFFER \$150,000 or \$550,000/\$150,000 high/low stipulation

INSURER(S) Leading Insurance Group Insurance Co. Ltd. for both defendants

TRIAL DETAILS Trial Length: 4 days
 Trial Deliberations: 1 hour
 Jury Vote: 6-0
 Jury Composition: 5 male, 1 female