

UPSTATE

ERIE COUNTY

MOTOR VEHICLE

Passenger — Broadside — Intersection — Multiple Vehicle

Plaintiff claimed auto accident caused injuries of spine, knee

VERDICT \$3,000,000**CASE** Brigette Brzezniak v. Vincent J. Sorrentino and City of Buffalo, No. 800606/14**COURT** Erie Supreme**JUDGE** John L. Michalski**DATE** 10/28/2016**PLAINTIFF****ATTORNEY(S)** Michael C. Scinta, Brown Chiari LLP, Buffalo, NY**DEFENSE****ATTORNEY(S)** Michael T. Hagelin, Hagelin Spencer LLC, Buffalo, NY (Vincent J. Sorrentino, City of Buffalo)

None reported (Kristen Brzezniak)

FACTS & ALLEGATIONS On April 22, 2013, plaintiff Brigette Brzezniak, a 24-year-old unemployed woman, was a passenger of a vehicle that was being driven by her sister, Kristen Brzezniak, who was traveling on the northbound side of Michigan Avenue, near its intersection at Seneca Street, in Buffalo. While Kristen Brzezniak was proceeding through the intersection, her car struck the left side of a flatbed truck that was being driven by Vincent Sorrentino, who was traveling on the westbound side of Seneca Street. Brigette Brzezniak claimed that she suffered injuries of her back, a knee and her neck.

Brigette Brzezniak sued Sorrentino and the owner of Sorrentino's truck, the city of Buffalo. Brzezniak alleged that Sorrentino was negligent in the operation of his vehicle. She further alleged that the city of Buffalo was vicariously liable for Sorrentino's actions.

The defendants impleaded Kristen Brzezniak. They alleged that Kristen Brzezniak was negligent in the operation of her vehicle.

Brigette Brzezniak claimed that the intersection was controlled by a pair of blinking traffic signals. She claimed that a yellow signal governed her sister's entrance to the intersection, and she further claimed that a red signal governed Sorrentino's entrance to the intersection. She contended that Sorrentino should have yielded the right of way.

Sorrentino contended that he was not aware that he did not possess the right of way. He claimed that he did not understand the obligation imposed by a blinking red signal.

Sorrentino's counsel claimed that the collision occurred after Sorrentino had crossed half of the intersection, and he thusly contended that Sorrentino controlled the intersection. Sorrentino claimed that Kristen Brzezniak did not apply her vehicle's brakes or attempt to avoid the collision.

Liability was decided via summary judgment: Kristen Brzezniak was dismissed, and Sorrentino and the city of Buffalo were deemed entirely liable for the accident. The trial addressed damages.

INJURIES/DAMAGES arthroscopy; cartilage/chondral, damage; chiropractic; chondroplasty; cortisone injections; discectomy; fusion, lumbar; hardware implanted; hematoma; herniated disc at C5-6; herniated disc at C6-7; herniated disc at L3-4; herniated disc at L4-5; herniated disc at L5-S1; knee contusion; knee surgery; laminectomy; laminectomy, lumbar; microdiscectomy; physical therapy

Brigette Brzezniak was placed in an ambulance, and she was transported to Erie County Medical Center, in Buffalo. She claimed that her back, her neck and her right knee were painful. A doctor diagnosed a strain of Brzezniak's neck and a contusion of her right knee. Brzezniak underwent minor treatment. After 24 days had passed, she underwent drainage of a large residual hematoma that had developed in her right knee.

Brzezniak ultimately claimed that she suffered herniations of her C5-6, C6-7, L3-4, L4-5 and L5-S1 intervertebral discs and damage of cartilage of her right knee.

On Sept. 20, 2013, Brzezniak underwent surgery that included a microdiscectomy, which involved excision of a portion of her L4-5 disc, and a hemilaminectomy, which involved excision of a portion of a vertebra. On Sept. 26, 2014, she underwent arthroscopic surgery that addressed her right knee. The procedure included a chondroplasty, which involved a repair of cartilage. On Nov. 13, 2015, she underwent surgery that included a discectomy, which involved excision of her L3-4 and L4-5 discs; a laminectomy, which involved excision of portions of vertebrae; fusion of her spine's L4-5 and L5-S1 levels; and implantation of stabilizing hardware. She also underwent chiropractic manipulation, physical therapy and the administration of injections of cortisone, which addressed a painful condition of her right knee. Her chiropractic treatment is ongoing.

Brzezniak claimed that her back remains painful, that physical activity worsens her pain, and that some of her spine's fixation hardware has broken and must be removed. She also claimed that she requires further fusion of her spine's lumbar region.

Brzezniak sought recovery of future medical expenses, damages for past pain and suffering, and damages for future pain and suffering.

Defense counsel intended to introduce evidence that suggested that Brzezniak's injuries stemmed from congenital conditions, based on the contention that Brzezniak and her sister—who filed a separate lawsuit stemming from the accident—claimed to have suffered largely similar injuries and underwent post-accident MRI scans that produced

largely similar results. However, Justice John Michalski precluded the introduction of such an argument.

Defense counsel contended that Brzezniak exaggerated the extent of her injuries, that Brzezniak's surgeries were not necessary, and that further surgery has not been scheduled and is not necessary.

RESULT The jury found that Brzezniak's damages totaled \$3 million.

BRIGETTE

BRZEZNIAK \$300,000 past pain and suffering
\$2,700,000 future pain and suffering
(53.4 years)
\$3,000,000

DEMAND

None

OFFER

\$450,000

TRIAL DETAILS

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

PLAINTIFF**EXPERT(S)**

William N. Capicotto, M.D., orthopedic surgery, Buffalo, NY

DEFENSE**EXPERT(S)**

Robert M. Lifeso, M.D., orthopedic surgery, Buffalo, NY

POST-TRIAL Defense counsel has filed notice of appeal.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel and counsel of Sorrentino and the city of Buffalo. Additional information was gleaned from court documents. Kristen Brzezniak's counsel was not asked to contribute.

—Jason Eisenberg

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ROCKLAND COUNTY**FEATURED VERDICT****MEDICAL MALPRACTICE**

Unnecessary Procedure — Surgical Error — Informed Consent

Doctor: Hasty patient didn't let surgery produce its result

VERDICT**Defense****CASE**

Linda Fagan and Alfred Fagan v. Andrew Spinak, MD, John Chang, MD, Spinak Medical Eye Center and Nyack Hospital Simeon A. Lauer, MD, No. 32771/13

COURT

Rockland Supreme

JUDGE

Robert M. Berliner

DATE

2/2/2017

PLAINTIFF**ATTORNEY(S)**

Steven H. Beldock, Birbrower & Beldock, P.C., New City, NY, of counsel, Fellows Hymowitz, New City, NY

DEFENSE**ATTORNEY(S)**

Neil H. Ekblom, Ekblom & Partners, LLP, New York, NY

FACTS & ALLEGATIONS On July 20, 2012, plaintiff Linda Fagan, 61, an office's manager, underwent surgery that was intended to correct ptosis, which is drooping of an upper eyelid. The procedure, levator-advancement surgery, involved relocation of each eyelid's muscle, and it was performed by an ophthalmologist, Dr. Andrew Spinak, at Nyack Hospital, in Nyack. Spinak was assisted by another ophthalmologist, Dr. John Chang.

Fagan claimed that the surgery produced acceptable improvement of her left eye's ptosis, but that her right eyelid was unnaturally elevated.

Fagan subsequently underwent an exploratory surgery that addressed the perceived defect of her right eyelid. The procedure was performed by another ophthalmologist, Dr. Simeon Lauer. Lauer suggested that the eyelid would gradually descend to its desired position, but Fagan opted to undergo corrective surgeries. The procedures improved the eyelid's appearance, but the eyelid cannot be fully closed.

Fagan claimed that Spinak's surgery caused keratitis, which is an inflammatory condition of the cornea. She also claimed that her right eyelid's dysfunction prevented nonsurgical treatment of a pre-existing cataract. She claimed that she ultimately required surgical removal of the cataract.

Fagan sued Spinak, Chang, Lauer, Nyack Hospital and the practice that employed Spinak and Chang, Spinak