

Verdicts & Settlements

PRACTICE

Urology in Bladder

10306689/08 (9/7/2011)

by Stanley B. Green

by Peter E. Tangredi of Peter E. White Plains
and by Joseph A. Pannone of Morris,

From 2004 until 2007, plaintiff was a program representative, and Dr. Indararaju Mohandoss. In 2007, Dr. Watson had developed a condition in which blood invades the bladder, referred to a urologist, who diagnosed tumors of the bladder and prostates of his bladder and prostates of his surgery. He claimed the diagnosis was not diagnosed sooner, and the diagnosis would have averted the condition and prostate. Plaintiff alleged he failed to timely diagnose the failure constituted malpractice.

Dr. Watson had been present in his urine and he was referred to a specialist. Plaintiff contended prior urinalyses by Dr. Mohandoss failed to treat the condition. Plaintiff submitted a report which suggests the possible diagnosis necessitates an evaluation of the extent and duration of the condition as extensive as claimed. Plaintiff attributed to an infection the symptoms recurred, and he referred to a urologist. He contended being a drug user some time prior to the onset began, which placed the condition and the presence of bacteria. However, Watson's counsel contended the condition does not result in blood entering the urine.

Dr. Watson's tumors necessitated surgery of the bladder and prostate. A surgeon was recommended from a resected tumor. Plaintiff's residual impotence and the difficulty of recovery of damages and suffering. Plaintiff alleged Watson's injuries were a result of his tumors and their treatment.

Result: The parties negotiated a pretrial settlement in which Mohandoss' insurer agreed to pay \$1.9 million.

INSURANCE

Homeowner Denied Insurer's Arson Allegations

Verdict: \$230,000

Helmrich v. New York Mutual Underwriters, 1030626/09 (10/4/2011)

Orange Supreme: Justice Elaine Slobod

Plaintiff Attorney: Robert V. Magrino of New York City

Defense Attorney: Bruce W. Farquharson of Feldman, Rudy, Kirby & Farquharson in Jericho

Facts & Allegations: On May 30, 2008, plaintiff Paul Helmrich, a construction worker in his 40s, learned a fire had gutted his home in Warwick.

He filed a claim with New York Mutual Underwriters, his insurer. New York Mutual denied the claim after concluding the fire was incendiary in nature. The insurer contended Helmrich intentionally set or procured the fire, thus violating the fraud clause of his insurance policy.

Helmrich sued New York Mutual, alleging the claim denial constituted a breach of contract.

Helmrich's counsel noted the home was being constructed when the fire occurred. Helmrich contended he was living in New Jersey during the construction and that he and his family were in New Jersey when the fire happened.

Defense counsel contended Helmrich's home had not undergone construction or renovation during the two months preceding the fire. Helmrich was not gainfully employed when the fire occurred, Helmrich had incurred tens of thousands of dollars of debt, and Helmrich was also facing foreclosure of his New Jersey residence. He suggested those factors motivated Helmrich to destroy the Warwick home.

Defense counsel presented an expert who studies the cause and origin of fires, and the expert opined the fire was intentionally set. The defense's expert electrician opined the fire had not been caused by an electrical source.

Defense counsel also presented a local police detective who investigates claims of arson. The detective opined the fire's cause was not accidental or natural, though he would not definitively state that the fire was incendiary in nature. The detective acknowledged the fire occurred during a time in which other Warwick homes had been destroyed by suspicious fires, but defense counsel contended the other fires occurred in a different district of Warwick and were apparently caused in a manner that could not have caused the fire that destroyed Helmrich's home.

Injuries/Damages: Helmrich claimed the fire caused damage necessitating rebuilding and replacement costs of about \$330,000. Helmrich's insurance policy provided coverage of \$250,000, and Helmrich's counsel contended Helmrich was entitled to recovery of at least \$235,000 after the calculation of depreciation. Defense counsel suggested a figure of \$218,000, but the parties ultimately stipulated Helmrich's damages totaled \$230,000.

Result: The jury found defense counsel did not clearly and convincingly prove Helmrich intentionally caused the fire or Helmrich intentionally misrepresented any material facts related to the fire during New York Mutual's investigation. As such, Helmrich recovered the stipulated damages of \$230,000. He will also recover interest.

REAL PROPERTY

Owner, Tenant Dispute Loud Noise Claim

Verdict: Defense

Maroney v. Cunnion, 109829/07 (9/28/2011)

New York Supreme: Justice Eileen A. Rakower

Plaintiff Attorney: Colin E. Kaufman of Adam Leitman Bailey, P.C.

Defense Attorneys: Dale J. Degenshein of Stroock & Stroock & Lavan (157 East 72nd Street Condominium Corp.), Frank A. Scanga of the Law Office of Frank A. Scanga (157 East 72nd Street Condominium Corp.), Robert Swetnick of Eaton & Associates (Kathleen Cunnion)

Facts & Allegations: In 2005, plaintiff Peter Maroney, an investment banker in his 30s, became a resident of a multi-family dwelling at 157 E. 72nd St., in Manhattan. His apartment was located directly beneath an apartment owned by Kathleen Cunnion. Maroney claimed Cunnion's tenants have created unreasonably noisy conditions limiting his enjoyment of his residence. He contended he has repeatedly complained, but the problem has not been rectified.

Maroney sued Cunnion and the building's owner, 157 East 72nd Street Condominium Corp., alleging Cunnion's tenants' actions have created a nuisance and the building's owners have negligently failed to address the nuisance.

Maroney claimed he regularly hears the footfalls of Cunnion's tenants. Witnesses corroborated Maroney's claim and also reported having heard noises such as chairs being dragged across the floor of Cunnion's apartment.

Maroney's acoustics expert obtained a recording of noise that typically emanates from Cunnion's apartment, and the recording was played for the jury. The expert opined the sound's decibel lev-

els exceeded the limit set by the city's noise ordinance. He also testified that the noise was of an excessive bass tone, which is not regulated by an ordinance.

Maroney's counsel contended the noise is the product of a structure that is a sound product of a structure in the presence of a floating floor. Defense counsel contended that such a floor is not a sound product of a structure.

Defense counsel contended that the non-expert witnesses' testimony was unreliable. They contended the witnesses' testimony was unreliable because they had heard the noise during the trial and the witnesses' testimony was unreliable because they had heard the noise during the trial and the witnesses' testimony was unreliable because they had heard the noise during the trial.

Defense counsel further contended that the witnesses' testimony was unreliable because they had heard the noise during the trial and the witnesses' testimony was unreliable because they had heard the noise during the trial.

Defense counsel argued that the witnesses' testimony was unreliable because they had heard the noise during the trial and the witnesses' testimony was unreliable because they had heard the noise during the trial.

The defense's acoustics expert testified that the noise was not a nuisance and he contended that the noise was not a nuisance and he contended that the noise was not a nuisance.

Defense counsel argued that the witnesses' testimony was unreliable because they had heard the noise during the trial and the witnesses' testimony was unreliable because they had heard the noise during the trial.

Injuries/Damages: Plaintiff was subjected to about \$70,000 in noise. He contended that the noise was a nuisance for many everyday activities and recreational activities.

His expert real estate appraiser testified that the noise diminishes the value of the property by \$70,000. Maroney sought \$70,000 in damages and the cost to repair the apartment.

Defense counsel argued that the witnesses' testimony was unreliable because they had heard the noise during the trial and the witnesses' testimony was unreliable because they had heard the noise during the trial.

Result: The jury ruled in favor of the defense.

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