

# Verdicts & Settlements

**PRACTICE**

**Urology in Bladder**

10306689/08 (9/7/2011)

by Stanley B. Green

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From 2004 until 2007, plaintiff was a program representative, and Indraraju Mohandoss. In 2007, 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 made sooner, and the diagnosis would have averted the bladder and prostate. Plaintiff, alleging he failed to timely diagnose the failure constituted malpractice.

Plaintiff had been present in his urine and he was referred to a specialist. Plaintiff contended prior urinalyses and Mohandoss failed to treat the urologist submitted a report which suggests the possible diagnosis necessitates an evaluation of the extent and duration of the symptoms as extensive as claimed and attributed to an infection. The symptoms recurred, and he was referred to a urologist. He contended being a drug user some time before the diagnosis began, which placed the diagnosis and the presence of the infection. However, Watson's counsel contended the result in blood enter-

Plaintiff's tumors necessitated the removal of his bladder and prostate. A surgeon was recommended from a resected specimen. Plaintiff's residual impotence and the need for recovery of damages and suffering. Plaintiff alleged Watson's injuries were the result of his tumors and their

**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 contended the noise was an excessive bass tone, which is not regulated by an ordinance.

Maroney's counsel contended the noise is the product of a structure, and the noise could be eliminated in the presence of a floating floor, but that such a floor is not required by ordinance.

Defense counsel contended that the non-expert witnesses were not New York City residents, and the non-expert witnesses' claims. They contended the witnesses' testimony was unreliable because they had heard the noise during the trial and the witnesses' testimony was self-serving.

Defense counsel further contended that the witnesses were not New York City residents, and the non-expert witnesses' claims. He would have the witnesses' testimony. Defense counsel did not prove Maroney's claim of unreasonable noise or nuisance behavior.

Defense counsel also contended that the recording of Maroney's testimony noted the recording's reliability. Maroney's mother testified that she was bothered by noises during the trial, and they argued that Maroney was away from the premises during the trial.

The defense's acoustics expert testified that the recording did not reveal the noise level, and he contended that the recording was structurally sufficient.

Defense counsel also contended that the witnesses promptly investigated the noise and did not detect a nuisance under the building's bylaws.

**Injuries/Damages:** Maroney claimed he was subjected to about \$70,000 in noise. He contended that the noise was for many everyday activities and recreational activities.

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

Defense counsel contended that the apartment's value has not been diminished, and is not significantly affected by the noise. Cunnion's tenants may be liable for the noise.

**Result:** The jury ruled in favor of the defense.

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