



Injuries: displaced trimalleolar fracture of the right ankle requiring open reduction and internal fixation with seven screws and a plate. The hardware was surgically removed 18 months later. Pltf. was out of work for 6 months and required a cane for 2½ years. She claimed that she has a permanent loss of range of motion, swelling, and pain, and is unable to perform any athletic activities. Pltf.'s expert testified that she will develop traumatic osteoarthritis at the fracture site. Defts. disputed the degree of permanency and Pltf.'s claim that she will develop arthritis. Demonstrative evidence: photographs of the scene; model of the ankle. Jury deliberation: 1½ days. Carriers: Allstate for Spyridon and Angela Aronis; Zurich for the other Aronis Defts.

Pltf. Expert: Dr. Mitchell Kaphan, orth. surg., Bronx.
Deflt. Expert: Dr. Sheldon Manspeizer, orth. surg., White Plains. **H**

XV/42-10 INSURANCE CASE — BURGLARY — DEFENSE VERDICT

Jamie Gross v. State Farm Fire & Casualty Company 18289/95 2½-day trial Verdict 2/13/98 Bronx Supreme

Judge: Lucindo Suarez

Verdict: Defense verdict (6/0). Jury: 4 male, 2 female.

Pltf. Atty: Warren Goodman, of counsel to Matthew Marchese, Bronx
Deflt. Atty: Bruce W. Farquharson of Feldman & Rudy, P.C., Westbury

Facts: Pltf. claimed that his fourth floor walk-up apartment in the Bronx was burglarized sometime between 7/2/94 and 7/6/94, while he was in Las Vegas getting married. He claimed the theft of approximately \$30,000 in property, including jewelry. He further contended that the burglar had damaged virtually all of the furniture in the apartment by slashing the upholstery.

Deflt. denied that a legitimate burglary had occurred, citing inconsistencies in Pltf.'s testimony and the documentation he presented in support of his claim. Deflt. argued that Pltf.'s testimony that he left the window and security gate open was incredible. Deflt. further contended that it was unlikely that anyone could have stolen the amount of items claimed without having attracted any attention, as many of the items were heavy and bulky. Demonstrative evidence: photographs; invoices. Offer: \$5,000; demand: \$12,000; amount asked of jury: \$30,000. Jury deliberation: ½ hour. Carrier: State Farm. **H**

KINGS COUNTY — SUPREME COURT

XV/42-11 MEDICAL MALPRACTICE — FAILURE TO USE PROBE AFTER EXCISION OF BOIL RESULTS IN DEVELOPMENT OF FISTULAS

Greenbaum v. Patel 13793/93 11-day trial Verdict 12/18/97 Kings Supreme

Judge: Michelle W. Patterson

Verdict: \$365,000. Breakdown: \$350,000 for past pain and suffering; \$15,000 for future pain and suffering (10 years). The case settled after the trial for \$360,000.

Pltf. Atty: Robert M. Ginsberg of Ginsberg & Broome, Manhattan
Deflt. Atty: Lewis Rosenberg of Shapiro, Beilly, Rosenberg, Albert & Fox, Manhattan

Facts: Pltf., a 36-year-old courier at the time, testified that he presented to Deflt.'s office with two boils between the anus and scrotum. Deflt. admitted Pltf. to St. Vincent's Hospital and on 12/4/90 performed an incision



and drainage of the abscess closest to the scrotum and excised a perianal mass from the boil closest to the anus. Deft. noted an opening in the cavity following the excision and attempted to explore with a catheter, but the catheter only went in about 1 inch. Deft. did not proceed further with the exploration.

Pltf. remained at home for approximately 4 months, but the wounds did not heal. He presented to another physician and found that he had suffered a complex series of fistulization in the areas surrounding the wounds. Pltf. underwent six separate surgical procedures over a 3-year period until the FISTULAS were closed and healed.

Pltf. claimed that Deft. should have used a probe instead of a catheter when exploring the cavity. He also claimed that an anagram should have been performed. Pltf. testified that a fistula existed at the time of the initial surgery, which eventually resulted in the infections. Pltf.'s expert testified that if the fistula had been discovered, immediate surgery should have been performed which would have cured the problem and he would not have required the subsequent surgeries.

Deft. argued that there was no malpractice in failing to use the probe or anagram. He contended that even if the fistula was discovered, it would have been acceptable medical practice not to perform surgery and wait until the fistula healed on its own. Demonstrative evidence: anatomical charts; drawings; enlargements of hospital records. Note: There was a dispute as to whether the jury award of "\$15,000 for ten years" for future pain and suffering was to be the annual sum payable for 10 years or the total sum. The case settled after verdict for \$360,000.

Pltf. Expert: Dr. Stanley Edelman, surgeon, Manhattan.

Deft. Expert: Dr. Thomas Dailey, colorectal surgeon, Manhattan. **M**

XV/42-12 BUS ACCIDENT — PASSENGER FALLS WHILE EXITING BUS — DEFENSE VERDICT

Rosaleen and Robert Bennett v. Command Bus Transit, Inc. 14804/91 1-day trial Verdict 4/2/98 Kings Supreme

Judge: Martin Schneier

Verdict: Defense verdict on liability (6/0). Jury: 1 male, 5 female.

Pltf. Atty: Linda A. Fedrizzi of Ginsberg, Katsorhis & Fedrizzi, Flushing

Deft. Atty: Stanley N. Albert of Shapiro, Beilly, Rosenberg, Albert & Fox, Manhattan

Facts: Pltf., a 50-year-old clerk, claimed that on 9/5/90 she was exiting the rear door of Deft.'s bus at the intersection of Trinity Place and Greenwich St. in Manhattan when the bus lurched, causing her to fall. Deft.'s bus driver testified that the interlocking mechanism was in place at the time of the incident and that it was impossible for the bus to move. Deft. produced Pltf.'s hospital records and Bill of Particulars which indicated that she tripped and fell, but did not refer to the bus lurching.

Injuries: (not before the jury) fractured calcaneus. Demonstrative evidence: hospital records; Pltf.'s Bill of Particulars. Offer: \$20,000; demand: \$125,000. Jury deliberation: 1 hour. **M**

QUEENS COUNTY — SUPREME COURT

XV/42-13 MOTOR VEHICLE — REAR END — TMJ, CONCUSSION, BACK INJURIES

Kenneth Roper v. Con Edison 15539/95 7-day trial Verdict 3/10/98 Queens Supreme

Judge: Frederick D. Schmidt

Verdict: \$1,733,296 (5/1). Breakdown: \$75,000 for past pain and suffering; \$625,000 for future pain and suffering; \$103,296 for past lost earnings; \$930,000 for future lost earnings. Jury: 5 male, 1 female. **A post-trial motion is pending.**

