

The officer allegedly insinuated that Montoya had taken too much sick leave during the previous weeks. The next day, after reporting this to her union, Montoya suffered a panic attack and was hospitalized for severe anxiety.

Montoya applied for workers' compensation, but the claim was denied. She was suspended and asked to surrender her weapon and badge. She then endured months of frustrating and unnecessary interactions with her health insurer regarding her medical claims. Montoya had been earning \$120,000 annually but has not returned to work.

She sued the city and the police department, alleging disability discrimination and retaliation.

The jury awarded \$2.1 million.

CITATION: *Montoya v. City of Los Angeles*, No. BC504572 (Cal. Super. Ct. Los Angeles Cnty. Apr. 5, 2016). **PLAINTIFF COUNSEL:** AAJ member Matthew McNicholas, AAJ member Alyssa Schabloski, and David Angeloff, all of Los Angeles.

MOTOR VEHICLE LIABILITY

Delivery driver backs dumpster into worker's knee

Richard Black worked for a hospital's housekeeping staff and went to the loading dock to throw some trash into a dumpster. Richard Cea, an employee of Royal Carting Service Co., had just delivered the dumpster, and it was still attached to the back of his truck.

As Black was throwing trash in while standing with one foot on the dock and the other on the top edge of the dumpster, Cea suddenly moved the truck. The dumpster moved away from the dock, and Black fell to the ground. Cea then reversed the truck, causing the dumpster to strike Black's left knee.

Black, 55, suffered a fractured distal femur. He underwent open reduction internal fixation, followed by physical therapy. Nonunion of the bone

necessitated revision surgery and application of a bone graft. He underwent additional physical therapy but later developed arthritis in the knee and required a total knee replacement.

His medical expenses of about \$188,700 were paid by workers' compensation. He returned to work, but residual pain and a restricted range of motion in his knee have necessitated certain accommodations.

Black, through a guardian, sued Cea, alleging that he was negligent in moving the truck while the dumpster was still attached without first determining whether anyone was standing near or on the dumpster. Black also sued Royal Carting Service, alleging that it was liable under respondeat superior for Cea's negligence, and another company that owned the truck. The plaintiff sought noneconomic damages for past and future pain and suffering.

The defendants argued that Black was negligent in placing his foot on the dumpster when he should have realized that it was still attached to the truck.

The parties settled pretrial for the defendants' policy limit of \$1 million. A workers' compensation lien of about \$223,600 was compromised and resolved for about \$110,100.

CITATION: *Dart v. Cea*, No. 12707/09 (N.Y. Sup. Ct. Orange Cnty. Dec. 22, 2015).

PLAINTIFF COUNSEL: AAJ member George M. Levy, Newburgh, N.Y.

NEGLIGENCE

Improper lookout on ski slope

Doe, 63, was skiing with his wife and friends. As he traversed a ski slope, he collided with Roe, a teenager who was performing a spin maneuver from above. Doe suffered a traumatic brain injury, a neck fracture at C2 that necessitated fusion surgery, and a shoulder fracture that required open reduction surgery.

A dentist who had enjoyed vigorous physical activity, Doe is now limited in his physical abilities and tolerance for stress, is unable to do his job—at which he had earned \$250,000 annually—and requires care from his wife. His medical expenses were \$100,000.

Doe sued Roe, alleging he failed to stop and look before performing the spin maneuver. Roe asserted that Doe had been comparatively negligent for traversing the slope in an area that was "blind" to uphill skiers.

Roe moved for summary judgment; however, the court ruled that Doe had not been negligent because uphill skiers could slow down or stop and see the terrain below. The court also ruled that Doe had not assumed the risk of injury and that hitting a downhill skier was not negligence per se.

The parties settled for \$3.25 million, paid by Roe's parents' insurer.

CITATION: *Doe v. Roe Skier*, Confidential Dkt. No. (D. Colo. Jan. 11, 2016).

PLAINTIFF COUNSEL: AAJ member James E. Gigax, Denver. **PLAINTIFF EXPERTS:** John D. McDowell, dentistry, Denver; Tilo Voitell, computer animation, and Toby Terpstra, collision reconstruction, both of Greenwood Village, Colo.; Helen Woodard, rehabilitation, Lakewood, Colo.; and Sheri Young, occupational therapy, Arvada, Colo.

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