

*herniated disc at C5-6; herniated disc at L3-4; herniated disc at L4-5; internal fixation; laminectomy; physical therapy; radiculopathy; reconstructive surgery; resection; shoulder-impingement syndrome; swelling; torn biceps tendon; torn labrum; torn rotator cuff; traumatic brain injury; unconsciousness*

Cullen's head was struck by the falling plank. He became unconscious, and a witness reported that Cullen's head was bleeding profusely. Cullen was placed in an ambulance, and he was transported to St. Vincent's Hospital, Manhattan. His wound was closed via the application of 10 staples. A CT scan revealed that he was suffering swelling of extra-cranial soft tissue.

Cullen subsequently underwent an electromyography and a positron emission tomography. Cullen's expert neurologist opined that the electromyography indicated that Cullen suffered diffuse cerebral dysfunction, and Cullen's expert neuropsychiatrist opined that the other test indicated deficits of the brain's temporoparietal region.

Cullen claimed that he also sustained herniations of his C3-4, C4-5, C5-6, L3-4 and L4-5 intervertebral discs; partial tears of his right shoulder's biceps tendon and rotator cuff; a tear of the same shoulder's labrum; and an injury that produced impingement of the same shoulder. He also claimed that he developed radiculopathy.

Cullen's right shoulder's injuries were initially addressed via physical therapy and the administration of painkillers, but the treatment did not resolve his condition. On March 31, 2006, he underwent reconstructive surgery that included repair of the torn labrum, decompression that released the impingement and a partial resection of the torn biceps tendon.

Cullen's herniations were initially addressed via physical therapy and the administration of epidural injections of steroid-based painkillers, but the treatment did not resolve the pain that the herniations produced. On March 13, 2007, Cullen underwent surgery that included a discectomy, which is the excision of a disc; fusion of the anterior side of a portion of his spine's cervical region; and the insertion of fixation hardware. On May 13, 2008, he underwent surgery that included a laminectomy, which involved the excision of a lumbar vertebra's posterior arch, and decompression of a nerve root.

Cullen acknowledged that the May 2008 surgeries have improved the condition of his lower back, but he contended that he suffers residual pain that stems from his neck, residual pain that stems from his right shoulder and a residual reduction of his neck's range of motion. He claimed that he will likely have to undergo additional fusions of his spine's cervical and lumbar regions.

Cullen also contended that his brain's injury produces severe sequelae that include depression, impairment of his cognitive functionality and retrograde amnesia.

Cullen claimed that his physical injuries permanently prevent his resumption of his ironworker's duties. He is undergoing vocational rehabilitation, but he contended that he does not have much hope of securing work. He sought reimbursement of a \$203,781.12 workers' compensation lien, recovery of a total of \$2.5 million to \$3.6 million for his past and future lost earnings, and damages for his past and future pain and suffering.

**RESULT** The parties negotiated a \$3,275,000 pretrial settlement, which was established via the guidance of mediator Michael McAllister.

**INSURER(S)** American International Group Inc. for all defendants (primary insurer)  
Travelers Property Casualty Corp. for all defendants (excess)

**PLAINTIFF EXPERT(S)** Monte S. Buchsbaum, M.D., brain injury/trauma, New York, NY  
Ronald E. Missun, Ph.D., economics, New York, NY  
Michael Palmeri, M.D., orthopedic surgery, Poughkeepsie, NY

**DEFENSE EXPERT(S)**

**EDITOR'S NOTE** This information that was provided by plaintiff.



—Samantha Schulz

## QUEENS COUNTY

### MOTOR VEHICLE

**No-Fault Case — Rear-ender — Multiple Vehicle**

## Expressway accident injured back, knee, plaintiff alleged

**SETTLEMENT** **\$1,434,645**

**CASE** Gustavo Cordero v. Laura McCloy, No. 16671/07

**COURT JUDGE** Queens Supreme  
Peter J. Kelly  
**DATE** 5/4/2009

**PLAINTIFF ATTORNEY(S)** James Galleshaw, Sullivan & Galleshaw, L.L.P., Middle Village, NY  
Keith Sullivan, Sullivan & Galleshaw, L.L.P., Middle Village, NY

**DEFENSE ATTORNEY(S)** Tracy S. Reifer, Carman, Callahan & Ingham, LLP, Farmingdale, NY

**FACTS & ALLEGATIONS** At about 5:30 p.m. on Aug. 21, 2006, plaintiff Gustavo Cordero, 47, a construction worker, was driving

## NEW YORK CITY

on the westbound side of the Long Island Expressway, in Hauppauge. As he approached the interchange at Wheeler Road, his compact sport utility vehicle's rear end was struck by a trailing car that was being driven by Laura McCloy. Cordero claimed that he sustained injuries of his back, a knee and his neck.

Cordero sued McCloy. He alleged that McCloy was negligent in the operation of her vehicle.

Cordero claimed that the collision occurred while he was stopped in traffic.

McCloy contended that Cordero abruptly stopped short of traffic. As such, she claimed that she could not have avoided the collision.

Cordero's counsel moved for summary judgment of liability, and the motion was granted. The matter proceeded to damages.

**INJURIES/DAMAGES** *decreased range of motion; fusion, lumbar; herniated disc at L5-S1; knee surgery; physical therapy; strain, cervical; strain, lumbar; torn medial meniscus*

Cordero was placed in an ambulance, and he was transported to North Shore University Hospital, in Manhasset. He underwent minor treatment.

Cordero ultimately claimed that he sustained a herniation of his L5-S1 intervertebral disc, strains of his back and neck, and a tear of his left knee's medial meniscus. In December 2006, he underwent surgery that addressed the injury of his left knee. More than 12 months later, his herniation was addressed via surgery that included fusion of the anterior and posterior sections of his spine's L5 and S1 levels. He also underwent about nine months of physical therapy and the administration of painkilling nerve-block injections that were directed to the lower portion of his back.

Cordero claimed that he suffers persistent residual back pain that radiates through his legs. He contended that his pain and his back's limited mobility prevent his resumption of any type of work.

Cordero sought recovery of a total of \$750,000 for his past and future lost earnings. He also sought recovery of damages for his past and future pain and suffering.

Defense counsel noted that Cordero had suffered a prior bulge of his L5-S1 disc. He also noted that Cordero had previously undergone surgery that addressed his left knee. However, Cordero's medical records had been lost in a fire, so there was no documentation as to the nature of the surgery. Defense counsel claimed that Cordero's alleged injuries were merely aggravations of those preexisting conditions, and he also claimed that Cordero exaggerated the extent of his injuries. Thus, he contended that Cordero did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d).

Defense counsel further contended that Cordero can perform construction work or some other type of work.

**RESULT** The parties negotiated a \$1,434,645 pretrial settlement. McCloy's primary insurer agreed to contribute its \$500,000 of available coverage plus attorneys' fees, and McCloy's excess insurer, which provided coverage up to \$2.5 million, agreed to contribute the remainder.

**INSURER(S)** **Progressive Casualty Insurance Co.**  
primary insurer  
**Mount Vernon Fire Insurance Co.** excess

**PLAINTIFF EXPERT(S)**  
**Jeffrey A. Goldstein, M.D.**, neurology, New York, NY (treating doctor; did not testify)  
**Ronald Krinick, M.D.**, orthopedic surgery, New York, NY (treating doctor; did not testify)  
**Douglas C. Schottenstein, M.D.**, pain management, New York, NY (treating doctor; did not testify)

**DEFENSE EXPERT(S)**  
**Charles A. Kincaid, Ph.D.**, vocational rehabilitation, Hackensack, NJ (did not testify)  
**Robert A. Tantleff, M.D.**, radiology, East Meadow, NY (did not testify)  
**Edward A. Toriello, M.D.**, orthopedic surgery, Brooklyn, NY (did not testify)  
**Jose A. Torres Gluck, M.D.**, neurosurgery, Bronx, NY (did not testify)

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Monica Paquette

**MOTOR VEHICLE****Rear-ender — Multiple Vehicle****Car crash caused back, knee, neck injuries, plaintiff claimed**

**VERDICT** **\$36,000**  
**ACTUAL** **\$25,000**

**CASE** Joanne Mastakas v. Wing Keung Enterprises, Inc. and Shigang Tian, No. 17184/07  
**COURT** Queens Supreme  
**JUDGE** Martin E. Ritholtz  
**DATE** 4/22/2009

**PLAINTIFF ATTORNEY(S)** **Adam Weiss, Russo, Darnell & Lodato, Esqs.**, East Meadow, NY

**DEFENSE ATTORNEY(S)** **Jeffrey M. Kalenka, Robert P. Tusa**, Garden City, NY