GRSM50
GORDON REES SCULLY MANSUKHANI
YOUR 50 STATE LAW FIRM™

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OVERVIEW

Don Derrico primarily focuses his practice on defending complex, high-exposure claims. During his career, he has taken in excess of 100 jury verdicts in New York courts and in other jurisdictions across the country. Excess insurers and other clients often ask Don to step in on the eve of trial to try their high-exposure case which could not be settled before trial. He has obtained countless defense verdicts and has resolved hundreds of matters for significantly less than prior defense counsel's recommended settlement amount.

Prior to his legal career, Don worked in construction which is why many insurance carriers retain him to defend their insured's in construction related litigation. He has litigated and tried hundreds of cases involving wrongful death, catastrophic accidents at construction sites, product liability, auto & trucking accidents and premises liability & security claims. In addition, Don has litigated complex commercial disputes, class actions and land use and zoning disputes. He has been retained in a myriad of other areas from real estate disputes to civil rights matters to complex matrimonial actions.

Don has more than 20 years of experience defending clients in the sports and fitness field. He currently serves as primary outside counsel to a major East Coast health club chain, overseeing all claims and working closely with the client's insurer on reserve setting and pre-suit resolution. In addition, he is the primary point of contact for several of the firm's excess insurance company clients and frequently is called upon by these and other carriers to evaluate high-exposure cases being litigated by other defense counsel.

Don is Co-Chair of the Trucking & Transportation practice group and Chair of the East Coast Rapid Response Team. The Trucking and Transportation group represents several of the largest nationally prominent trucking companies. The Rapid Response Team provides our clients with 24/7 availability to respond to accidents to coordinate the investigation and secure crucial evidence.

Regardless of subject matter, venue, or adversary, Don is adept at evaluating potential exposure and liability and determining the best strategy for achieving a favorable outcome while keeping defense costs under control. He assembles a team of attorneys best qualified to execute the client's chosen resolution strategy and provides hands-on supervision throughout the life of a matter to ensure clients receive quality legal representation.

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REPRESENTATIVE EXPERIENCE

- *Frank Roth and Barbara Roth v. Kevin H. McLaughlin and Three Speed Design, LLC*: Don and his team secured a unanimous defense verdict in a contentious motor vehicle lawsuit that was litigated for nine years in New York County Supreme Court. The plaintiff alleged the firm's client's vehicle sideswiped his van in Brooklyn, New York. As a result of the accident, the plaintiff underwent three surgeries on his neck, shoulder, and hip. The plaintiff demanded $5,500,000 and refused to engage in any settlement negotiations. The firm's client, a high-profile fashion executive, was adamant the accident resulted from the plaintiff's road rage and that the plaintiff attempted to overtake his vehicle several times which ultimately resulted in the collision. The plaintiff testified that the defendant swerved into his van while attempting to make a left turn. At trial, the GRSM team successfully argued that the plaintiff became enraged and caused the accident when he mistakenly perceived that the defendant cut him off while switching lanes. The GRSM team utilized photos of the damage to the vehicles, Google Earth photos of the intersection, and the testimony of the parties to prove that the impact could not have occurred in the manner testified to by the plaintiff. The jury deliberated for approximately 45 minutes and returned a defense verdict in favor of GRSM's client.

- *Walter Naranjo and Miriam Jara v. Vassar College, College Properties, LLC, U.W. Marx, Inc. and Storm King Group Inc.*: Don and his team secured a complete defense verdict on behalf of a prominent New York college following a three-week jury trial in Queens County, New York, in a high-profile labor law case. The plaintiff, a construction worker, sought $30 million in damages after falling from a roof while working for an asbestos abatement company hired by GRSM's client to remove asbestos from a dining hall. The incident occurred while the plaintiff and his brother were dismantling an asbestos decontamination shed at the direction of their foreman. They were instructed to climb onto the roof to remove screws from plywood panels. During the process, the roof collapsed, causing both workers to fall approximately eight feet. The plaintiff landed on his head, rendering him unconscious. He underwent multiple surgeries for injuries to his neck, back, both shoulders, and both knees. In addition, the plaintiff claimed to have suffered a traumatic brain injury, resulting in early-onset dementia. Since the accident, he has been unable to work and was determined to be permanently disabled. The plaintiff argued that the ladders provided for the task were unsuitable and that he was not given the appropriate safety equipment, such as scaffolding, which he claimed was necessary to complete the job. In response to the plaintiff's claims, GRSM filed a third-party action against the asbestos abatement contractor, seeking contractual indemnification. GRSM successfully obtained summary judgment on this claim. However, the contractor's insurance carrier denied coverage for GRSM's client due to a policy exclusion, which was later upheld in a separate legal action. As a result, the client remained responsible for any potential jury award. Throughout the trial, GRSM argued that the ladders provided to the worker were appropriate for the task and that the plaintiff had disobeyed his foreman's direct instructions not to climb onto the roof. The defense successfully demonstrated to the jury that the plaintiff's own actions were the sole proximate cause of the accident. After nearly five hours of deliberation, the jury rendered a complete defense verdict, finding that the ladders were suitable, and that the plaintiff was entirely responsible for his injuries. Before trial, the plaintiff had demanded a $10 million settlement, which was rejected.

- *Farber v. Lawrence Woodmere Academy*: Don and his team secured a defense verdict in Nassau County Supreme Court on behalf of a private school in Long Island, New York. The case, filed under a law that would temporarily revive the statute of limitations for certain negligence claims, involved allegations of misconduct by a teacher. The plaintiff, now 30, claimed that misconduct occurred during her time as a high school student. Braun's thorough deposition work and Smith's discovery efforts led to a significant reduction in the claims against the school through a motion for summary judgment. During the nine-day trial, the defense focused on demonstrating that the plaintiff's allegations did not meet the criteria required by the law, and as a result, the claims were barred by the statute of limitations. Key elements of the defense included using the plaintiff's records and testimonies from school administration witnesses to establish the absence of evidence supporting the claims. Despite attempts by the plaintiff's counsel to introduce prejudicial evidence and seek a mistrial, the jury deliberated for over four hours, ultimately finding in favor of the defense and concluding that the plaintiff had not substantiated her claims. The plaintiff had demanded $1.25 million to settle the case. No settlement offer was extended.
- *Hila, Arian (Ledi Hila) v. The Noble Ninth, Inc., German Masonic et al.*: GRSM Westchester and Buffalo Managing Partner Donald Derrico and Partner Jason Scottobtained a directed verdict at trial in a lawsuit involving a construction site accident. The plaintiff and his co-worker were performing demolition of a three-story building using a debris chute. When they attempted to clear a clog in the chute, the chute became dislodged, and the chute pinned the plaintiff to the side of the dumpster. As a result, the plaintiff sustained severe injuries and is in a permanent vegetative state. The plaintiff alleged violations of labor law sections 240(1) and 241(6) and product liability. The GRSM Team was hired to defend the company that allegedly sold the chute. The plaintiff also sued the building owner and the chute manufacturer, who impleaded the plaintiff's employer. Before trial, the court granted summary judgment to the plaintiff against the building owner, the chute manufacturer, and our client. Derrico and Scott moved to reargue the granting of summary judgment against our client. They successfully convinced the court to reverse itself by pointing out that the seller of the product was not a viable labor law defendant. After five days of trial, the GRSM Team moved for a directed verdict and argued that the evidence adduced at trial failed to establish that our client sold the chute in question and that even assuming they had, the warnings on the chute were visible, clear, and adequate. After extensive oral argument, the court granted our motion for a directed verdict. Thereafter, the case settled with the chute manufacturer paying 12 million dollars, the building owner paying $500,000, and the employer's worker compensation carrier waiving their 3 million dollar lien and agreeing to pay for the plaintiff's lifetime treatment, which requires 24-hour nursing care at an inpatient facility. The pretrial demand was $30,000,000.

- *Tirado, Angelica v. Hofstra University*: Don and his team secured a unanimous defense verdict in a slip-and-fall case on behalf of a well-known college in Long Island, New York. The plaintiff, a student at the college, alleged that, while showering in her dorm, she slipped and fell due to an unsecured drain cover. She claimed that, as a result, she fell and struck her head and was rendered unconscious for up to 10 minutes. In addition, she sustained a severe laceration to her head which required 30 staples and 20 stitches to close. The plaintiff alleged that she had previously complained that the shower drain covers were not screwed down and often moved when stepped on. As a result of her injury, the plaintiff claimed that she suffered from debilitating headaches and depression and was unable to work. The plaintiff alleged $6 million in future lost earnings and demanded $1.9 million to settle the case. The GRSM team acknowledged that the drain cover was not screwed down but asserted that it was not necessary. Further, the witness who testified for GRSM's client testified that there were no records of any complaints regarding unsecured drain covers. Using the witnesses' testimony at trial regarding the dimensions of the shower and location of the drain, Mr. Derrico created a demonstrative replica of the shower on the floor of the courtroom using tape and was able to demonstrate through the plaintiff that she could not have fallen and struck her head as she testified doing. After deliberating for approximately one hour, the jury returned a unanimous defense verdict.
- *Cribbs, Mary Jude and James Clinton Cribbs III v. Corporate Woods 11 Company, et al*: Don and his team won at trial on a complex construction claim. Our client retained a General Contractor ("GC") to rebuild their outdoor parking structure, which involved removing and replacing the concrete decking. The plaintiff alleged two years after the construction was complete, she fell as she got out of her car when she stepped into a depressed expansion joint. The contractor's carrier agreed to defend and indemnify the owner under a reservation of rights ("ROR"). The ROR was premised upon an allegation that the accident was due to the incorrectly installed expansion joint between the concrete slabs and a failure by the owner to maintain the premises properly. The plaintiff sued the owner (our client), the General Contractor, and a subcontractor who installed the expansion joints between the concrete decking. Derrico was hired to try the case when a pre-trial mediation failed. Immediately thereafter, the plaintiff decided to discontinue against the GC and Sub, which left our client as the only remaining defendant. The plaintiff did so because he believed that all he had to do was prove that a defect existed regardless of who created it. However, at trial, Derrico successfully argued that the cause of the accident was the construction defect, and maintenance had nothing to do with it. This was significant because dismissing the improper maintenance claims invalidated the ROR and afforded the client owner full indemnity from the GC's carrier. If the jury determined that the owner was partially at fault for failing to maintain the premises properly, that finding would sever the indemnity obligation of the GC's carrier. The jury deliberated for approximately one hour and found that the accident was caused by a negligently constructed expansion joint. The client and their carrier were delighted with the result.

- *Cordero, Bibiana v. Julius Karinskis and Communication Technology Services, LLC*: Don and his team secured a defense verdict in New York County after a week-long contentious trial. The plaintiff alleged that our client's vehicle was speeding and struck her vehicle in the rear quarter panel as she attempted to cross an intersection. Admittedly, our client testified that he was driving in excess of the posted speed limit. As a result, plaintiff sustained numerous injuries including injuries to her neck, back and shoulder and underwent knee surgery with a recommendation of a total knee replacement. Plaintiff stopped working after the accident due to her injuries and claimed that she needed a home health aide to assist her in her daily activities. Plaintiff sought $1.5 million in lost earnings and $1 million in future life care costs. Plaintiff demanded $5 million to settle the case. Derrico and his team successfully convinced the jury that speed was not a factor in the accident and that the plaintiff should have yielded the right of way to our client's vehicle. Derrico was able to elicit on cross-examination of the plaintiff that, despite her claims that she did not see the defendant approaching the intersection, she would not have attempted to cross had she seen him and would have yielded the right of way. The jury deliberated for 38 minutes and returned a verdict in our client's favor.

- *Traca, Theresa v. Catapano Engineering & Architecture, P.C. and MVG Realty*: Don and his team secured a defense verdict related to a trip and fall case involving serious orthopedic injuries which included two surgeries. Derrico was requested to step in and try the case after the matter did not settle at mediation. The plaintiff alleges that as she was leaving a Bingo Hall located in a building owned and maintained by the firm's client, she tripped and fell over a concrete parking stop in the parking lot. The accident occurred at 10 p.m. The plaintiff alleged that the parking lights were not on when she fell and that the parking stop was misaligned. As a result, the plaintiff sustained a severely displaced fracture to the pelvis and hip which required surgical repair. One year later the plaintiff had a total hip replacement performed. The plaintiff produced at trial two non-party witnesses who testified that on the date of the accident the parking lights were not on, and the parking stops were not visible. Further, the non-party witnesses testified that the lights were rarely on at night and the parking stops had been misaligned for months. Three pictures were taken the night of the accident by the co-defendant who operated the Bingo Hall. Unfortunately, the person who took the photos passed away and was never deposed. Only two of the three photos were exchanged in discovery by prior counsel and admitted into evidence by the Judge. The third photo, that wasn't exchanged, revealed the lights were on in the area where plaintiff fell. The plaintiff refused to stipulate that third photo into evidence. Plaintiff argued the photo that wasn't exchanged in discovery and there was nobody to authenticate that the photo was taken on the date of the accident. The Judge agreed. Derrico was able to lay a foundation for admission of the photo with the final witness who testified. Based upon the testimony of the final witness the Judge reversed his prior decision, and the photo was admitted into evidence. Derrico cited plaintiff's deposition testimony wherein she testified that she never looked down before she fell and that she knew the parking stop was there. Further, Derrico argued that the parking lot light was on where the plaintiff fell, and that the plaintiff's car was wider that the parking stop and that no portion of it would have been sticking out unless plaintiff improperly parked her car. Finally, Derrico argued that despite the allegation that the lights were infrequently on, the owner never received any complaints. The plaintiff demanded three million dollars to settle the case and refused to negotiate. After sixteen minutes of deliberation the jury returned a defense verdict.
- *Randi Raaen v Urban Outfitters*: Don and his team were retained to take over the defense of this slip and fall matter after it failed to resolve at mediation. Plaintiff alleged that she was caused to trip and fall on an interior staircase in the defendant's store in midtown Manhattan. Plaintiff alleged that the staircase in question did not have handrails and violated the NYC Building Code. Plaintiff fell while descending the staircase and sustained a comminuted fracture of her heal which necessitated 2 surgeries. The store had renovated the interior when they leased the space 4 years prior to the accident. Don argued to the jury that the accident occurred because the plaintiff wasn't paying attention and that the staircase in question was an interior stair case as opposed to an access staircase and that the Building Code requirement for handrails on both side was inapplicable. Both sides called Engineering experts who had opposing views. Plaintiff's counsel asked the jury for $4,500,000. After the jury deliberated 4 1/2 hours they returned a unanimous defense verdict.

- *Hussain v Burton & Doyle & Mario Sbarro*: Don and his team were retained to represent the defendant's in a class action wage an hour claim asserted by former employees of Burton & Doyle Steakhouse in United States District Court Eastern District. The former employees alleged that they were not paid the tipped minimum wage, that they were not paid over time and that the restaurant permitted Sushi chef's to participate in the tip pool in violation of the FLSA (Fair Labor Standards Act) and NY's Labor Law. In addition, the former employees alleged that Mario Sbarro was the owner and exercise dominion and control over them and, as such was personally liable for the violations. The defense argued that the plaintiffs were experienced restaurant workers and did not object to the Sushi chef's participation in the tip pool and that they earned well in excess of the tipped minimum wage. Don was able to establish through cross examination that Mario Sbarro had little to no involvement in the day to day operation of the restaurant. After 2 1/2 hours of deliberation the jury returned a unanimous defense verdict.
- *Hodzic v M. Cary, et al.:* Don obtained a directed verdict after an eight-day trial in Queens, New York. The plaintiff, a sales associate at JP Morgan/Chase, alleged that she tripped and fell at work as she was exiting a printer room at the bank. The firm's client, the general contractor, was hired by JP Morgan/Chase to renovate the the bank which included the installation of a raised floor. The client hired a carpentry subcontractor to perform the work. The client supervised the work which was performed over the weekend while the bank was closed. The building plans, which were prepared by JP Morgan/Chase's architect, did not include raising the the floor in the printer room which created a three inch step down into the printer room. On Monday, when the plaintiff returned to work she tripped and fell as she was exiting the printer room. The plaintiff alleged that our client violated the NYC Building Code and had been warned by one of the subcontractors that leaving a three inch step without a ramp was dangerous. Further, the plaintiff's expert testified that the step in question did in fact violate the applicable building codes and the contractor should have built a transition ramp. The plaintiff sustained injuries to both arms and neck which resulted in a two level fusion to her neck and two elbow surgeries. The plaintiff claimed that as a result of her elbow surgeries she developed complex regional pain syndrome and was no longer capable of working. At trial, Derrico was able to establish that our client as well as the carpentry subcontractor built the raised floor pursuant to the architectural plans and that the plans did not include a ramp into the printer room and/or any work in the printer room. After eight days of trial the plaintiff rested. Without putting on any witnesses, Derrico moved for a directed verdict. Derrico successfully argued the client followed the building plans and did not owe a duty tot he plaintiff. After three and a half hours of oral argument the court granted the motion for a directed verdict. The plaintiff demanded $7 million to settle the case. No offer was made.

- *Hannigan v. Inland Western Saratoga Springs Wilton, LLC, et al.:* Plaintiff, a Federal Express driver, alleged that ice outside a Staples store in an upstate New York shopping center caused him to slip and fall. Plaintiff alleged that the condition existed for at least 48 hours prior to the accident and that the property owner and snow removal contractor failed to remediate the condition. As a result, the plaintiff sustained several lumbar herniations which resulted in three (3) back surgeries. The plaintiff did not return to work after the accident and demanded $12.5 million to settle the case. While both the plaintiff and his co-worker testified that he slipped and fell on ice, Derrico was able to undermine the credibility of the plaintiff by showing that his version of the accident differed from his co-workers in terms of how and where the accident occurred.
  The plaintiff called an expert meteorologist who opined that the ice existed for at least 48-50 hours prior to the accident and was the result of improper piling of snow and ice against the building which resulted in a melting and refreeze across the sidewalk. Derrico countered the plaintiff's expert by successfully offering into evidence the snow removal contractor's extensive records which established that 10 hours prior to the accident he had applied calcium chloride to the sidewalk in question and that it had been snowing for at least 10 to 15 minutes before the accident occurred. After 45 minutes of deliberations the jury returned a unanimous defense verdict. Don was asked to step in and try the case 1 month before trial.

- *Scott v. Logan Bus:* The defendant was in the process of making a right turn when the plaintiff, who was riding a hybrid electric bike, struck the right front fender of the bus. The defendant driver admitted that she knew the plaintiff was riding his bike behind her in a designated bike lane and that she didn't see him when she turned because he was in her blind spot. The defense argued that the bus driver properly signaled her intention to turn and that the plaintiff failed to see the turn signal and was riding too close to the bus.
  The plaintiff claimed that as a result of the accident and injuries his private equity fund had to shut down which resulted in the loss of millions of dollars. The plaintiff called numerous experts including an accident reconstructionist, neurologist, orthopedic surgeon, orthopedist, neuro psychologist, a vocational expert and a life care planner. All of the plaintiff's experts opined that he sustained a serious head injury with brain damage which caused him psychological injuries which prevented him from continuing as a private equity fund manager.
  The defense called a neuropsychologist, orthopedic surgeon and a neurologist. The defense experts opined that the plaintiff's complaints at the emergency room and subsequent treatment were inconsistent with having sustained any head injury and that an MRI of his brain and his neuropsychological tests failed to confirm any brain damage. With regard to the lost earnings claim ($18 million), Derrico argued that his tax returns for the past five years showed a decline in income each year prior to the accident and that the plaintiff had numerous federal and state tax liens against him. The plaintiff asked the jury for $38.5 million in damages for pain and suffering, past lost earnings, future lost earnings, past and future medical expenses. The jury deliberated for four and half hours and returned a verdict wherein they found the plaintiff was 50 percent at fault and they only awarded the plaintiff $1 million which was reduced to $500,000 for his comparative fault. Derrico was brought prior to trial by the excess carrier.

- *Holownia v. Prime:* Donald Derrico and his partner Peter Siachos, obtained a unanimous defense verdict in Ulster County, New York after a week-long jury trial defending the largest refrigerated trucking company in the nation, along with its truck driver. The defendant truck driver was admittedly speeding on I-87 in New York when a co-defendant changed lanes, striking the truck's steer tire, causing it to lose control. The truck, which contained tens of thousands of pounds of cucumbers and tomatoes, traveled across the median and was involved in a head-on collision with plaintiff's vehicle, resulting in serious injuries. Plaintiff, who was 49 years old at the time of the accident, claimed he could no longer work and was forced to immediately retire.
  Derrico and Siachos successfully moved to bifurcate liability and damages, and also were successful in their motions to exclude the truck driver's criminal record and speeding infractions. They also were able to keep out prior instances of speeding, hard-braking, and truck load stability issues, all of which were maintained on the truck's "black box." During the trial, Plaintiff's engineering and human factor's expert testified that, according to the black box data, the truck driver's reaction time and braking were insufficient, and that had he been driving the speed limit, his truck would have stopped short of the oncoming traffic, avoiding the head-on collision with plaintiff's car. Additionally, he testified that, given the rainy weather and slick roads, the truck driver should have been driving much slower – probably well below the speed limit.
  Defendants' human factors and accident reconstruction experts testified that plaintiff's expert's analysis of reaction time and braking was incorrect; plaintiff's expert failed to use the proper number of milliseconds from when a driver determines there is an emergency situation. Additionally, defendants' experts testified that plaintiff's expert failed to account for the slippery grass median and the curved trajectory of the truck, both of which affected the gravitational forces and friction coefficient after the car struck the truck's steer tire. Finally, defendants' experts testified that even if the truck driver had been driving slower, that the elliptical trajectory of the truck and the sloped median still would have taken the truck into the oncoming traffic, just at a different angle.
  Importantly, under New York joint and several liability statutes, plaintiff only needed to obtain 1% liability as to the firm's clients (and 99% as to the co-defendant who struck the tire) for the firm's clients to have 100% liability for any potential verdict. Additionally, under New York law, defendants are barred from mentioning to the jury that 1% liability is effectively the same as 100% liability. After deliberating 45 minutes, the jury found that despite the admission the defendant driver speeding he was not the proximate cause of the accident.
  Plaintiff appealed the verdict and denial of the post-trial motion to set the verdict aside. The appeal centered on the reversible error for the trial court to deny plaintiff's motion for a directed verdict, because evidence of the tractor trailer's excessive speed established a violation of the New York vehicle and traffic law and constituted negligence. Plaintiff also argued that it was an error for the trial court to allow the responding police officer to offer opinion testimony as to whether the operation of the tractor trailer had any influence on the accident because the officer was not qualified as an expert witness. In the appellate brief written by Derrico and Welch, they argued that the denial of plaintiff's

motion for a directed verdict was proper, because liability does not result unless the violation of the vehicle and traffic law was a proximate cause of the accident. It was further argued that a jury could rationally and fairly conclude that the speed of the tractor-trailer was not a proximate cause of the accident, in light of evidence that the tractor trailer was set in motion due to a sudden lane change by co-defendant's vehicle. grsm's attorneys further argued that it was not an error for the trial court to allow opinion testimony by the responding police officer because the officer's conclusions were derived from her own factual observations that did not require any particular expertise. On May 14, 2020, the Appellate Division, Third Department, by a panel of five justices, unanimously affirmed the jury verdict and awarded costs to the firm's client.

- *Wilson v. The County of Westchester:* Plaintiff claims that she was struck by defendant's bus while crossing a road in the crosswalk. As a result plaintiff sustained numerous severe injures which resulted in hip and back surgery. Mr. Derrico and his team were retained 1 month before trial. In that short period they were able to track down a non-party witness and obtained several other items of crucial evidence. The Prior defense counsel's motion for summary judgment was denied based upon the affidavit of the non-party witness who stated that the plaintiff was in the crosswalk when the impact occurred. The Police report stated that she was 30' from the crosswalk. The court denied the motion as a question of fact. When Mr. Derrico and his team met with the non-party witness the witness disavowed the affidavit and advised that he only met with plaintiff's investigator and only signed a piece of paper which he was told would confirm that the investigator spoke to him. He was adamant that he never signed an affidavit. The non-party witness advised Mr. Derrico and his team that the plaintiff was not in the cross walk and in fact was 30' from the cross walk and walked into the side of the bus. Plaintiff demanded $4 million to settle. The jury was out 45 minutes and returned a unanimous defense verdict. Mr. Derrico also handled the post-trial appeal and the Appellate Division unanimously affirmed the verdict.
- *Solórzano v. Skanska:* Mr. Derrico was asked to step in three weeks before and try this matter which involved an asbestos worker who fell from a scaffold and sustained numerous injures which resulted in multiple surgeries. Plaintiff claims that the building owner and the general contractor violated section 240 of the labor law (scaffold law) in that the scaffold did not have the proper railings and was defective. Plaintiff's motion for summary judgment for strict liability under section 240 was denied. Mr. Derrico argued to the jury that the scaffold was safe and that the plaintiff was the sole proximate cause of the accident in that he failed to properly secure the removable handrail after he climbed onto the scaffold. Plaintiff demand $4.5 million to settle and had rejected several 7 figure offers. The jury returned a defense verdict 25 minutes after beginning deliberations.

- *Shepard v. Esak:* The plaintiff alleged that as the result of a rear end collision in 2013 she sustained injuries to her neck and back. Ultimately, the plaintiff had a lumbar discectomy and was recommended to have a cervical discectomy and fusion. After the plaintiff was granted summary judgment on liability, the carrier contacted Derrico and asked that he try the damages aspect of the case. The plaintiff's doctor who performed the lumbar surgery testified that the plaintiff would require a lumbar fusion and revision and cervical fusion and revision in the future. The doctor opined that the cost of these four future surgeries would be $1.1 million. The plaintiff alleged that as a result of her injuries and surgery she could no longer work. The plaintiff was previously employed as a Home Health Aid. The plaintiff asked the jury for $6.1 million. The jury deliberated only 25 minutes and returned a defense verdict based upon their finding that the plaintiff had not sustained a "serious injury".
- *Gomez v. The County of Westchester, et al.:* Plaintiff alleged that as she was crossing the street, in the crosswalk, the defendant's bus struck her and knocked her to the ground. As a result, she alleged that she sustained injuries to her neck and lower back. Plaintiff ultimately had neck and lower back surgery. Plaintiff's doctor testified that she would require 2 additional surgeries in the future to her neck and lower back. The plaintiff claimed that as a result she was no longer able to work. Prior to being retained by the County to try the case, plaintiff was awarded summary judgment on liability. Derrico was brought in by the County's excess carrier who attached after 1 million to try the damages aspect of the case after summary judgment was awarded. Prior to the trial plaintiff had been offered and rejected 1.2 million to settle. Plaintiff asked the jury for 5 million dollars for past & future pain and suffering, past & future lost wages and for past & future medical expenses. Plaintiff called the surgeons who performed the neck and lower back surgery, a radiologist and a life care planner who opined that the plaintiff would incur 1.5 million in future life care expenses. The defense called a radiologist and orthopedist. Both opined that plaintiff's neck and lower back conditions which necessitated the surgery were pre-existing and that the need for surgery was unrelated to the accident. The experts further opined that the plaintiff's neck and back issues were resolved by the surgery. The jury awarded plaintiff $800,000 for past lost earnings, past medical expenses and past & future pain and suffering. There was no award for future medical expenses.

- *Landa v. Town Sports International:* The plaintiff, a professional guitar player alleged that during a complimentary personal training session the personal trainer taught him an advanced plyometric "jump up" exercise onto a flat bench. Several weeks after the complimentary personal training session while performing the exercise on his own the plaintiff lost his balance and fell. Plaintiff asserted that the exercise was an advanced exercise specifically designed for professional athletes and not appropriate for a novice. In addition, the plaintiff asserted that a flat bench was not the properly equipment and the exercise should have been performed on either a step or plyometric box. As a result, plaintiff sustained a fractured elbow to his dominant arm which required surgical repair. Plaintiff asserted that the accident and injury caused permanent damage to his elbow which resulted in an inability to play guitar as he did prior to the accident. Plaintiff called an expert in personal training who opined that the exercise was not suitable for a novice gym patron and a flat bench should never been used for this type of advanced exercise. Derrico was able to establish on cross that the plaintiff had varied the exercise he had been taught and that he used an incline bench not a flat bench. Further, Derrico undermined plaintiff's expert by establishing that he never actually discussed the accident with the plaintiff, never visited the gym to inspect the equipment and was unable to positively identify the bench that was utilized. The defense called Dr. Shawn Arent a professor of Exercise Science at Rutgers University who opined that not only was a "step up" a suitable exercise but that a flat bench is commonly used to perform this exercise. In addition, Dr. Arent opined that plaintiff was performing a "jump up" exercise not a "step up" when he was injured and that a "jump up" was in fact an advance plyometric exercise. Dr. Arent further opined that a "jump up" exercise would never be taught during a complimentary personal training session. The plaintiff demand 1.5 million dollars. The jury deliberated 20 minutes and returned a unanimous defense verdict.
- *Anthony DePalma v. C& S Wholesale Grocers:* Retained after the pre-trial mediation failed. Plaintiff alleged that he sustained severe injuries to his head, neck, lower back and shoulders when the cranking mechanism for the landing gear of a trailer snapped back and struck him in the face. As a result, plaintiff was rendered unconscious and had several surgical procedures. Plaintiff claimed that as result of the accident he could no longer work and would require extensive medical treatment in the future. Plaintiff rejected the offer of $750,000 and mediation and stated her would not accept less than $2,200,000. Mr. Derrico tried the case and obtained a unanimous defense verdict.
- *Caldwell v. Cablevision:* Retained two weeks before trial in this case in which plaintiff claimed she tripped and fell over a trench that defendant cable company had dug in front of her driveway causing her to sustain a compound tib/fib fracture that required surgical repair. While in the hospital, plaintiff contracted sepsis and nearly died. She was hospitalized for several months and was unable to return to work. Plaintiff's demand was $3 million. We convinced the jury that plaintiff was not being truthful about how and why she fell and that defendant had completed its work weeks before plaintiff's accident. Although the jury found that defendant was negligent, it returned a defense verdict finding that defendant's work was not the proximate cause of the accident. Verdict affirmed on appeal.

- *Aaron Agosto v. The City of New Rochelle:* Plaintiff, a 12 year old attendee at the City's summer camp, sustained a subdural hematoma which required a craniotomy while participating in a game of touch football. Camp counselors organized a pick up game of touch football which included participation of the teenage counselors and campers. The game was played on an asphalt parking lot. While attempting to catch a pass the infant plaintiff slipped on gravel and collided with a camp counselor. As a result, he struck his head on the pavement and was rendered unconscious. At the hospital, he was diagnosed with a subdural hematoma and an emergency craniotomy was performed. Plaintiff asserted that as a result he sustained permanent brain damage. Plaintiff presented multiple experts at trial including a neuro surgeon, neuro radiologist, education specialist, psychologist and economist. Plaintiff took 4.5 weeks to present their case. Derrico called a pediatric neuro surgeon, a neuro radiologist and an education specialist. Derrico successfully argued that the infant plaintiff had returned to his pre morbid baseline and had sustained no permanent injury. Plaintiff demanded $45 million from the jury. The City wanted to enter a high/low agreement with a low of $500,000 and $5,000,000 as a high. Derrico talked the City out of entering into a high law and advised that he felt that while the jury would find the City negligent he did not believe the jury was going to award the plaintiff substantial amount as he has not proven permanent injury. After 4.5 hours of deliberation, the jury returned a verdict of $230,000.
- *Van Norden v. Mann Edge Tool Company:* Retained to try and vacate a default judgment and inquest award of $1.4 million against the manufacturer of a log splitting maul that broke and hit plaintiff in the eye with a piece of metal. We argued that defendant manufacturer had not been properly served and that the claim should be dismissed because the statute of limitations had expired. The trial court vacated the default judgment but would not dismiss the case. On appeal, we convinced the appellate court to reverse the trial court and dismiss the case.
- *DeJesus v. Beer Gardens:* Retained on the eve of trial in this case in which plaintiff sought a multi-seven-figure demand for permanent mental and physical injuries he sustained after he allegedly was stabbed outside defendant's nightclub. Plaintiff and a group of friends got into a physical altercation with another group of patrons, and both groups were escorted out the same door at the same time and resumed fighting outside. Plaintiff alleged that he was stabbed immediately upon exiting the club. Although the incident had occurred more than five years before we were retained, we located a witness who was prepared to testify that the stabbing occurred two blocks away from the club. In addition, we located and secured the cooperation of the prosecuting ADA, whose notes and recollection of what transpired that night significantly contradicted plaintiff's deposition. Plaintiff ultimately accepted a settlement well within the primary insurer's limits.

- *Jane Doe v. Little League of Staten Island:* Plaintiff was attending a little league championship game and was struck by a foul ball. Plaintiff alleged that the protective netting was insufficient and the stands were placed too close to the netting. As a result, she sustained an orbital fracture and claimed to have a TBI. At trial, Derrico successfully argued that the accident did not occur as alleged and that the plaintiff was actually leaning against the protective netting when she was struck. Derrico called an expert in sporting events who opined that the protective netting was sufficient and that the accident would not have occurred but for plaintiff's negligence. The jury returned a verdict in favor of Little League.
- *Burke v. Johnson March Systems:* Retained within two weeks of trial in this case in which plaintiff alleged that a 3,000 pound water sample panel manufactured by the defendant fell onto him while he was moving it and caused him to sustain devastating injuries, including a crushed pelvis that resulted in incontinence and impotence. Plaintiff, a bodybuilder and aspiring model, further alleged that he suffered from post-traumatic stress disorder and clinical depression. He demanded $14 million. Plaintiff claimed that defendant violated the New Jersey Products Liability Act because defendant failed to adequately warn plaintiff that the panel had an off-center of gravity and failed to provide appropriate instructions. At trial in federal court, we argued that the packaging on the panel could not be marked because it could shift during shipping and give a false impression of the location of the center of gravity. We further argued that defendant supplied the co-defendant purchaser of the panel with schematic drawings that clearly delineated the center of gravity. After a seven-day trial, the jury found that our client was not negligent and did not violate the New Jersey Products Liability Act. The jury did find the co-defendant negligent and awarded more than $12 million to plaintiff.
- *Rivera v. The County of Westchester:* Retained on eve of trial in this case brought by the estate of two young children who were steamed to death when their drug-addicted father and mother fell asleep while the children were in the bathroom. The parents were being investigated by the department of social services for child neglect and abuse. The estate claimed that the County failed to conduct a proper investigation, resulting in the death of the children. The court denied the County's motion for summary judgment. After being retained to handle the trial, we convinced the judge to dismiss the action based upon a qualified immunity defense. Plaintiff sought $7 million and had been offered $2 million.

PUBLICATIONS

- Author, How to Avoid Reptilian Tactics by Properly Preparing your Witness to Testify

PRESENTATIONS

- *How to Win at Trial When Your Case Won't Settle*, GRSM Legal Education Conference, New York and Hartford, May 2018

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- J.D., Fordham University School of Law, 1991

Honors

- *Super Lawyers*® (2024)