

## ■ \$80,000 VERDICT

**Motor vehicle negligence – Rear end collision – Plaintiff driver struck in rear when stopping for traffic on I-81 – Plaintiff’s Mercedes is “totaled” – Aggravation of previously asymptomatic cervical degenerative disease – Cervical radiculitis – Extensive restrictions placed on previously extremely active woman in her 60s – No income claims – Damages only – Bench trial.**

### **Onondaga County, NY**

**Liability was stipulated in this case in which the female plaintiff driver, in her mid 60s, was struck in the rear when slowing for traffic at rush hour on I-81. The plaintiff maintained that she was struck with extensive force, and that her Mercedes was “totaled.”**

The imaging studies revealed degenerative disc disease in the cervical area. The plaintiff contended that she was previously asymptomatic and extremely recreationally oriented, having engaged in very fre-

quent walking, running and swimming, among other pursuits. The plaintiff asserted that she developed cervical radiculitis shortly after the accident, and has to essentially give up her active lifestyle.

The plaintiff was a school psychologist who already planned on retiring a few months after the collision. The plaintiff retired as planned and the plaintiff made no income claims.

The defendant maintained that the plaintiff made a good recovery. The plaintiff countered that she continues to undergo treatment.

The court awarded \$80,000.

### **REFERENCE**

Melvin vs. Segars. Index no. 2015 EF 1061; Judge Deborah Karalunas, 05-22-17.

**Attorney for plaintiff: Jean Marie Westlake of DeFrancisco & Falgiatano in Syracuse, NY.**

## ■ DEFENDANT’S VERDICT ON NO-FAULT THRESHOLD

**Motor vehicle negligence – Rear end collision – Defendant claims he suffered sudden brake failure and had brake linings replaced later that day – Plaintiff mother/front seat passenger and teenage son/rear-seat passenger claim cervical bulges and severe aggravation of migraine type headaches – Plaintiff son also alleges severe TMJ dysfunction.**

### **Ulster County, NY**

**This case was brought by a female plaintiff front-seat passenger who was age 49 at the time of the accident and her rear-seat passenger/son who was age 15 at the time of the collision. The plaintiffs contended that immediately after the host vehicle stopped for a red light; it was struck in the rear by the defendant 19-year-old driver. The defendant maintained that he had no indication of prior difficulties with the brakes, but that when he pumped them to stop behind the plaintiffs, they did not function properly and that the collision occurred.**

The evidence disclosed that the defendant continued to his destination, returned home and then went to the service station where the brake linings were replaced. The defendant traveled more than 15 miles after the accident. The defendant testified that he drove with great difficulties, often pumping the brakes.

The plaintiffs each contended that they sustained a severe and permanent aggravation of migraine type headaches that are permanent in nature. The plaintiff’s proofs reflected that the treatment included spectral lenses. The defendant maintained that the use of such tinted lenses was only a business model and that there was no recognized medical syndrome for which such lenses are a known treatment. The de-

fendant further denied that the force of the trauma was sufficient to cause the claimed aggravation. The defendant pointed out that the plaintiffs had been involved in a more severe collision approximately three years earlier.

The plaintiff further maintained that the collision caused bulging cervical discs to both plaintiffs with radiculopathy and that the plaintiffs will permanently suffer radiating pain and weakness. The defendant’s neurologist denied that either plaintiff suffered structural changes which would account for the claimed aggravation. The defense expert concluded that such headaches are often brought on by stress lifestyle and genetic predisposition.

The plaintiff son also contended that the accident caused severe TMJ dysfunction that will cause permanent symptoms. The defendant’s oral and maxillofacial surgeon concluded that the jaw problems were due to the son’s open bite and were not related to the accident. The defendant, who denied that either plaintiff met the no fault threshold, also pointed out that the plaintiff son fared well in school after the collision.

The jury found that the defendant was 100% negligent and found for the defendants on the no-fault threshold.

### **REFERENCE**

**Defendant’s neurologist expert: Ira Neustad, M.D. from Goshen, NY. Defendant’s oral and maxillofacial surgeon expert: Josef Bieber, DDS from Fishkill, NY.**

Hyatt vs. Pece. Index no. 1897/13; Judge James P. Gilpatric, 09-29-17.

**Attorney for defendant: Jason M. Bernheimer of Keane & Bernheimer, PLLC in Valhalla, NY.**