

DRAFT

NEW YORK

QUEENS COUNTY

**WORKER/WORKPLACE NEGLIGENCE**

— Motor Vehicle — Road Defect — Motor Vehicle — Dangerous Condition — Motor Vehicle — Sideswipe — Motor Vehicle — Motorcycle — Motor Vehicle — Multiple Vehicle

Freshly resurfaced road was too slick, motorcyclist claimed

**Mixed Verdict** \$6,400,000

**Case** Richard LaRosa Claire LaRosa v. Michael Madden Synergy Security Systems Inc., City of New York, New York City Police Department, New York City Department of Transportation, NY City Department of Environmental Protection, Deborah Bradley Construction & Management Services, Inc. & Burtis Construction Co., Inc., No. 20029/12

**Court** Queens Supreme

**Judge** Allan B. Weiss

**Date** 9/19/2016

**Plaintiff**

**Attorney(s)**

Michael P. Vessa, The Law Office of Vessa Wilensky, P.C., Uniondale, NY

**Defense**

**Attorney(s)**

Richard J. Brownell, Brownell Partners, PLLC, New York, NY (Burtis Construction Co. Inc.)

Michael A. Cannella, White & McSpedon, P.C., New York, NY (Deborah Bradley Construction & Management Services Inc.)

None reported (City of New York, New York City Department of Environmental Protection, New York City Department of Transportation, New York City Police Department)

Curtis Sobel, Sobel Pevzner, LLC, Huntington, NY (Michael Madden, Synergy Security Systems Inc.)

**Facts & Allegations**

On Aug. 21, 2012, plaintiff Richard LaRosa, 51, was motorcycling on the Whitestone Expressway, in Queens.

LaRosa collided with a vehicle that was traveling in an adjacent lane. His right leg was crushed.

LaRosa sued the vehicle's driver, Michael Madden; the owner of Madden's vehicle, Synergy Security Systems Inc.; a subcontractor that had resurfaced the expressway, Deborah Bradley Construction & Management Services Inc.; the resurfacing project's general contractor, Burtis Construction Co. Inc.; and four entities that were believed to have been involved in the resurfacing project, the city of New York, the New York City Department of Environmental Protection, the New York City Department of Transportation and the New York City Police Department. LaRosa alleged that Madden was negligent in the operation of his vehicle, that Synergy Security Systems was vicariously liable for Madden's actions, and that the remaining defendants negligently created a dangerous condition that contributed to the accident.

LaRosa's counsel discontinued the claims against the city of New York, the New York City Department of Environmental Protection, the New York City Department of Transportation and the New York City Police Department. The matter proceeded to a trial against Burtis Construction, Deborah Bradley Construction & Management Services, Madden, and Synergy Security Systems. However, the jury was permitted to apportion liability to a nonparty, the New York State Department of Transportation, which had commissioned the resurfacing project and was separately sued in the New York State Court of Claims.

LaRosa claimed that Madden's vehicle drifted and initiated the collision. He contended that Madden failed to maintain proper control of the vehicle.

LaRosa's counsel further claimed that the resurfacing created slick conditions that prevented optimum control of vehicles. He contended that Deborah Bradley Construction & Management Services applied an excess amount of sealant. LaRosa's counsel also noted that the expressway was closed while the resurfacing was performed. He claimed that Burtis Construction reopened the expressway before the roadway's surface had completely dried. He contended that Burtis Construction recklessly disregarded the safety of motorists.

Burtis Construction's counsel contended that the accident was a result of Deborah Bradley Construction & Management Services having applied an excess amount of sealant.

Deborah Bradley Construction & Management Services' counsel claimed that Deborah Bradley Construction & Management Services had been instructed to apply two coats of sealant and that it fulfilled that request. Counsel of Madden and Synergy Security Systems attempted to invoke the emergency doctrine, which prevents attachment of liability to motorists who reasonably and prudently respond to a sudden, unexpected emergency that necessitates a speedy reaction. Madden claimed that the collision occurred a moment after his vehicle was struck by a trailing vehicle, and he further claimed that he collided with LaRosa while trying to avoid the trailing vehicle. That vehicle's driver was never identified. LaRosa's counsel challenged Madden's credibility. He claimed that Madden repeatedly provided contradictory testimony regarding the manner in which the accident occurred.

### **Injuries/Damages**

amputation, leg (below the knee); crush injury, leg; comminuted fracture; phantom pain; fracture, leg; prosthesis; meniscus, tear; post-traumatic stress disorder; artery, severed/tear

LaRosa sustained four crush-induced, comminuted fractures of his right leg. Arteries and veins were severed, and the entire leg was nearly severed.

LaRosa was placed in an ambulance, and he was transported to New York Hospital Queens. During the ensuing 12 days, he underwent five surgeries that were intended to save his right leg. The procedures were not successful. On Sept. 5, 2012, LaRosa underwent amputation of a lower portion of the leg. The knee was preserved, and LaRosa subsequently received a prosthetic device.

After some three years had passed, LaRosa learned that he was suffering a tear of his left knee's meniscus. He claimed that the injury was a result of his right leg's condition having overburdened his left knee. LaRosa also claimed that the accident and his injury led to his development of post-traumatic stress disorder.

LaRosa further claimed that his left knee remains painful and severely unstable. He also claimed that he experiences "phantom" pain that seems to stem from the missing portion of his right leg. He claimed that he previously enjoyed hunting and motorcycling, but that his residual effects prevent his resumption of those activities.

LaRosa sought recovery of damages for past and future pain and suffering. LaRosa's wife, Claire LaRosa, sought recovery of damages for loss of consortium.

### **Result**

The jury rendered a mixed verdict: Burtis Construction, Madden, the New York State Department of Transportation and Synergy Security Systems were deemed liable for the accident, and Deborah Bradley Construction & Management Services was not deemed liable. Burtis Construction was assigned 50 percent of the liability; the New York State Department of Transportation was assigned 26 percent of the liability; and Madden and Synergy Security Systems were assigned a total of 24 percent of the liability. The jury also found that Burtis Construction recklessly disregarded the safety of motorists.

Prior to the scheduled start of the trial's damages phase, the plaintiffs, Madden and Synergy Security Systems negotiated a settlement. Synergy Security Systems' insurers agreed to pay \$1.5 million, from primary and excess policies that provided total coverage of \$3 million.

A second jury determined that the plaintiffs' damages totaled \$6.4 million. Given that Burtis Construction was found to have acted recklessly, it was statutorily obligated to fulfill the entire award, less the amount recovered via the in-trial settlement. Burtis Construction must also pay 9 percent interest dating to June 28, 2016, when liability was determined.

### **Plaintiff(s)**

#### **Claire LaRosa**

\$650,000 loss of consortium

**\$650,000 plaintiff's total award**

#### **Richard LaRosa**

\$4,000,000 past pain and suffering

\$1,750,000 future pain and suffering

**\$5,750,000 plaintiff's total award**

**Demand** None reported

**Offer** None reported

### **Insurer(s)**

Hanover Insurance Co. for Madden and Synergy Security Systems (primary insurer)

Hartford Insurance Group for Madden and Synergy Security Systems (excess)

Starr Cos. for Burtis Construction

**Trial Details**

**Trial Length:** 12 Days

**Jury Deliberations:** 2 Hours

**Jury Poll:** None reported

**Jury Composition:** None reported

**Plaintiff****Expert(s)**

Kevin N. Jiang, M.D., orthopedic surgery, Flushing, NY (Michael P. Vessa)

Andy Lee, M.D., vascular surgery, Flushing, NY (Michael P. Vessa)

**Defense****Expert(s)**

None reported

**Post-Trial**

Burtis Construction's counsel has moved for a reduction of damages.

**Editor's Note**

This report is based on information that was provided by plaintiffs' counsel, Burtis Construction's counsel, and Deborah Bradley Construction & Management Services' counsel. Additional information was gleaned from court documents. Counsel of Madden and Synergy Security Systems did not respond to the reporter's phone calls, and the remaining defendants' counsel was not asked to contribute.

**Plaintiff(s)****Demographics****Claire LaRosa**

**Age:** None reported

**Occupation:** None reported

**Gender:** None reported

**Married:** None reported

**Children:** None reported

**Children Description:** None reported

**Richard LaRosa**

**Age:** 51 Years

**Occupation:** None reported

**Gender:** Male

**Married:** Yes

**Children:** Yes

**Children Description:** injured party

**Written By** –Jack Deming