

PLAINTIFF'S MEDIATION BROCHURE

HILDA AND JOHN KENNEDY
VS.
ESTATE OF FREDERIC A. POLLOCK, ET AL

DOCKET No. ATL-L-1167-15

MEDIATOR
JOHN M. DEFEO, ESQUIRE

LOCATION
COOPER LEVENSON, PA
1125 ATLANTIC AVENUE
ATLANTIC CITY, NJ 08401

DATE
APRIL 20, 2017, 2:00 P.M.

1 Case Number **14-129221** 10 Crash Occurred On **PACIFIC AVENUE** 11 Speed Limit **25**
 2 Police Dept of **Atlantic City** Code **101** 12 Route No. Suffix **---** 13 Milepost **---** 14 **30** 15 Feet Miles N E S W of **RHODE ISLAND AVENUE** 16 **215**
 3 Station/Precinct **A.I.U.** 17 Cross Road Name **RHODE ISLAND AVENUE** 18 Speed Limit **25**
 4 Date of Crash **11/17/14** 5 Day of Week **Th** 6 Time (use 2400 hrs) **1544** 7 Municipality Code **0102** 8 Total Killed **00** 9 Total Injured **01**
 19 Ramp To From NB SB EB WB

23 Veh No **01** 24 Policy No **150001277** 25 Ins Code **027** 53 Veh No **P1** 54 Policy No **---** 55 Ins Code **---**
 Parked Ped Pedalcyclist Resp to Emergency Hit & Run Ped Pedalcyclist Resp to Emergency Hit & Run
 26 Driver's First Name **FREDERIC** Initial **A** Last Name **POLLOCK** 29 Sex **M** 56 Driver's First Name **HILDA** Initial **K** Last Name **KENNEDY** 59 Sex **F**
 27 Number and Street **35 S. VIRGINIA AVENUE APT. 719** 30 Eyes **4** 57 Number and Street **105 S. METROPOLITAN AVENUE APT. 105** 60 Eyes **0**
 28 City **ATLANTIC CITY** State **NJ** Zip **08401** 58 City **ATLANTIC CITY** State **NJ** Zip **08401**

31 State **NJ** 32 Driver's License No **P6280 | 26861 | 04414** 33 DOB **04/27/41** 34 Expires **02/15** 61 State **---** 62 Driver's License No **---** 63 DOB **03/31/32** 64 Expires **---**
 35 Owner's First Name **---** Initial **---** Last Name **---** 65 Owner's First Name **---** Initial **---** Last Name **---**
 Same As Driver Same As Driver
 36 Number and Street **---** 66 Number and Street **---**
 37 City **---** State **---** Zip **---** 67 City **---** State **---** Zip **---**

38 Make **JITNEY** 39 Model **BUS** 40 Color **WT** 41 Year **11** 42 Plate No **OXZ-9490** 43 State **NJ** 68 Make **---** 69 Model **---** 70 Color **---** 71 Year **---** 72 Plate No **---** 73 State **---**
 44 VIN **1FDFF4FSXBDA39231** 45 Expires **03/15** 74 VIN **---** 75 Expires **---**
 46 Vehicle Removed To Driven Left at Scene Towed Impound Disabled 47 Authority Owner Driver Police 76 Vehicle Removed To Driven Left at Scene Towed Impound Disabled 77 Authority Owner Driver Police

48 Alcohol/Drug Test Given: No Yes Refused Type: Breath Blood Urine Results: 0 ___ % Pending
 49 Hazardous Material Name or Placard No **---**
 50 Carrier No USDOT Other *
 51 Commercial Vehicle Weight < 10,000 lbs 10,001 - 26,000 lbs ≥ 26,001 lbs
 52 Carrier name **---**
 134 Crash Diagram (NOT TO SCALE)
 Indicate NORTH
 REFERENCE ONLY - VEHICLE MOVED
 PEDESTRIAN MOVED
 PACIFIC AVENUE
 RHODE ISLAND AVENUE
 SIDEWALK
 V-1
 V-1
 78 Alcohol/Drug Test Given: No Yes Refused Type: Breath Blood Urine Results: 0 ___ % Pending
 79 Hazardous Material Name or Placard No **---**
 80 Carrier No USDOT Other *
 81 Commercial Vehicle Weight < 10,000 lbs 10,001 - 26,000 lbs ≥ 26,001 lbs
 82 Carrier name **---**

135 Crash Description
 DRIVER 1 REPORTS EAST ON PACIFIC AVE. IN THE RIGHT LANE AND STOPPED PRIOR TO RHODE ISLAND AVE. PASSENGERS EXITED THE BUS AND GOT ONTO THE SIDEWALK. D-1 STARTED TO PULL AWAY AND HEARD A THUD AND STOPPED IMMEDIATELY. INVESTIGATOR NOTES: THE JITNEY ASSOCIATION HAS VIDEO COVERAGE OF THE PASSENGERS EXITING AND MAKING IT ONTO THE SIDEWALK. HEAVY RAIN AND WIND AT TIME OF CRASH. 5 UNIDENTIFIED MALE PASSENGERS LEFT PRIOR TO POLICE ARRIVAL.

136 Damage To Other Property **NONE**
 Oper **---** 137 Charge Multiple Charges **---** 138 Summons No. **---** Oper **---** 139 Charge Multiple Charges **---** 140 Summons No. **---**
 141 Officer's Signature **[Signature]** 142 Badge No. **714** 143 Reviewed By **[Signature]** Badge No. **---** 144 Case Status Pending Complete

	83	84	85	86	87	88	89	90	91	92	93	94	95	Names & Addresses of Occupants - If Deceased, Date & Time of Death
A	01	01	01	--	73	M	--	--	01	09	04	--	--	26,27,28
B	01	04	01	--	00	M	--	--	01	02	01	--	--	00
C	01	06	01	--	00	M	--	--	01	02	01	--	--	00
D	01	09	01	--	00	M	--	--	01	02	01	--	--	00
E	P1	--	--	03	08	F	07	07	02	--	--	--	5101	56,57,58

DESCRIPTION OF ACCIDENT

This matter arises out of an incident that occurred on Monday, November 17, 2014. On that date, Plaintiffs, Hilda T. Kennedy and John F. Kennedy, were passengers in a jitney owned and operated by Defendant, Frederic A. Pollock, that was traveling Eastbound on Pacific Avenue in the City of Atlantic City, County of Atlantic, and State of New Jersey. Defendant, Frederic A. Pollock, was in the process of discharging passengers, including the Plaintiffs, near the intersection of Rhode Island Avenue. As the Plaintiff, Hilda T. Kennedy, was in the process of alighting from the aforesaid jitney of the Defendant, the Defendant failed to properly operate the jitney and failed to make proper observations thereby causing the jitney to move forward. As the jitney moved forward, it ran over the Mrs. Kennedy and otherwise causing her physical injury.

See **Exhibit A**, Police Accident Report

LIABILITY

Liability in this matter is clear with there being no issue of comparative negligence between the parties.

A uniquely qualified expert, Frank Costanza, has performed an investigation and analysis regarding the subject motor vehicle accident. Mr. Costanza has opined as follows:

1. The Defendant violated the applicable Atlantic City Ordinance by failing to position his vehicle as close as practical to the curb so as to discharge passengers directly on the curb. This failure created a gap between the jitney and the curb/sidewalk within which an individual, such as Mrs. Kennedy, could become trapped.
2. The Defendant failed to comply with the operational requirements of his Commercial Drivers License.

3. The Defendant failed to make proper observations, as required, prior to moving the jitney.

Significantly, Mr. Costanzo has further opined, "The sole cause of this collision was the inattentive driving actions of Mr. Pollock ultimately leading to the serious injuries of Mrs. Kennedy."

The Defendant, Frederic A. Pollock, was negligent in the operation of the Jitney, in that he failed to keep a proper lookout, failed to make proper observations, failed to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances and was otherwise negligent, inattentive and careless, thereby causing his vehicle to cause injury to the Plaintiff. Additionally, as a common carrier, Defendant Frederic A. Pollock, failed to comply with the higher standards, regulations, policies and procedures which operators of jitney type vehicles are required to follow within the City of Atlantic City.

Significantly, the limitation on lawsuit or "verbal threshold" is inapplicable in this matter in light of the fact that the Defendant's vehicle was a commercial vehicle.

See **Exhibit B**, Expert Report of Frank Costanza dated October 3, 2016..

INJURIES SUSTAINED

Mrs. Kennedy sustained near catastrophic and permanent injuries as a result of this accident. More specifically, the more significant injuries sustained were as follows:

- **Right humerus fracture**
- **Left clavicle fracture**
- **Posterior dislocation of the right shoulder**
- **Internal injury of the proximal right subclavian artery**
- **Hemorrhagic shock**
- **Right scapular fracture**
- **Multiple rib fractures**
- **Soft tissue hematoma, right chest wall**
- **Metabolic acidosis**

- **Blood loss anemia**
- **Axillary nerve injury causing atrophy and weakness of the deltoid muscle**

Attached are the following photographs of Mrs. Kennedy both before and after this tragic accident:

- 3 pre-accident daily life/activity photographs
- 2 post-accident injury photographs
- 3 post-accident scarring photographs

See, **Exhibit C**, Photographs of Client.

In addition to the above, each injury was accompanied by pain, sleeplessness, suffering and disability, and to some extent, damage to the surrounding joints, muscles, nerves, vessels, organs and other soft tissue. Mrs. Kennedy was further injured and disabled due to the cumulative effect of the above injuries and the frightening and shocking experience which caused a systemic imbalance, psychic trauma, pain, nervousness, fatigue and disability, both physically and mentally. These injuries are permanent, some of which may increase and worsen requiring extended medical treatment and potential future treatment.

Perhaps equally important, the quality of life that Mrs. Kennedy enjoyed has been significantly diminished and will continue to decline as the damage to her spine as a result of this accident progresses.

SURGICAL PROCEDURES

As a direct result of this accident, Mrs. Kennedy has had to undergo multiple surgical procedures to her shoulder/arm. These procedures can be described as follows:

- **November 17, 2014: Focused assessment with sonography in trauma ultrasound exam; Placement of right common femoral Cordis catheter**
- **November 17, 2014: Attempted closed reduction of right shoulder posterior dislocation and right shoulder proximal humerus fracture**

- **November 19, 2014:** Open reduction of posterior shoulder dislocation; open reduction and internal fixation of right proximal humerus fracture; open repair of large rotator cuff tear; closed reduction of comminuted scapular fracture
- **November 19, 2014:** Closed treatment of left clavicle fracture
- **November 19, 2014:** Attempted insertion of a right-sided percutaneous 8-French chest tube; Insertion of a ride-sided 28-French chest tube
- **January 27, 2015:** Incision and drainage of infected right hematoma

See Exhibit D, Pre-Op Condition of Hilda Kennedy

See Exhibit E, Post-Op Condition of Hilda Kennedy

See Exhibit F, Pre-Op Condition/Post-Op Condition of Right Arm

See Exhibit G, Right Arm Surgery 11/19/14

See Exhibit H, First Attempted Right Arm Surgery, 11/17/14

See Exhibit I, Operative Reports

COURSE OF TREATMENT

Immediately following the accident, Mrs. Kennedy was taken via ambulance to AtlantiCare Regional Medical Center where she was admitted with complaints of right upper extremity pain, upper back pain and chest pain. She was diagnosed with a right humerus fracture, left clavicle fracture, posterior dislocation of the right shoulder, internal injury of the proximal right subclavian artery, hemorrhagic shock, right scapular fracture, multiple rib fractures and a soft-tissue hematoma of the right chest wall. She was admitted to the Trauma ICU until her discharge on November 24, 2014. While in the Trauma ICU, she underwent several surgical procedures which were performed by Dr. Richard Islinger, Dr. Peter Thompson and Kathy McNulty, ACNP-C. Mrs. Kennedy was monitored daily by a neurologist and pulmonologist and was also monitored for hemodynamic shock.

Mrs. Kennedy was discharged from AtlantiCare Regional Medical Center on November 24, 2015 and was admitted to Bacharach Rehabilitation for acute rehabilitation, including core strengthening, gait training, and cognitive therapy. Mrs. Kennedy remained at Bacharach Rehabilitation until December 12, 2014 when she was discharged to Egg Harbor Care Center for continued acute rehabilitation. While Mrs. Kennedy was in the Egg Harbor Care Center, she developed an infection in the incision from her right shoulder surgery. She was treated by Dr. Christopher J. Lucasti, an infectious disease doctor and her surgeon, Dr. Richard Islinger, for this infection. Dr. Lucasti treated Mrs. Kennedy initially with oral antibiotics. When the infection worsened, Mrs. Kennedy was started on IV antibiotic therapy. Dr. Islinger recommended an MRI of the right humerus for evaluation. Mrs. Kennedy submitted to this MRI on January 16, 2015 and was diagnosed with a complex fluid collection, hematoma. In his final narrative report dated May 11, 2016, Dr. Lucasti opined "It is my opinion that the patient developed a postoperative cellulitis and an infected hematoma secondary to the trauma from the motor vehicle accident. The patient required surgical intervention initially to stabilize her fractures, and then she had incision and drainage of the infected hematoma. It is within the bounds of a reasonable medical degree of certainty that the injuries sustained by Mrs. Kennedy were from a motor vehicle accident, and then the subsequent infection occurred because of that."

Due to the severity of the hematoma and infection, on January 27, 2015, Mrs. Kennedy underwent an incision and drainage of infected right hematoma. This procedure was performed by Dr. Richard Islinger at Shore Memorial Hospital.

Mrs. Kennedy was discharged from the Egg Harbor Care Center on February 27, 2015 to her home. After she was discharged, as a result of severe and continuing complaints she continued to treat in an out-patient setting with Dr. Richard Islinger through July 27, 2015. Mrs.

Kennedy treated with Dr. Islinger for her right upper extremity pain, right upper extremity swelling, limited mobility in her right arm and erythema. Dr. Islinger recommended a course of physical therapy and referred Mrs. Kennedy to pain management. In his final narrative report dated November 10, 2015, Dr. Islinger opined, "In my opinion, it is obvious that her above injuries are a direct result of being struck by the Jitney on 11/17/14. Hilda continues to complain of significant pain and she has obvious deformity and weakness as a result of these multiple injuries. It is my opinion that Hilda's condition is permanent. My prognosis is guarded in that it is likely she will continue to suffer from pain as well as weakness throughout her right upper extremity as a result of this severe injury that she sustained."

Mrs. Kennedy presented for a course of out-patient physical therapy at Bacharach Rehabilitation on May 6, 2015. Mrs. Kennedy complained of limited mobility in her right arm and side. She attended physical therapy sessions until June 5, 2015 to improve her strength and daily life.

At the referral of Dr. Islinger, Mrs. Kennedy presented to Dr. Arvind Baliga of Mid-Atlantic Rehabilitation Associates on September 8, 2015. Mrs. Kennedy complained of burning pain of the right shoulder, weakness and atrophy of the right shoulder. Dr. Baliga treated Mrs. Kennedy until October 19, 2015 and diagnosed her with significant atrophy of the right deltoid, complex right shoulder injury, and C5-6 radiculopathy (confirmed via EMG/NCS). In his final narrative report dated March 3, 2016, Dr. Baliga opined "Given the time course from the initial injury, the complex nature and severity of the right shoulder injuries, and the overall lack of any significant improvement despite therapy and the passage of time, it is with a reasonable degree of medical certainty that Mrs. Kennedy will have permanent pain and significant residual dysfunction at the right shoulder. In fact, I do not expect any significant functional return beyond that which

already currently exists at this time. Her prognosis is also worsened by the fact that she is of advanced age. She continues to be significantly limited by pain as well as loss of functioning. This appears to be creating some overuse issues on the left.”..... . “The cornerstone of caring for this pleasant lady in the future will consist of pain management as well as continued therapy mainly geared towards preserving passive range of motion at the right shoulder to prevent it from freezing up.”

Mrs. Kennedy continues to experience headaches; collarbone pain; right shoulder and arm pain with limited range of motion, weakness, and aching; elbow pain; low back pain; bilateral ear pain which causes difficulty with balance; pain and tenderness of the buttocks; right-sided rib pain; scarring and disfigurement; chronic pain.

See **Exhibit J**, Narrative Report of Dr. Christopher J. Lucasti dated May 11, 2016

See **Exhibit K**, Narrative Report of Dr. Richard Islinger dated November 10, 2015

See **Exhibit L**, Narrative Report of Dr. Arvind Baliga dated March 3, 2016

DIAGNOSTIC TESTING

ARMC	11/17/14	<p>CT Cervical Spine: Unremarkable</p> <p>CT Thoracic & Lumbar Spine: Grade 1 anterolisthesis of L4-L5 by approximately 1mm Vacuum disc phenomenon at L4-L5 and L5-S1. Disc osteophyte complex noted at L2-L3</p> <p>CT Chest, Abdomen & Pelvis: Chest – tiny right-sided pneumothorax. Mild bilateral pleural effusion versus hemothorax Lungs – subtle pulmonary contusion adjacent to the displaced rib fractures. Bilateral atelectasis. Chest Wall/Axilia – multiple depressed, displaced right rib fractures. Clinical correlation is needed to rule out flail chest Additional – Fracture with posterior dislocation of the right shoulder, with displaced comminuted fracture of the right scapula and of the right humeral neck. Displaced fracture of</p>
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		<p>the left clavicle near the left sternoclavicular junction. Extensive soft tissue injury about the right shoulder and right side of the chest. Suspect soft tissue hematoma near the right shoulder. Clinical correlation is needed to rule out active bleeding. There is subcutaneous air noted near the fractures about the right side of the chest.</p> <p>Abdomen/Pelvis – bilateral pelvic cystic mass-like lesions. Ultrasound recommended. Right groin central line tip is overlying the right common femoral vein region</p> <p>CT Head: No acute intracranial hemorrhage or mass effect Left parieto-occipital scalp hematoma</p> <p>Ultrasound – Liver: Gallstones Heterogeneous liver which is not well evaluated secondary to multiple rib fractures and right shoulder surgery</p> <p>Right Upper Extremity Arteriogram / Thoracic Aortogram: No evidence of thoracic aortic injury Evidence of traumatic arterial /intimal injury in the proximal right subclavian artery adjacent to the thyrocervical trunk. There is mildly delayed opacification in the right upper extremity beyond this area, which remains patent</p> <p>X-Ray – Right Humerus (2 views): Fracture of the proximal humerus Multiple rib fractures Possible scapula fracture</p> <p>X-Ray – Pelvis (1 view): Unremarkable</p> <p>X-Ray – Chest (1 view): Serial right comminuted, displaced rib fractures and displaced left midclavicular fracture</p> <p>X-Ray – Right Shoulder (1 view): Comminuted fracture of the right scapula and fracture of the right humeral neck. Evaluation for shoulder dislocation is limited on this single portable view Right rib fractures</p>
ARMC	11/19/14	<p>(2) X-Ray – Chest (1 view frontal): There is a small right pneumothorax. This appears larger</p>

		<p>compared to the prior study (could be due to changes in patient positioning) Widening of the superior mediastinum appears similar to the prior study Bilateral lower lobe opacities are worse compared with November 17, 2014</p> <p>X-Ray – Right Shoulder (2 views): 3 spot images demonstrate plate and screws traversing the proximal right humerus</p>
ARMC	11/20/14	<p>X-Ray (1 view frontal): There is increasing atelectasis and consolidation at the right lung base</p>
ARMC	11/21/14	<p>X-Ray (1 view frontal): Tiny right apical pneumothorax</p>
ARMC	11/22/14	<p>X-Ray (1 view frontal): No significant interval changes</p>
ARMC	11/23/14	<p>X-Ray (1 view frontal): Internal improvement</p>
ARMC	11/24/14	<p>X-Ray (1 view frontal): Right chest tube removed</p>
ARMC	11/24/14	Study of Abdomen – Requested
ARMC	11/26/14	Extremity Study – Requested
ARMC	12/03/14	Abdomen Study – Requested
Atlantic Medical Imaging (Somers Point)	01/16/15	<p>MRI – Right Humerus Complex fluid collection (hematoma) Grade 2 strain of the triceps muscle lateral head Grade 1 strains of the deltoid, long head triceps and teres major muscles</p>
Cerner Imaging Center	06/18/15	<p>CT Scan – Right Humerus Residual deformity proximal humerus immobilized with a side plate and screws Comminuted ununited fracture of the scapula wurg extends into the acromial process</p>
MARA – Dr. Arvind Baliga	10/19/15	<p>EMG/NCS – Upper Extremities Abnormal electrical study There is electrical evidence of an old right axillary neuropathy with extensive axon loss and without ongoing denervation in this nerve distribution at this time.</p>

See Exhibit M, Diagnostic Studies

MEDICAL BILLS/LIENS

Mrs. Kennedy's treatment has all been submitted through Medicare as she was not eligible for PIP benefits. As of January 1, 2017, Medicare has asserted a lien in the amount of \$99,718.14. Additionally, The Rawlings Company has asserted a lien in the amount of \$503.51 for accident-related prescriptions.

Mrs. Kennedy has retained two medical bill experts, Mr. Michael Burger and Val Parisi, RN. Both of these experts have provided opinions establishing the reasonableness and customary nature of the medical billings involved in Mrs. Kennedy's care.

See Exhibit N, Medicare Conditional Payment Print-Out dated, April , 2017

See Exhibit O, Correspondence from The Rawlings Company dated April 11, 2017

See Exhibit P, Table of Medical Bills

See Exhibit Q, Medical Bill Review of Michael Burger, Sr., dated October 3, 2016

See Exhibit R, Medical Bill Review of Val Parisi, RN, dated November 27, 2016

CURRENT COMPLAINTS AND LIMITATIONS

Unfortunately, the severe pain and suffering that Mrs. Kennedy has had to endure is only a part of this tragic story. Due to her permanent disability and her ongoing physical problems and limitations, Mrs. Kennedy's quality of life has been significantly diminished. Mrs. Kennedy continues to experience headaches; collarbone pain; right shoulder and arm pain with limited range of motion, weakness, and aching; elbow pain; low back pain; bilateral ear pain which causes difficulty with balance; pain and tenderness of the buttocks; right-sided rib pain; scarring and disfigurement; chronic pain. Mrs. Kennedy's pain is aggravated and/or exacerbated by inclement weather including cold weather and rain.

Mrs. Kennedy is unable to perform many chores and household tasks like she previously did. Washing dishes, heavy lifting, grocery shopping, and performing normal home maintenance is difficult, if not impossible, for Mrs. Kennedy and causes her severe pain.

CONCLUSION

Plaintiff, Hilda Kennedy, is currently 85 years old with an estimated life expectancy of 6.5 years. She has sustained a significant, debilitating, permanent injury to her right humerus. In addition to the pain and suffering and permanent disability as set forth above, Mrs. Kennedy also has visible scarring as a result of the surgeries.

Respectfully submitted,

COOPER LEVENSON, PA

By: 

RANDOLPH C. LAFFERTY, ESQUIRE
Attorneys for Plaintiffs,
Hilda and John Kennedy

DATED: 04/14/17