

BASCH & KEEGAN

PERSONAL INJURY ATTORNEYS

Brief Insights



A DIGITAL BULLETIN—AUGUST 2022

Basch & Keegan is the Presenting Sponsor of La Guelaguetza Festival on Sunday, August 14th



Please join us on Sunday August 14th at Waryas Park on Main Street in Poughkeepsie at the 15th annual La Guelaguetza Festival from 1pm – 7pm! The event is organized by Grupo Folclorico de Poughkeepsie to celebrate the culture, cuisine, and community of Oaxaca, Mexico. Waryas Park overlooks the Hudson River and participants will enjoy traditional, flavorful dishes from Oaxaca, along with traditional performances, including native songs and dances featuring ensembles in customary bright, colorful costumes. This is a free, family friendly event!

We hope to see you at the festival! Stop by and say hello at the Basch & Keegan booth for more information on how we help the community, and some great giveaways!

Basch & Keegan at the Farmers Market August 27th

Pick Up the Sunday Daily Freeman this Month to Enter a Raffle for \$100 in Kingston Farmers Market Bucks!

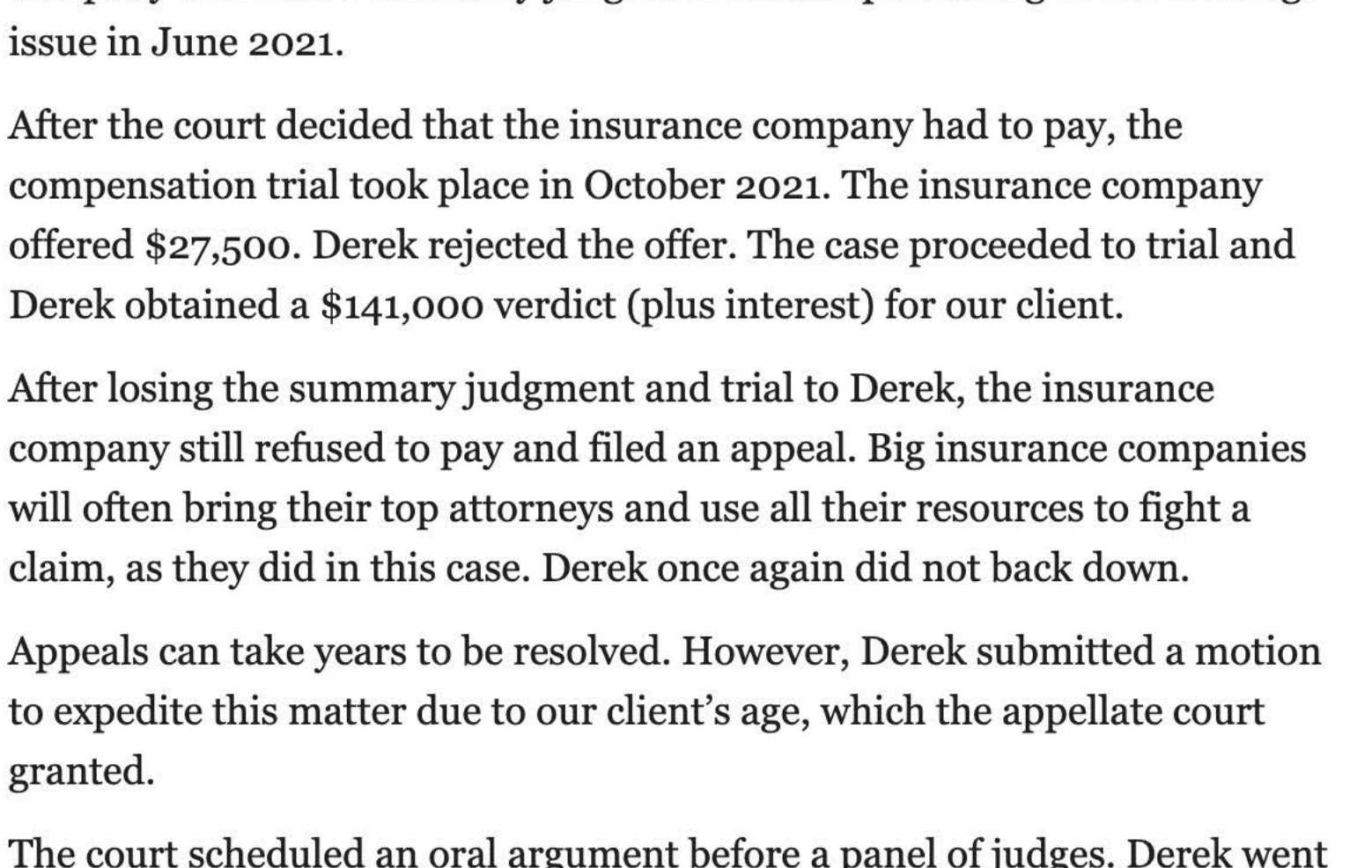


Basch & Keegan has proudly sponsored the Kingston Farmers Market every year since its inception in 2000. The Kingston Farmers Market has over 50 local vendors every Saturday in the County Courthouse Parking Lot in Uptown Kingston from 9am – 2pm.

Basch & Keegan will be at the Market on Saturday, August 27th and you have a chance to win \$100 in Kingston Farmers Market Bucks, which can be used with any vendor at the market!

To enter, pick up a copy of the Sunday Freeman, cut & fill out our ad on the second page of the paper, and bring it to our table at the Farmers Market on August 27th.

You need to be in it to win it! Hope to see you at the Kingston Farmers Market on August 27th.



Derek J. Spada Wins Trifecta Against Insurance Giant

When you become a client of Basch & Keegan, our attorneys will never give up on your case. There is no better example of this fact than the victory Derek J. Spada received this month from the Appellate Division: Second Department.

You may remember this case as we shared the details last year – our client is a lifelong toy inventor who had the prototypes of action figures he invented in the 1960s stolen from his home. Our client filed a claim with his homeowner’s insurance policy. The insurance company denied his claim and alleged that the toys were business property, which is not covered by the policy. Derek engaged in a lengthy battle with the insurance company and won a summary judgment motion pertaining to the coverage issue in June 2021.

After the court decided that the insurance company had to pay, the compensation trial took place in October 2021. The insurance company offered \$27,500. Derek rejected the offer. The case proceeded to trial and Derek obtained a \$141,000 verdict (plus interest) for our client.

After losing the summary judgment and trial to Derek, the insurance company still refused to pay and filed an appeal. Big insurance companies will often bring their top attorneys and use all their resources to fight a claim, as they did in this case. Derek once again did not back down.

Appeals can take years to be resolved. However, Derek submitted a motion to expedite this matter due to our client’s age, which the appellate court granted.

The court scheduled an oral argument before a panel of judges. Derek went to Brooklyn to argue the appeal. There is a link to a video of the argument at the bottom of this page.

Despite the insurance company’s exhaustive efforts to deny this claim, Derek prevailed.

In the decision, the Appellate Division stated, “We conclude that the policy language is reasonably susceptible of an interpretation that would not apply the limitation to the particular property at issue in this case, which was unique property created by the plaintiff decades earlier and retained as part of a collection. The insurer’s reliance upon the plaintiff’s use of other property not at issue in this case is unavailing. Thus, the Supreme Court properly construed the language in favor of the insured.” [Click here for the full decision.](#)

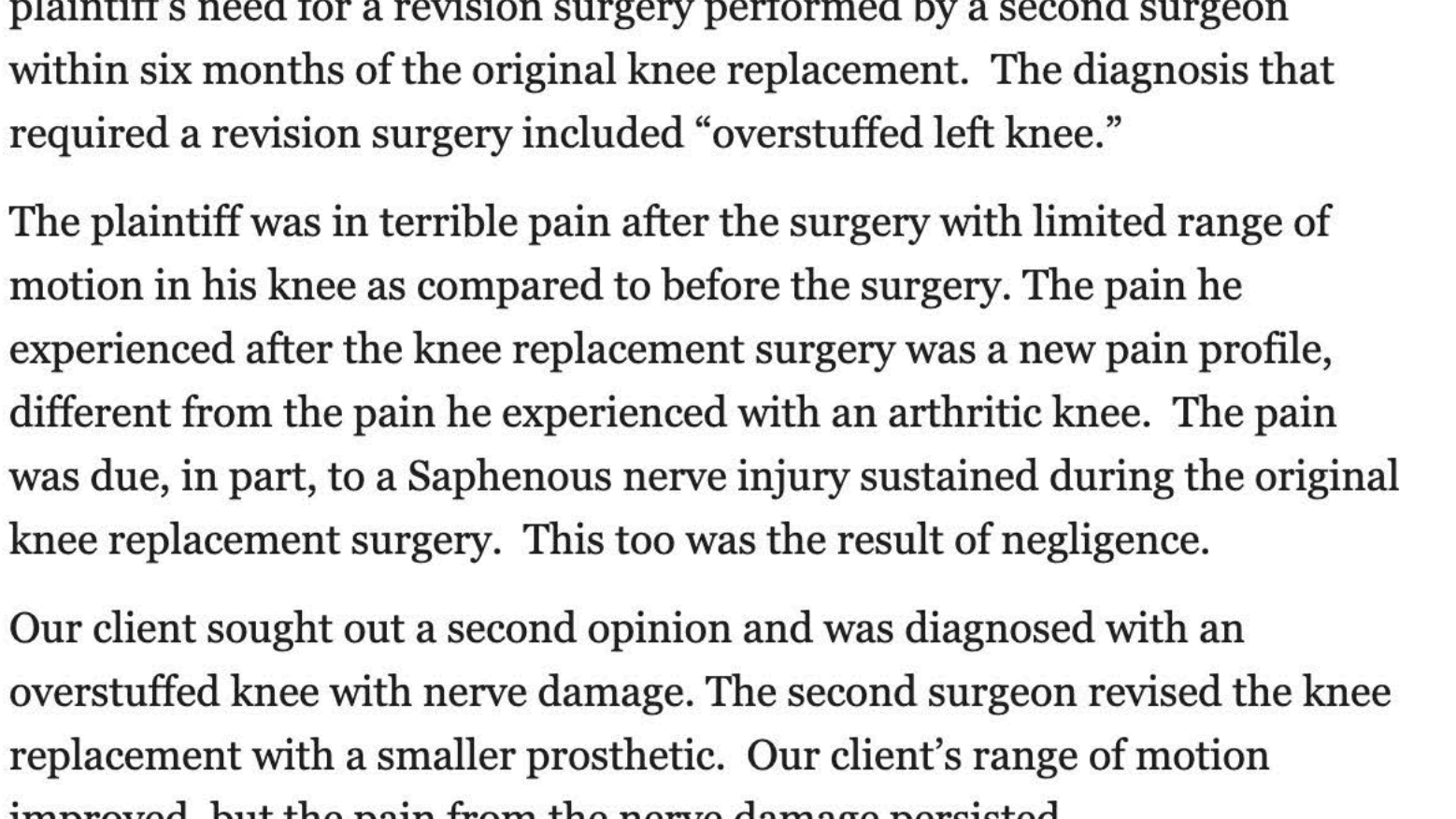
Derek describes this as the one of the top 10 cases of his lifetime. He prevailed on a case where one of the largest insurance companies in America put forth its top attorneys and spared no expense in an attempt to wrongfully deny a claim.

In doing so, Derek achieved a rare trifecta by winning a (1) summary judgment motion, (2) trial and (3) appeal all in the same case.

Ask your attorney friends how often a lawyer wins a summary judgment motion, trial and appeal in the same case. (Hint: Just about never.)

[HERE IS THE LINK TO THE APPELLATE DIVISION ARGUMENT:](#)

Fast forward to 1:31:47 when the case is called and 1:48:43 when Derek begins.



John A. DeGasperis Wins Medical Malpractice Case

Basch & Keegan recently settled a medical malpractice case for a poorly constructed total knee replacement. The plaintiff is a 64-year-old man from Warren County who had a history of knee problems. He finally decided to get a total knee replacement after years of conservative treatment measures failed. The surgery was a complete failure because the plaintiff’s orthopedic surgeon deviated from accepted standards of care by “overstuffing” the knee. John A. DeGasperis handled this case and recovered \$500,000.

According to John, this was a challenging case because “bad outcomes do not necessarily result from medical negligence.” In other words, just because the surgery did not result in a good outcome, it does not automatically mean the doctor was negligent.

Medical malpractice occurs when “a health care provider renders treatment that deviates from the accepted standard of practice in the medical community.” Medical malpractice cases must be commenced by an accompanying opinion which states there is merit to the claim. A major obstacle in medical malpractice claims is proving there was an actual deviation from standard care because doctors give their opinions as to what procedures or treatment should have been done based on a given set of facts surrounding a person’s symptoms. Since there are rarely clear-cut rules about what types of procedures or treatments should be given, proving a deviation from the standard can be difficult.

In this case involving a total knee replacement, the surgeon used the wrong size prosthetic implant. Knee implants come in different sizes to accommodate various body sizes, types, and needs. The doctor who replaced the plaintiff’s knee incorrectly sized one of the four prosthetic pieces that are utilized during a total knee replacement. Those four pieces include the femoral component, tibial component, patellar component, and a plastic insert made of non-wearable plastic. During surgery, the surgeon measured the femur bone at a size six. She cut the bone with a size six cutting block, but she subsequently implanted a size seven femoral component. This negligent act resulted in a large gap between the anterior side of the femoral component and the femur bone. The excessively large prosthetic caused the plaintiff to have considerable pain, as well as restricted range of motion of the knee joint.

When asked about the mid-sizing of the knee, the doctor claimed that the operative report contained a typographical error. This was a huge factor in our case against the doctor. The doctor’s testimony was undermined by the plaintiff’s need for a revision surgery performed by a second surgeon within six months of the original knee replacement. The diagnosis that required a revision surgery included “overstuffed left knee.”

The plaintiff was in terrible pain after the surgery with limited range of motion in his knee as compared to before the surgery. The pain he experienced after the knee replacement surgery was a new pain profile, different from the pain he experienced with an arthritic knee. The pain was due, in part, to a Saphenous nerve injury sustained during the original knee replacement surgery. This too was the result of negligence.

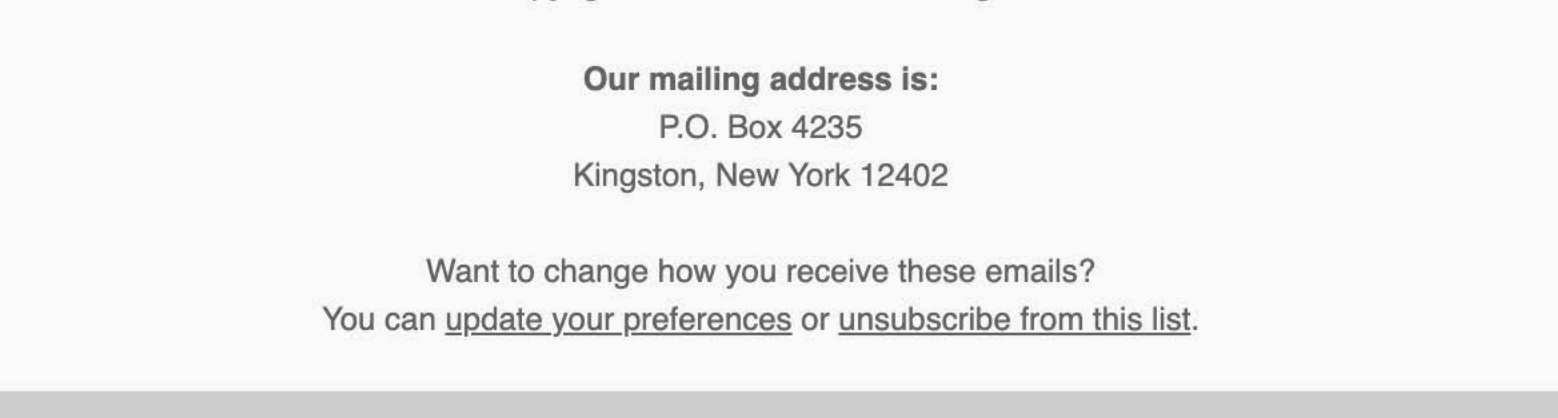
Our client sought out a second opinion and was diagnosed with an overstuffed knee with nerve damage. The second surgeon revised the knee replacement with a smaller prosthetic. Our client’s range of motion improved, but the pain from the nerve damage persisted.

When this client came to Basch & Keegan seeking advice he could hardly walk. The revision surgery had not occurred yet. “I remember seeing how much pain he was in. I thought to myself, ‘something went wrong during that surgery.’” John did not waste time. He obtained the plaintiff’s medical records and diagnostic studies. He reviewed the records, including the operative report and hospital records. It was during the initial investigation when John realized the surgeon screwed up. “The operative report indicated she measured a six, but she put in a seven. I cross-referenced hospital’s prosthetic log, which confirmed she used a size seven.”

John next consulted with an experienced orthopedic surgeon. The surgeon confirmed there could be reasons for measuring one size and implanting a different size, but John’s expert was confident that in this case the surgeon acted negligently. After building his case, John pushed the case to trial. Just one week before the trial was set to commence, the doctor’s medical liability insurance company offered to settle for \$500,000. John really wanted to go to trial; however, the client wanted to resolve the case at \$500,000.

A settlement of \$500,000 is a win for a medical malpractice case. The medical insurance companies will typically not extend settlement offers because this is an admission of negligence on the doctor. The doctor needs to consent to all settlement offers before the medical liability insurance company can extend an offer. This is because doctors have the right of consent. Once a doctor has admitted negligence in a medical malpractice case, they are required to report and register their names in the National Practitioner Data Bank. This databank can be accessed by hospitals, health plans, state licensing boards, medical malpractice payers and other health care entities across the country. Furthermore, each state has a medical board website where the public can search health care professionals by name for any legal issues, including medical malpractice lawsuits.

Basch & Keegan has been handling medical malpractice case for nearly forty years. The firm’s lawyers have brought numerous medical malpractice cases too trial, and many more have been settled out of court. Please feel free to call our office for a free consultation if you or a loved one was injured or died as a result of medical malpractice.



Join us at the Next CRUISE IN 2022

AUGUST 17TH AT WOODSTOCK HARLEY-DAVIDSON

Enter to win a \$100 Gift Card to Woodstock Harley-Davidson at each event!

Basch & Keegan is the Presenting Sponsor for Woodstock Harley-Davidson’s “Cruise In” nights which includes food, music, and giveaways on the 3rd Wednesday of the summer months, June - September. Bikes, trikes, and cars welcomed (If it has wheels, it’s welcomed)!

We have attended both “Cruise In” events in June and July and enjoyed talking with everyone and explaining how Basch & Keegan can help motorcyclists and protect them from being taken advantage of by an insurance company after an accident.

At each event we raffle a \$100 gift card to the dealership, and you can enter to win by being added to our email list! Cruise into Woodstock Harley Davidson on Wednesday August 17th between 4pm and 7pm and stop by our booth.

Basch & Keegan is dedicated to helping motorcyclists who are injured due to the negligence of another person. If an accident or injury happens while you’re on your bike, we’re here to help.

YOU LIVE HERE? WELL, YOU MIGHT WANNA GET THIS BRANCH FIXED... YOU HAVE HOMEOWNER’S INSURANCE, RIGHT?

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