

# Brief Insights

**BASCH & KEEGAN**  
PERSONAL INJURY ATTORNEYS



**May 2023**



## **John A. DeGasperis recovered \$310,000 in a Supplemental Underinsured Motorist Claim**

John A. DeGasperis recovered \$310,000 for a Basch & Keegan client in an insurance claim filed against Utica National Insurance Group. This insurance claim involved Supplemental Underinsured Motorist (SUM) insurance benefits.

New York State law requires drivers to carry certain types of auto insurance. SUM insurance is optional. You can purchase SUM insurance, although you are not obligated to. SUM insurance pays the difference between the full value of your losses and the coverage provided by the policy of the driver who caused your accident.

In this case our client was a middle-aged woman from Kingston, New York, who was rear-ended in a car crash. Her injuries were very serious, especially a neck injury that required spine surgery with fusion of the cervical vertebra. She initially hired Basch & Keegan to file a claim against the other driver who caused the crash. John handled this case and quickly obtained the other driver's full policy limits of \$25,000.

John knew the \$25,000 settlement did not make his client whole due to the significance of her injuries, so he pursued a claim against his client's own insurance company, Utica National Insurance Group.

"I reviewed my client's own car insurance policy. It included significant coverage for SUM benefits, and she needed every penny considering the extent of her injuries," said John.

This case was a challenging one due to the client's extensive history of neck pain and prior neck surgery. She had undergone spine surgery 6 years prior to the car crash. She had done reasonably well after the surgery except for an occasional "flair up" that would cause her some pain or muscle spasms. These flair ups occurred at a frequency of once per month, and they were resolved with Bengay or a prescription muscle relaxant.

Exactly one week after the accident, our client found herself in her neurosurgeon's office for complaints of neck pain, shoulder pain, and left-sided arm pain that radiated down to the forearm and hand. Over the course of time, her injury profile grew more severe. Three months after the crash, our client underwent an expansion of her previous spinal fusion. The surgery resulted in a two-month, post-operative recovery which left her out of work during that period. She also suffers from permanent pain, neurological dysfunction, and restricted range of motion of the cervical spine. She has since returned to work.

In order to obtain the SUM insurance benefits, John filed a demand for arbitration with the American Arbitration Association. The insurance company offered to settle the case for \$310,000, and the client agreed to accept the offer.

Basch & Keegan is here to help after a car accident.

# Derek J. Spada Wins Another Appeal

There is no doubt that Basch & Keegan law partner, Derek J. Spada, is a master of appeals. Time and time again, he triumphs in the Appellate Division. Last month, Derek beat the defendant's summary judgment and then won another appeal for a Basch & Keegan client.

Our client was delivering food to a supermarket, and tripped over a pallet jack that was left in a dimly lit walkway just inside of a rear entrance. Our client had been making similar deliveries to the premises for two years prior to the date of his accident.

On the day of the incident, he loaded the delivery cart and proceeded up a ramp to the entrance of defendant's receiving area. The defendant's employee opened the door but said nothing. Our client walked backwards into the building, which was necessary based upon the size of his cart and the orientation of the door because the door had to be held open to maneuver the cart through the doorway. While he was walking backwards and pulling the cart, our client tripped over the forks of a pallet jack that protruded into the receiving area near the doorway. The pallet jack was left there several hours earlier by the night crew.

Although our client had previously observed pallet jacks in the defendant's receiving area, he explained that on this occasion the pallet jack was not in its normal charging location and had instead been left in an area that was within a marked walkway directly inside of the door. The defendant's employee confirmed that the pallet jack had been left in the location where our client tripped over it and that the battery had likely died the night before.

Defendant contends that it bore no responsibility for our client's fall, as his decision to enter the store backwards was the sole proximate cause of his accident, although that was the only way he could enter the building with the food cart. The defense also alleged that the pallet jack was open and obvious and not inherently dangerous. However, the Supreme Court, Appellate Division 3rd Judicial Department found: "defendant failed to eliminate all triable issues of fact as to whether the pallet jack was inherently dangerous and failed to establish prima facie that [it] maintained the premises in a reasonably safe condition ... Plaintiff's familiarity with the presence of pallet jacks in defendant's store and his decision to enter the doorway walking backwards are factors that may be considered with respect to plaintiff's comparative negligence, but do not establish that defendant was free from fault as a matter of law."

As a result of this fall, our client sustained severe and permanent injuries to his neck, including multiple disc herniations. His injuries required surgery. He has been out of work since the accident.

Now that we beat the defendant's summary judgment and won the appeal, the next step for justice is going to trial or obtaining a settlement. If you or a loved one has been injured, call Basch & Keegan. We are here to help and will never give up on our clients.



## New Episode of Upstate & Litigate

Derek Spada and John DeGasperi released Episode 4 of Upstate & Litigate: Medical Malpractice this month! New Episodes are released the first Tuesday of every month. You can watch all four Episodes of Upstate & Litigate on YouTube.

**UPSTATE & LITIGATE**  
BASCH & KEEGAN



## Free Farmers Market Bags Available at Our Kingston Offices!

The 2023 Basch & Keegan farmers market bags arrived just in time for the opening of the Kingston Farmers Market in the Ulster County Court parking lot! Want one? Stop by 303 or 307 Clinton Avenue during business hours and ask the receptionist!



## COMMUNITY NEWS & Local Events

**Basch & Keegan is Here to Help the Community.**

**Here is a list of the sponsorships we have coming up:**

- **May 6th:** Kingston Farmers Market Opening Day at Ulster Parking Lot.
- **May 13th:** Mid-Hudson Rebels Softball Team Annual Rebels Golf Tournament.
- **May 21st:** Jewish Federation of Ulster County 75th Annual Gala.
- **May 21st:** Cystic Fibrosis Foundation Great Strides Walk, Poughkeepsie.