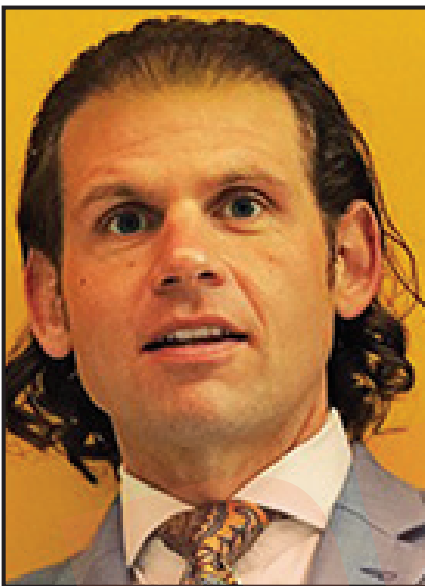


## Verdicts & Settlements

# Plaintiff suffered injuries after being struck by overhead door

### \$3,875,000 settlement



#### MARKO

This was a negligence and premises liability case against a big-box store and its employee, brought by a delivery man who was injured while making a delivery of goods to a local store. The plaintiff was catastrophically injured when he was waved into the docking area of the store when the employee turned her back and pulled a heavy metal door forcefully onto the plaintiff's head.

Every store across the country had the exact same setup and design: All delivery drivers were required to walk under the garage bay door in order to deliver goods, even though there was a pedestrian door available next to the garage door. The store, however, kept the pedestrian door locked at all times.

The defendant denied liability. The plaintiff pursued discovery aggressively and after several contentious motion hearings, the plaintiff forced the defendant to turn over internal incident report documents showing that over the past 10 years, many other delivery drivers were seriously injured across the United States by the defective garage door bay setup. No changes were made to the store despite the company knowing about the danger associated with the delivery drivers.

Plaintiff hired renowned Human Factors expert Lila Laux, who testified in the famous McDonald's hot coffee case. Laux opined that the delivery set-up was dangerous. Weather stripping on the doors obscured views so that people inside could not see those entering until they were very close to the doorway. The weather stripping also blocked people outside from seeing inside, especially where the light reflected off the stripping. It was observed that the door could descend far enough to hit a person within two-three seconds. This is incredibly fast considering that the average person's reaction time to an unexpected event is typically greater than two seconds.

In the defendant's original discovery answers, it blamed the plaintiff for the injury, claiming that he tried to run under the closing dock door. However, in a later interrogatory answer, the defendants tried to remove their previous answer, without indicating it was being amended.

The defendant also spoiled evidence. Prior to and during litigation, the defendant failed to preserve several critical pieces of evidence, including the actual door that was pulled on the plaintiff's head, which was removed in the middle of litigation a couple days before the the defendant's corporate representative deposition. The court granted spoliation sanctions, including adverse presumptions against the defendant and ordering the defendant to purchase a new identical garage door and delivering it to the courthouse for trial.

The plaintiff suffered serious injuries, including neck injuries requiring a cervical fusion and decompression surgery. The screws placed during the surgery came loose, and the plaintiff needs additional surgery to fix the problem.

The plaintiff also sustained a traumatic brain injury. His neuro-

psychologist diagnosed him with a TBI, adjustment disorder, post-concussion syndrome, and serious emotional and psychological limitations. Neurologist Dr. Randy Benson performed extensive brain imaging, which showed significant brain damage.

The case settled shortly before trial with the assistance of mediator Dan Makarski, who relentlessly pushed both sides to compromise on their positions and did not give up despite early unwillingness on both sides. The trial was expected to last two months. After no less than three mediation sessions, and significant efforts expended by Mr. Markarski, plaintiff's counsel and defense counsel, the matter resolved for \$3,875,000.

Counsel for the plaintiff provided case information.

**Type of action:** Laminectomy and cervical spinal fusion, TBI and other problems

**Injuries alleged:** Confidential

**Name of case:** Confidential

**Court/Case no./Date:** Confidential/ April 21, 2020

**Tried before (jury, judge, facilitation, mediation or arbitration):** Mediation

**Name of mediator:** Dan Makarski

**Settlement amount:** \$3,875,000

**Most helpful expert(s):** Barry Grant, economist; Dr. Randall Benson, neurologist; Dr. Bradley Sewick, neuropsychology; Dr. Kapsokavathis, spinal surgery; Dr. Lila Laux, human factors; Dr. Robert Ancell, vocational; and Dr. Gerald Shiener, psychiatry

**Attorney(s) for plaintiff:** Jon Marko of Marko Law Firm

**Attorney(s) for defendant:** Confidential