

NEW YORK COUNTY — SUPREME COURT

**BUS ACCIDENT — DISABLED BUS ROLLS INTO BUS IN WHICH PLAINTIFF IS A PASSENGER —
HERNIATED LUMBAR DISC AND RADICULOPATHY**

Louise Loadholt v. Funaway Tours of New Jersey, Inc.; Raymond McGrath; Inner Circle Qonexions, Inc.; PBD Realty Co.; and Catherine Burton 25949/90 Verdict 2/1/94 Judge Lorraine S. Miller, New York Supreme

\$750,000 v. Inner Circle and Burton (6/0). Defense verdict for Funaway. Breakdown: \$100,000 for past pain and suffering; \$650,000 for future pain and suffering. Jury: 2 male, 4 female.

Edward A. Lemmo

Gregg D. Weinstock of Garbarini & Scher, Manhattan, for Funaway and McGrath

Mitchel Lidowsky of Langan & Levy, Manhattan, for Inner Circle, PBD Realty, and Burton

The accident occurred on 4/22/89 at 7:30 PM in the right northbound lane on the Garden State Pkwy. near the Asbury toll booth. Pltf., a 26-year-old clerical assistant for the New York City Police Dept., was a passenger in a Funaway Tours bus driven by Deft. Burton (both 100% liable) returning from Atlantic City. An Inner Circle Qonexions bus was in front of the Funaway bus and a third bus brought up the rear.

Evidence indicated that there was a fight on the Inner Circle bus and Deft. Burton pulled over to the side of the road, stopped the bus, and set the emergency brake. Burton testified at her deposition (she did not appear at trial) that after she set the brake she felt the bus sway. Deft. McGrath, the Funaway bus driver, testified that he saw the Inner Circle bus ½ mile ahead with its flashers on start rolling back onto the highway into his lane. He testified that he was unable to avoid impact because there was traffic to his left. The driver of the third bus corroborated McGrath's testimony. There was no evidence from either passengers or the responding State trooper to corroborate Burton's testimony. The impact occurred at the side of the bus where Pltf. was sitting. She testified that the window broke on her.

Injuries: herniated disc at L5-S1; bilateral lumbar radiculopathy; chronic lumbar myofascitis; chronic right shoulder arthropathy. Pltf.'s radiologist testified that CAT scans that he performed in May 1991 confirmed the herniated disc. Pltf.'s neurologist testified that Pltf. had an abnormal result on a straight leg raising test when he examined her in July 1993. He also testified that he found some restriction of motion and he contended that Pltf.'s condition will worsen with time. Defts. denied that Pltf. sustained a serious injury under the No-Fault Law, Insurance Law § 5102(d). Defts. contended that Pltf.'s injuries could not have occurred from the impact and argued that her weight exacerbated her problems. Pltf. was 5 feet 6 inches tall and weighed over 200 lbs. Deft.'s neurologist testified that he was unable to perform a straight leg raising test because Pltf. complained of pain. Deft.'s radiologist testified that Pltf. suffered a bulging disc, not a herniation. On cross-examination, however, he admitted that the bulge could cause nerve root compression. The jury found that Pltf. sustained a serious injury.

Note: Deft. Funaway moved for New Jersey law to apply on the issue of apportionment. Judge Miller found that New York law applied. See, Babcock v. Jackson, 12 N.Y.2d 473, 240 N.Y.S.2d 743 (Ct. of Appeals, 1963). Offer: \$35,000 from Inner Circle; \$3,000 from Funaway and McGrath; demand: \$200,000. Carrier: Hartford for Inner Circle; Clarendon National for Funaway. Pltf. Experts: Dr. Miklos Weinberger, radiologist, Manhattan; Dr. Lawrence Shields, neurologist, Manhattan. Pltf. would have called Dr. Murray Braaf, her original treating orth. surg., but he was unable to appear at trial. Deft. Experts: Dr. Robert M. Richman, orth. surg., Manhattan; Dr. Roger Bonomo, neurologist, Manhattan; Dr. Leonard Ebin, radiologist, Manhattan.