



## The Voice

### And The Defense Wins

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#### James P. Lisovicz and Timothy P. Smith



On June 1, 2016, [James P. Lisovicz](#) and [Timothy P. Smith](#) of Parsippany, New Jersey's **Kinney Lisovicz Reilly & Wolff PC** secured a significant victory in the New Jersey Supreme Court when they convinced the court to reverse a \$2.7 million judgment in *Torres v. Pabon and Suburban Disposal, Inc.*, a suit alleging the negligent operation of a commercial motor vehicle. Mr. Lisovicz and Mr. Smith were asked to handle the appeal following a jury verdict in favor of the plaintiff.

The case arose out of a motor-vehicle accident in a highway a construction zone. Defendant Pabon was driving a Suburban Disposal garbage truck when the plaintiff overtook the truck and drove into its rear with such force that her car partially underrode the truck. A jury trial resulted in a judgment of \$2.7 million in plaintiff's favor. Defendants appealed, and the appellate division affirmed. The New Jersey Supreme Court granted certification to review that judgment.

The Supreme Court ruled that several errors individually and cumulatively prejudiced the trial against defendants, depriving them of their right to a fair trial. Those errors included improper adverse-inference charges regarding a fact witness and an expert witness, the impermissible use of late requests for admissions regarding an expert witness's opinions, improper jury instructions on the key issue of liability, and the failure to issue a limiting jury instruction regarding plaintiff's testimony about inadmissible medical bills. The court therefore reversed the judgment below and remanded for a new trial.

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