Plaintiff claimed open stairwell not guarded at construction site

Type: Settlement

Amount: $11,283,397

State: California

Venue: Santa Clara County

Court: Superior Court of Santa Clara County, Santa Clara, CA

Injury Type(s):

- *back* - fracture, vertebra; fracture, transverse process
- *neck* - fracture, vertebra; fracture, transverse process
- *brain* - hydrocephalus; edema, cerebral; traumatic brain injury; subarachnoid hemorrhage
- *chest* - hemothorax; fracture, rib
- *other* - laceration; hyponatremia; fracture dislocation
- *epidermis* - contusion
- *hand/finger* - fracture, metacarpal
- *arterial/vascular* - hemorrhage; deep vein thrombosis
- *pulmonary/respiratory* - contusion, pulmonary

Case Type:

- *Construction* - Accidents
- *Worker/Workplace Negligence* - OSHA
- *Slips, Trips & Falls* - Fall from Height
- *Premises Liability* - Dangerous Condition

Case Name: Jerry Kielty, by and through his Guardian Ad Litem, Sherry Lynn Kielty v. Advent, Inc., Advent Companies, Inc., Advent Construction Management, D.F. Rios Construction, Inc., Foothill Fire Protection, Inc., Pacific Structures, Inc., Testing Engineers Inc., Global Premier Development, Inc. and MIL Aspen Associates, LP, No. 1-08-CV-122946

Date: June 19, 2012

Plaintiff(s):

- Jerry Kielty (Male, 50 Years)

Plaintiff Attorney(s):

- James McManis; McManis Faulker; San Jose CA for Jerry Kielty
- Jason A. Daria; Feldman, Shepherd, Wohlgelernter, Tanner, Weinstock & Dodig; Philadelphia PA for Jerry Kielty
- John M. Dodig; Feldman, Shepherd, Wohlgelernter, Tanner, Weinstock & Dodig; Philadelphia PA for Jerry Kielty
- Tyler Atkinson; McManis Faulker; San Jose CA for Jerry Kielty

Plaintiff Expert (s):

- H. Richard Adams M.D.; Rehabilitation Counseling; Long Beach, CA called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson
- Laura L. Liptai Ph.D.; Biomechanical; Moraga, CA called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson
- Scott J. Kush M.D.; Life Expectancy & Mortality; Menlo Park, CA called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson
- Daniel E. Zehler Psy.D.; Neuropsychiatry; Long Beach, CA called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson
- Doreen Casuto R.N., M.R.A.; Life Care Planning; San Diego, CA called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson
- George P. Widas P.E.; Engineering; Medford, NJ called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson
- Lonnie Haughton; Architecture; San Francisco, CA called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson
- Vickie M. Wolf C.P.A.; Economics; San Diego, CA called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson
- Michael Gilmore G.C.; Construction Design; Oakland, CA called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson
- Richard T. Gill Ph.D.; Human Factors -- See also TECHNICAL-Engineering-Ergonomics; Spokane, WA called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson
- Stephen A. Estrin C.E.; Construction; Cooper City, FL called by: James McManis, Jason A. Daria, John M. Dodig, Tyler Atkinson

Defendant(s):

- Advent, Inc.
- Advent Companies, Inc.
- Testing Engineers Inc.
- MIL Aspen Associates, LP
- Pacific Structures, Inc.
- D.F. Rios Construction, Inc.
- Vickers Concrete Sawing Inc.
- Advent Construction Management
- Foothill Fire Protection, Inc.
- Johnson Western Gunite Company
- Global Premier Development, Inc.

Defense Attorney(s):

- J. Stephanie Krmpotic; Low, Ball & Lynch; San Francisco, CA for Pacific Structures, Inc.
- Kenneth C. Ward; Archer Norris; Walnut Creek, CA for Johnson Western Gunite Company
- S. Mitchell Kaplan; Gordon & Rees LLP; San Francisco, CA for Global Premier Development, Inc., MIL Aspen Associates, LP
- Denis F. Shanagher; McKenna Long & Aldridge L.L.P.; San Francisco, CA for Advent, Inc., Advent Companies, Inc., Advent Construction Management
- Juliet W. MacMillin; Stone & Associates; Walnut Creek, CA for Foothill Fire Protection, Inc.
- None reported for Vickers Concrete Sawing Inc.
- Bryce D. Carroll; Gordon & Rees; San Francisco, CA for Global Premier Development, Inc., MIL Aspen Associates, LP
- Edmund M. Scott; Roger, Scott & Helmer, L.L.P.; Redwood City, CA for D.F. Rios Construction, Inc.
- Michael T. Beuselinck; Low, Ball & Lynch; San Francisco, CA for Pacific Structures, Inc.
- William L. Marchant; McKenna Long & Aldridge L.L.P.; San Francisco, CA for Advent, Inc., Advent Companies, Inc., Advent Construction Management
- Thorsten J. Pray; Gordon & Rees; San Francisco, CA for Global Premier Development, Inc., MIL Aspen Associates, LP
- Frank J. Pagliaro, Jr.; Ropers, Majeski, Kohn, Bentley, P.C.; Redwood City, CA for Testing Engineers Inc.

Defendant Expert(s):

- Janet H. Jhoun Ph.D.; Biomechanical; Livermore, CA called by: for S. Mitchell Kaplan, Bryce D. Carroll, Thorsten J. Pray
- Margo R. Ogus Ph.D.; Economics; Mountain View, CA called by: for S. Mitchell Kaplan, Bryce D. Carroll, Thorsten J. Pray
- Tracy D. Albee P.H.N., B.S.N., R.N.; Life Care Planning; Fresno, CA called by: for S. Mitchell Kaplan, Bryce D. Carroll, Thorsten J. Pray
- Joanna L. Berg Ph.D.; Psychology/Counseling; Oakland, CA called by: for S. Mitchell Kaplan, Bryce D. Carroll, Thorsten J. Pray
- Robert Shavelle Ph.D.; Statistics; San Francisco, CA called by: for S. Mitchell Kaplan, Bryce D. Carroll, Thorsten J. Pray
- Deborah L. Doherty M.D.; Physical Medicine; Kentfield, CA called by: for S. Mitchell Kaplan, Bryce D. Carroll, Thorsten J. Pray
- Douglas Cefali; General Contracting; Pleasant Hill, CA called by: for S. Mitchell Kaplan, Bryce D. Carroll, Thorsten J. Pray

Facts:

On Aug. 22, 2008, plaintiff Jerry Kielty, 50, a shot concrete pump operator, fell into an empty stairwell at a multi-building construction site, where condominiums were being built in San Jose.

There was originally plywood paced at the top of the stairway to act as a barricade. However, it was unclear whether the barricade that was in place earlier that day had been removed, temporarily moved, or in place when Kielty entered the building looking for plywood.

Kielty sued the general contractor, Advent Inc.; two of its related companies, Advent Companies Inc. and Advent Construction Management; and the framing contractor that was responsible for putting up the barricade, D.F. Rios Construction Inc. He also sued the companies that were allegedly working in or near the area of the accident, including the fire sprinkler company, Foothill Fire Protection Inc.; the concrete subcontractor, Pacific Structures Inc. and P Structures Inc.; a concrete cutting company, Vickers Concrete Sawing Inc.; an inspection company, Testing Engineers Inc.; and the property owners, Global Premier Development Inc. and MIL Aspen Associates, LP. He alleged the defendants failed to have properly maintain the area and have proper warnings or barricades in place, creating a dangerous condition. He also claimed the defendants were negligent by failing to provide a safe work environment.

The defendants subsequently cross-complained against each other, and Advent, Global Premier, MIL Aspen Associates and Pacific Structures brought third-party actions against Kielty's employer, Johnson Western Gunite Co., which was the shot concrete contractor. However, Vickers Concrete was ultimately let out of the case.

Kielty claimed that he had no recollection of how he fell. However, he claimed that if a barricade had been in place, it would have prevented his fall.

There was contradicting testimony regarding whether the barricade at the top of the stairway that D.F. Rios put in place was actually present at the time of Kielty's fall. It was noted that the barricade was made of plywood, and Kielty's co-workers testified that Kielty had walked away from his station to search for plywood.

Advent contended that it took all reasonable steps to maintain workplace safety and that D.F. Rios Construction was responsible for maintaining the barricade.

Global Premier Development and MIL Aspen Associates contended that the safety responsibilities were delegated to Advent.

All defendants contended that Johnson Western was negligent in its supervision of Kielty, and that Kielty was at least partially at fault in the accident.

Injury: Kielty sustained a right occipital scalp laceration, bilateral subarachnoid hemorrhage, a sub-frontal contusion, an intraventricular hemorrhage and a cerebral edema. He was ultimately diagnosed with a traumatic brain injury, including traumatic hydrocephalus, which is a buildup of fluid inside the skull that leads to brain swelling, and hyponatremia, which is a metabolic condition in which there was not enough sodium in the body fluids outside the cells. Kielty also suffered a fracture of the T1 lateral mass extending into the transverse process and a complete thoracic spinal cord injury at the T10-11 level, resulting in spinal shock, or the temporary loss of all neurological activity below the injured thoracic levels. In addition, Kielty suffered fractures of the right second and third metacarpals, and fractures to ribs 6 through 9 on the left side, and ribs 1 and 9 through 10 on the right side, as well as a right, upper lobe pulmonary contusion and a right hemothorax.

Kielty was immediately taken to a hospital after his fall and treated for his injuries. Despite treatment, he suffers from brain damage, deep vein thrombosis and is paralyzed from the waist down. As a result, he requires a guardian. Kielty has subsequently incurred in excess of $2.8 million in medical expenses and incurred $100,000 in lost wages.

Result: Kielty agreed to accept $11,283,397 as a conditional settlement from Advent, D.F. Rios, Foothill Fire Protection, Pacific Structures, and Testing Engineers. The settlement reflects the total amount of insurance coverage available from those defendants. The plaintiff's employer, Johnson Western Gunite, was also part of the settlement, in that it agreed to waive costs in return for a dismissal of the remaining single cause of action and an agreement to not appeal the granting of summary judgment. However, the property owners, Global Premier Development and MIL Aspen, did not contribute to the settlement, as they were indemnified by the general contractor and all the subcontractors. In addition, since Kielty is represented by a guardian ad litem, the court still needs to approve the settlement.

Kielty also entered into an agreement with Advent, which tendered its underlying policy limits and excess coverage, whereby Advent is filing a declaratory judgment action against Kielty's worker's compensation carrier alleging that it is an additional insured under the liability policy of the plaintiff's employer. If Advent is successful, there may be additional liability coverage available from which Kielty can attempt to recover from. However, Kielty agreed not to seek more than the amount of that excess policy.

In addition, Kielty settled with his worker's compensation carrier, which will guarantee payment of his medical bills for life.

Trial Information:

Judge: Kevin McKenney

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel, and counsel for Advent, Global Premier Development, MIL Aspen Associates, D.F. Rios Construction and Johnson Western Gunite. The Counsel for Foothill Fire Protection Inc., Pacific Structures Inc. and Testing Engineers Inc. did not respond to the reporter's phone calls. Counsel for Vickers Concrete Sawing Inc. was not asked to contribute.

Writer Priya Idiculla

VerdictSearch

Plaintiff: Treatment of back injuries led to second accident

Type: Verdict-Plaintiff

Amount: $10,791,332

Actual Award: $8,295,000

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Injury Type(s):

- *back* - fusion, lumbar; bulging disc, lumbar
- *brain* - subdural hematoma; traumatic brain injury
- *other* - unconsciousness; physical therapy; seizure disorder
- *surgeries/treatment* - decompression surgery
- *mental/psychological* - cognition, impairment; memory, impairment

Case Type:

- *Construction* - Accidents
- *Motor Vehicle* - Single Vehicle
- *Slips, Trips & Falls* - Falldown

Case Name: Brian Leierer v. Harris Salinas Rebar, Inc., No. HG 13679708

Date: November 05, 2015

Plaintiff(s):

- Brian Leierer (Male, 36 Years)

Plaintiff Attorney(s):

- Bryan D. Lamb; Lamb and Frischer, LLP; San Francisco CA for Brian Leierer
- Richard L. Frischer; Lamb and Frischer, LLP; San Francisco CA for Brian Leierer

Plaintiff Expert (s):

- Mark Holtsman Pharm.D.; Pharmacology; Sacramento, CA called by: Bryan D. Lamb, Richard L. Frischer
- Santi D. Rao M.D.; Orthopedic Surgery; Concord, CA called by: Bryan D. Lamb, Richard L. Frischer
- Gerald R. Fulghum C.S.P.; Safety; Sacramento, CA called by: Bryan D. Lamb, Richard L. Frischer
- Robert B. Cottle Ed.D.; Vocational Rehabilitation; Walnut Creek, CA called by: Bryan D. Lamb, Richard L. Frischer
- Michael D. Freeman Ph.D., M.P.H.; Epidemiology; Portland, OR called by: Bryan D. Lamb, Richard L. Frischer
- Michael J. Mahoney P.I.; Accident Reconstruction; Walnut Creek, CA called by: Bryan D. Lamb, Richard L. Frischer
- Phillip H. Allman, III Ph.D.; Economics; Oakland, CA called by: Bryan D. Lamb, Richard L. Frischer

Defendant(s):

- Harris Salinas Rebar Inc.

Defense Attorney(s):

- Douglas G. MacKay; Vitale & Lowe; Rancho Cordova, CA for Harris Salinas Rebar Inc.

Defendant Expert(s):

- Adam M. Kaye Pharm.D.; Pharmacology; Stockton, CA called by: for Douglas G. MacKay
- Gary L. Buffington C.S.P.; Safety (Construction); Santa Clarita, CA called by: for Douglas G. MacKay
- Van Buren R. LeMons M.D.; Neurosurgery; Sacramento, CA called by: for Douglas G. MacKay

Insurers:

- Zurich North America

Facts:

On Oct. 20, 2011, plaintiff Brian Leierer, 36, a carpenter for Ghilotti Construction, a general contractor, was working on the construction of a small bridge on Devlin Road, in Napa. He was performing detail work to ensure that the concrete to be poured the next day would create a level bridge. At the time, Harris Salinas Rebar Inc., the rebar subcontractor, had mostly completed a rebar mat, constructed of horizontal and transverse rebar, into which the concrete would be poured. However, a vertical piece of uncapped rebar rising out of a girder penetrated Leierer's pant leg, causing him to fall on the rebar mat. As he fell, his foot remained about two feet above the rebar mat and the 50-pound utility belt that he wore added weight to his fall. As a result, Leierer claimed that he sustained a serious back injury, for which he ultimately underwent a fusion surgery.

On Sept. 25, 2012, after being discharged and before a second back surgery, Leierer was involved in a solo-vehicle accident on Bollinger Canyon Road, in San Ramon. The accident occurred on a quiet road with a "sweeping," or gradual, left turn and the reconstruction showed that Leierer made a left U-turn directly into a tree at about the speed limit. There were no witnesses, but bystanders who came to the scene afterward noted that Leierer was seizing and not restrained by a seat belt. Thus, Leierer claimed that the car accident was due to a seizure he suffered as a result of the medical treatment he received for the back injury, which he sustained in the prior construction accident. He also claimed that he suffered head injuries as a result of the car crash.

Leierer sued Harris Salinas Rebar Inc.

Plaintiff's counsel contended that California Occupational Safety and Health Administration regulation §1712 requires that all vertical rebar up to 6-feet high be capped with 3- to 4-inch wide square caps to protect against hazards of impalement. Thus, counsel argued that Harris Salinas Rebar was negligent for failing to cap the rebar.

Plaintiff's counsel contended that the motor vehicle accident was caused by the medical care and treatment necessitated by Leierer's back injury. The plaintiff's safety and accident reconstruction experts also opined that the cause of the accident was consistent with a seizure and, more likely than not, caused by Leierer's medical treatment for his back injury. Plaintiff's counsel further contended that in the subject case, the facts and expert opinions proved that the car accident was mostly likely the result of inadequate pain management and withdrawal symptoms caused by discontinuation of pain medication and alcohol use in anticipation of surgery for his back. Thus, counsel noted that California Civil Jury Instructions Number 3929 provides that when a subsequent injury is caused by the care and treatment rendered for the initial injury, even if the care was negligently performed, the defendant is responsible for both injuries.

Defense counsel argued that Harris Salinas Rebar did not have a duty to cap vertical rebar and that since Leierer was not actually impaled, CalOSHA §1712 did not apply. Counsel also argued that Leierer was not injured when he fell on the job site, but was injured over the subsequent weekend. The foreman on the construction site even testified that Leierer was not injured at work, but was injured over the subsequent weekend. In addition, defense counsel argued that if even if Leierer did injure his back at work, it was due to lifting pipes, and not from a fall on rebar.

In regard to Leierer's solo car crash, defense counsel argued that the accident was not related to the care and treatment of Leierer's back injury, but was due to alcohol withdrawal from chronic alcoholism.

In response, plaintiff's counsel argued that the defense's chronic alcoholism claim was unsupported by the evidence and contradicted by multiple witnesses. Plaintiff's counsel also argued that the foreman on the construction site was impeached by his neighbor and friend, who testified that the foreman told her that Leierer was injured at work, but that the foreman was afraid to report an injury that occurred on his watch.

Injury:

Leierer claimed that he suffered bulging lumbar discs at the L4-5 and L5-S1 levels as a result of his fall on rebar. He also claimed that he suffered a subdural hematoma that left him with a moderate brain injury and in a three week coma as a result of his solo car accident.

After the fall, Leierer's employer's foreman, who saw the accident, allegedly commented that it looked like it hurt. However, he denied making such comment at trial. Leierer told his foreman that he was "okay" in his initial reaction to the fall, and returned to work the next day. However, Leierer realized that he could not do physical work when he attempted to lift a 20-pound pipe. As a result, he first sought medical treatment about 10 days after the fall. Over the following months, he reported pain at a level of nine out 10; took prescription, narcotic pain medication; and attended physical therapy.

In February 2012, Leierer underwent a back surgery that involved an L4-5 disc replacement and an L5-S1 fusion with decompression. However, the plaintiff's treating surgeon testified that the outcome was "less than optimal." Leierer also claimed that his narcotic and non-narcotic pain medication failed to relieve his ongoing severe pain, which he rated as being a seven or eight out of 10. As a result, he claimed he had to resort to drinking alcohol to assist in addressing his pain and depression.

In anticipation of a second back surgery in September 2012, Leierer discontinued his narcotic pain medication and compensated the lack of pain relief with alcohol. In addition, on the weekend before the scheduled surgery, Leierer checked himself into an emergency room with severe back pain and narcotic withdrawal. The E.R. doctor testified that the withdrawal was mostly likely due to discontinuing Norco.

Two days after discharge, Leierer was involved in the solo vehicle accident, during which he suffered a subdural hematoma that left him in a three week coma. When he awoke from the coma, he was allegedly a different person due to a moderate brain injury.

The plaintiff's treating doctor testified that meeting Leierer again was like meeting someone who looked like Leierer, but was not him.

Plaintiff's counsel contended that Leierer is still able to engage in ordinary conversation, and is kind and gentlemanly, but that Leierer cannot sustain focus enough to read a detailed newspaper article. Counsel also contended that Leierer developed a seizure disorder and has serious memory deficits. Counsel contended that as a result, Leierer can no longer drive or cook, and now requires daily care and has to be reminded of basic grooming.

Leierer's second back surgery ultimately occurred in April 2014. Doctors performed a decompression at the L5-S1 level, on the left side. Leierer claimed that the procedure helped remove some of his left-sided radicular pain. However, a right side decompression surgery was recommended, but he had not yet been performed as of the time of trial.

Defense counsel argued that Leierer was not hurt on the day of his fall and that even if Leierer was injured at work, all of the medical treatment was unreasonable and unnecessary. Counsel also argued that Leierer's withdrawal was due to his alcohol use. In addition, defense counsel contended during opening statements that Leierer voluntarily left the hospital against medical advice. However, plaintiff's counsel noted that the E.R. physician that was called by defense counsel testified that Leierer stayed at the hospital until he was formally discharged.

Result:

The jury found that Harris Salinas Rebar was 49.5 percent at fault; that Leierer's employer, Ghilotti Construction, was 49.5 percent at fault; and that Leierer was 1 percent at fault. It also found that Leierer's damages totaled $10,791,332.

After apportionment, the addition of C.C.P. § 998 fees and interest, and the addition of prevailing party costs, Leierer's recovery should be around $8,295,000.

Brian Leierer

$941,090 Personal Injury: past economic loss

$3,267,642 Personal Injury: future economic loss

$590,400 Personal Injury: past non-economic loss

$5,992,200 Personal Injury: future non-economic loss

Trial Information:

Judge:	Frank Roesch
Demand:	$2,300,000
Offer:	$60,000
Trial Length:	12 days
Trial Deliberations:	5 hours
Jury Vote:	Unanimous as to liability and past damages; 9-3 as to future damages
Jury Composition:	equal male and female; ethnically diverse
Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.
Writer	Priya Idiculla

Operator claimed defective hoist resulted in fall from height

Type: Verdict-Plaintiff

Amount: $8,328,591

Actual Award: $4,747,297

State: California

Venue: San Francisco County

Court: Superior Court of San Francisco County, San Francisco, CA

Injury Type(s):

- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *back* - lower back
- *head*
- *elbow* - dislocation
- *other* - thumb; laceration; neuropathy; myofasciitis; intramedullary fixation
- *amputation* - arm; arm (above the elbow)
- *surgeries/treatment* - open reduction; internal fixation
- *mental/psychological* - depression

Case Type:

- *Products Liability* - Design Defect; Failure to Warn; Manufacturing Defect

Case Name: Robert Kammerer v. Alimak Hek; Alimak AB; California Erectors, Bay Area, Inc.; Charles Pankow Builders, LTD; Charles Pankow Builders Inc.; Sheedy, Inc. dba Sheedy Drayage Company; and Does 1-100 Inclusive, No. CGC-07-470119

Date: August 23, 2012

Plaintiff(s):

- Robert Kammerer (Male, 39 Years)

Plaintiff Attorney(s):

- Richard H. Schoenberger; Walkup, Melodia, Kelly & Schoenberger; San Francisco CA for Robert Kammerer
- Michael A. Kelly; Walkup, Melodia, Kelly & Schoenberger; San Francisco CA for Robert Kammerer
- Andrew P. McDevitt; Walkup, Melodia, Kelly & Schoenberger; San Francisco CA for Robert Kammerer

Plaintiff Expert (s):

- C. Stephen Carr Ph.D.; Elevators/Lifts/Conveyors; Palo Alto, CA called by: Richard H. Schoenberger, Michael A. Kelly, Andrew P. McDevitt
- Alex Barchuk M.D.; Physical Medicine; Kentfield, CA called by: Richard H. Schoenberger, Michael A. Kelly, Andrew P. McDevitt
- Marc H. Jacobs M.D.; Psychiatry; San Francisco, CA called by: Richard H. Schoenberger, Michael A. Kelly, Andrew P. McDevitt
- Mark A. Rhodes Ph.D., P.E.; Electrical; Livermore, CA called by: Richard H. Schoenberger, Michael A. Kelly, Andrew P. McDevitt
- Karen L. Aznavoorian M.A.; Life Care Planning; Fresno, CA called by: Richard H. Schoenberger, Michael A. Kelly, Andrew P. McDevitt
- Michael C. Fagan Q.E.C.; Elevator & Escalator Design Standards; San Jose, CA called by: Richard H. Schoenberger, Michael A. Kelly, Andrew P. McDevitt
- Phillip H. Allman, III Ph.D.; Economics; San Francisco, CA called by: Richard H. Schoenberger, Michael A. Kelly, Andrew P. McDevitt
- Cornelius Olcott, IV M.D.; Vascular Surgery; Stanford, CA called by: Richard H. Schoenberger, Michael A. Kelly, Andrew P. McDevitt

Defendant(s):

- Alimak AB
- Sheedy, Inc.
- Alimak Hek, Inc.
- Charles Pankow Builders Inc.
- Charles Pankow Builders, LTD
- California Erectors, Bay Area, Inc.
- Sheedy Dryage Company, sued as dba Sheedy Hoist

Defense Attorney(s):

- Frank E. Schimaneck; Dryden, Margoles, Schimaneck & Wertz; San Francisco, CA for Alimak AB, Alimak Hek, Inc.
- Susan E. Foe; Dryden, Margoles, Schimaneck & Wertz; San Francisco, CA for Alimak AB, Alimak Hek, Inc.
- R. Randy Wertz; Dryden, Margoles, Schimaneck & Wertz; San Francisco, CA for Alimak AB, Alimak Hek, Inc.
- None reported for Sheedy Dryage Company, sued as dba Sheedy Hoist, Sheedy, Inc., Charles Pankow Builders, LTD, California Erectors, Bay Area, Inc., Charles Pankow Builders Inc.

Defendant Expert(s):

- Al Marchant; Standards; Shelton, CT called by: for Frank E. Schimaneck, Susan E. Foe,
- Fred P. Smith P.E.; Mechanical; Alpine, UT called by: for Frank E. Schimaneck, Susan E. Foe,
- Mark A. Cohen Ph.D.; Economics; Lafayette, CA called by: for Frank E. Schimaneck, Susan E. Foe,
- Mark H. Strassberg M.D.; Neuropsychiatry; San Francisco, CA called by: for Frank E. Schimaneck, Susan E. Foe,
- Bruce T. Adornato M.D.; Neurology; Palo Alto, CA called by: for Frank E. Schimaneck, Susan E. Foe,
- James McGowan M.A., C.R.C.; Vocational Rehabilitation; Santa Rosa, CA called by: for Frank E. Schimaneck, Susan E. Foe,
- Karen M. Preston P.H.N., R.N.; Physical Rehabilitation; Sacramento, CA called by: for Frank E. Schimaneck, Susan E. Foe,
- Raymond Gaeta M.D.; Pain Management; San Mateo, CA called by: for Frank E. Schimaneck, Susan E. Foe,
- Raymond Pietila Ph.D.; Electrical; Roseville, CA called by: for Frank E. Schimaneck, Susan E. Foe,

Insurers:

- Zurich Insurance Limited

Facts:

On Dec. 27, 2005, plaintiff Robert Kammerer, 39, a construction hoist operator, was transporting a co-employee to the roof of the San Mateo Library job site using an Alimak Scando 4000 construction hoist when the hoist malfunctioned and would not respond to input from the operator. Unbeknownst to Kammerer, an electric component within the hoist had short-circuited rendering the manual controls and safety interlock system inoperable. The electrical failure also rendered the high and low limit switches, door interlock switch and stop button inoperable. As a result, the hoist climbed upwards out-of-control.

The hoist was equipped with a mechanical lever that acted as a manual shut-off to control the main power. However, the power was not shut off and the hoist continued climbing. Kammerer subsequently opened the hoist gate, which did not cut off the power as it was supposed to, as the machine passed the roof landing. Kammerer claimed that since the hoist continued to climb, he believed that it was going to come off of the mast, so he attempted to exit the moving hoist onto the roof landing. However, Kammerer fell roughly 50 feet to the concrete below. The hoist continued upward until it hit the top of the mast and stopped. Kammerer's co-employee, who remained in the hoist, did not sustain any physical injuries.

Kammerer sued the general contractor on the San Mateo Library job, Charles Pankow Builders Inc.; the subcontractor hired by Charles Pankow Builders to build and operate the hoist, California Erectors, Bay Area Inc.; the believed designer and manufacturer of the hoist, Alimak Hek AB; and Kammerer's employer who was subcontracted by California Erectors, Sheedy Drayage Co.

All but Alimak Hek AB were dismissed from the case by the time of trial.

Kammerer originally claimed the hoist was defectively designed and manufactured, and that Alimak Hek failed to warn of this defect. However, the manufacturing defect claim

was not advanced because discovery revealed that the hoist was manufactured as designed.

Alimak Hek AB denied manufacturing the subject hoist, claiming that the hoist was manufactured by Linden-Alimak AB, which was a different company. As a result, the parties agreed to have the issue of the identity of the manufacturing defendant tried before the court before jury selection. During discovery, plaintiff's counsel made two separate trips to Sweden to depose employees of Alimak Hek and, through that testimony and records from the United States Patent and Trademark Office, counsel was able to establish that Alimak Hek AB was directly responsible as the entity which manufactured the hoist, independent of any issues of successor liability under a Ray v. Alad theory. After hearing the evidence and arguments, the court held that plaintiff's counsel had proven direct liability.

At the jury trial, the plaintiff's experts testified that the hoist's electrical circuitry violated American National Standards Institute requirements that existed when the hoist was manufactured in 1971. The experts explained that as early as 1963, ANSI required a backup electric circuit breaker to prevent just this type of problem in the event of a failure.

Plaintiff's counsel argued that Alimak Hek AB was liable for a design defect under both the risk-benefit and consumer-expectation test. Counsel contended that the cost of adding an additional electrical component was minimal and that there was no risk in doing so. Moreover, counsel contended that an ordinary consumer, like Kammerer, would expect the hoist to stop when the stop button was depressed. Plaintiff's counsel further argued that Alimak was negligent in failing to inform owners that the design of the mechanical power lever had been changed in subsequent models of the hoist. Counsel contended that although Alimak had issued a service message, the defendant could not prove that the message had been delivered to its customers.

The defense's expert for ANSI, who serves on the ANSI committee, testified at trial that the ANSI standards referenced by the plaintiff's experts did not apply to the SCANDO 4000 and even if they did, the SCANDO 4000 met them by inclusion of the main power lever. However, plaintiff's counsel countered by presenting deposition video clips of the defense's ANSI expert, where he testified that ANSI did apply. Plaintiff's counsel also presented video deposition testimony from the head of research and development for Alimak Hek AB, where he confirmed that ANSI applied.

Defense counsel argued that regardless of whether the mechanical power lever was changed in subsequent models, Kammerer was able to locate and pull the lever in the lift. Counsel noted that the hoist passenger and Kammerer's co-employee told a Sheedy employee that Kammerer pulled the lever. Counsel also noted that when the hoist was stuck at the top, the Sheedy employee climbed in using a ladder and found the lever to be in the down position, indicating that it had been pulled. However, Kammerer noted that he did not dispute whether the lever was pulled; he just had no recollection of doing it.

Alimak Hek denied any negligence and denied the presence of a design defect. Instead, it claimed that Kammerer's injuries were caused by his own negligence, along with the negligence of his employer, Sheedy Inc.

Specifically, the defense's electrical engineering expert testified that the electrical component in the hoist failed because Sheedy Inc. utilized non-original equipment

manufacturer parts and failed to perform maintenance as specified in the SCANDO 4000 manual. The expert noted that the operation manual instructed owners and operators to inspect the subject electrical component every 400 hours, but that the last inspection, according to Sheedy's maintenance documents, occurred more than two years before the incident. He further noted that the component that failed had not been replaced in over three years. Thus, the defense's mechanical engineering expert testified that Sheedy should have modernized the 33-year-old hoist to bring it into compliance with current Cal-OSHA guidelines. The expert further testified that Sheedy failed to adequately train Kammerer and had it done so, the plaintiff's injuries would have been avoided entirely because he would have understood that the hoist could never come off the top of the mast.

In addition, defense counsel criticized the manner in which Kammerer performed his daily hoist inspections and accused Kammerer of disabling the mechanical lever that controlled the main power. Counsel further argued that Kammerer was negligent for "jumping" out of the hoist when he thought it was safer to remain inside, like his co-employee passenger did.

Injury:

Kammerer sustained a right elbow dislocation with transection of all arteries and veins, all muscle attachments distal to the elbow, the brachial artery as well as the median, ulnar and radial nerves. He also sustained open fractures of the right tibia and fibula and a head laceration. Kammerer was subsequently airlifted to Stanford Hospital, where his right dominant arm was amputated in a mid-humeral, above-the-elbow amputation. He also underwent open reduction and internal fixation with intramedullary nailing of the right tibia and fibula on the day of the accident. Kammerer remained at Stanford until Jan. 6, 2006, at which point he was transported to the acute rehabilitation unit of Santa Rosa Memorial Hospital in Fulton for 10 days.

As a result of the amputation, Kammerer started overusing his left hand, resulting in carpal tunnel syndrome in his left hand. He subsequently underwent a left hand endoscopic carpal tunnel release in 2012 with placement of Arthrex Mini Tight Rope implant. He was also fitted with a bioelectric prosthetic right arm. However, Kammerer claimed that he did not end up using the prosthetic very much because of its weight and because, combined with his medications, it caused too much sweating in his right arm stump, causing the prosthetic to become uncomfortable and slip off.

Kammerer claimed chronic severe neuropathic pain of the right upper extremity, left thumb trapeziometacarpal joint arthrosis (secondary to overuse), myofascial pain syndrome involving right paraspinal muscles and right upper trapezii, low back pain, and a depressive disorder. However, he was able to return to work as a hoist operator in 2007 and continued working through the trial date. He walks with a slight limp and his chief complaint is phantom pain, which he describes as a 10/10 without medicine and 7/10 with medicine. Kammerer acknowledged that he does not require 24/7 care and lives by himself in a condominium, but his life care plan contemplated future assistance with household chores, meal preparation and work around the home.

Thus, Kammerer sought recovery of damages, including a past wage loss of $116,526; a future wage loss of $0 to $1,304,890, depending on his work life expectancy; and future medical costs of $1,926,411. He also requested $2.4 million in economic damages, over $5 million in past non-economic damages and $6 million in future non-economic damages.

The parties stipulated to past medical damages of $377,256.

Defense counsel argued that Kammerer's depression was caused by an ongoing dispute with his parents. However, according to plaintiff's counsel, the experts retained by each side agreed that Kammerer suffers from a major depressive disorder.

Defense counsel argued that Kammerer's past wage loss was only $134,427 and would only suffer a future wage loss of $6,592. Counsel also argued that Kammerer's future medical costs would only amount to $566,541. Thus, defense counsel suggested non-economic damages between $1 million and $1.5 million, and economic damages between $500,000 and $1 million.

Result: The jury found that Alimak was liable for the defect design of the hoist and for failing to warn of the defect. However, it also found that Kammerer was comparatively at fault. As such, the jury found Alimak Hek AB 57 percent liable, Sheedy Inc. 33 percent liable and Kammerer 10 percent liable.

The jury awarded Kammerer $8,328,591. Thus, Kammerer would recover $4,747,296.80, based on the percentage of fault found against Alimak Hek.

Robert Kammerer

$499,287 Personal Injury: past economic damages

$2,500,000 Personal Injury: past non-economic damages

$1,829,304 Personal Injury: future economic damages

$3,500,000 Personal Injury: future non-economic damages

Trial Information:

Judge: James McBride

Demand: $7,475,400 (C.C.P. § 998) against Alimak

Offer: None reported

Trial Length: 19 days

Trial Deliberations: 4.5 days

Jury Vote: 12-0 on negligence; 11-1 on negligence causation; 12-0 on design defect and design defect causation; 11-1 on negligent failure to warn; 11-1 on negligent failure to warn causation; 12-0 on negligence of employer Sheedy; 12-0 on negligence of employer Sheedy causation; 10-2 on negligence of Kammerer; 10-2 on negligence of Kammerer causation; 12-0 on damages; 12-0 on apportionment

Jury Composition: 3 male, 9 female

Editor's Comment: This report is based on information that was provided by plaintiff's and defense counsel.

Writer Priya Idiculla

Unmaintained property leased to college caused fall: plaintiff

Type: Settlement

Amount: $6,500,000

State: California

Venue: San Francisco County

Court: Superior Court of San Francisco County, San Francisco, CA

Injury Type(s):
- *back* - cauda equina syndrome
- *other* - aggravation of pre-existing condition
- *foot/heel* - foot drop (drop foot)
- *urological* - incontinence; sexual dysfunction; impotence
- *neurological* - nerve damage/neuropathy
- *mental/psychological* - depression

Case Type:
- *Government* - Counties; Municipalities
- *Slips, Trips & Falls* - Trip and Fall
- *Premises Liability* - Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Spero Saridakis v. City and County of San Francisco, City College of San Francisco and Does 1 through 20, inclusive, No. CGC-16-553818

Date: May 18, 2018

Plaintiff(s):
- Spero Saridakis (Male, 60 Years)

Plaintiff Attorney(s):
- Steven R. Anthony; Of counsel, Knox Ricksen LLP; Walnut Creek CA for Spero Saridakis
- Jane L. Trigero; Of counsel, Knox Ricksen LLP; Walnut Creek CA for Spero Saridakis

Plaintiff Expert (s):

- Brad M. Wong P.E.; Accident Reconstruction; Livermore, CA called by: Steven R. Anthony, Jane L. Trigero
- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: Steven R. Anthony, Jane L. Trigero
- Frank R. Schulkin M.D.; Psychiatry; Daly City, CA called by: Steven R. Anthony, Jane L. Trigero
- Joanna Moss Ph.D.; Economics; San Francisco, CA called by: Steven R. Anthony, Jane L. Trigero
- Joseph DiTomaso Ph.D.; Botany; Davis, CA called by: Steven R. Anthony, Jane L. Trigero
- Leland Luna D.O.; Family Medicine; South San Francisco, CA called by: Steven R. Anthony, Jane L. Trigero
- Subhro K. Sen M.D.; General Surgery; Palo Alto, CA called by: Steven R. Anthony, Jane L. Trigero
- Venita Chandra M.D.; Vascular Surgery; Stanford, CA called by: Steven R. Anthony, Jane L. Trigero
- Jeffrey B. Randall M.D.; Neurosurgery; Oakland, CA called by: Steven R. Anthony, Jane L. Trigero
- Jongsoo Park M.D.; Neurosurgery; Palo Alto, CA called by: Steven R. Anthony, Jane L. Trigero
- Stephen Ng M.D.; Physical Medicine; San Francisco, CA called by: Steven R. Anthony, Jane L. Trigero

Defendant(s):

- City College of San Francisco
- City and County of San Francisco

Defense Attorney(s):

- Golnar J. Fozi; Meyers Fozi & Dwork, LLP; Carlsbad, CA for City College of San Francisco
- Jeremy M. Dwork; Meyers Fozi & Dwork, LLP; Carlsbad, CA for City College of San Francisco
- Lane E. Webb; Clark Hill LLP; San Diego, CA for City and County of San Francisco
- Ann M. Asiano; Clark Hill LLP; San Francisco, CA for City and County of San Francisco

Defendant Expert(s):

- Jeffrey D. Coe M.D.; Orthopedic Surgery; Los Gatos, CA called by: for Golnar J. Fozi, Jeremy M. Dwork, Lane E. Webb, Ann M. Asiano

Insurers:

- Alliance of Schools for Cooperative Insurance Program (ASCIP)

Facts:

On Jan. 22, 2016, plaintiff Spero Saridakis, 60, a recently hired aeronautics instructor for City College of San Francisco, was on his way to a fenced-off tarmac, near the San Francisco Airport, where a helicopter was located. He was on his way to teach on his fourth day of employment, but as he was walking on the asphalt tarmac, he tripped and fell. Saridakis claimed injuries to his back.

Saridakis sued City College of San Francisco and the owner of the property where City College's Aeronautics Department and the tarmac were located, the city and county of San Francisco.

Saridakis claimed that there was a considerable amount of debris and overgrown weeds on the tarmac and that his foot became snagged on a hidden 3-foot-long cable, which had become entangled in the weeds due to years of neglect. He contended that weeds had grown over the asphalt for several years, such that the weeds had taken root in cracks in the asphalt, and that neither City College nor the city of San Francisco had maintained the particular area for several years.

Defense counsel asserted that Saridakis was comparatively negligent in that Saridakis failed to take due care to safely walk through an area he observed to be populated by grass and weeds.

Injury:

Saridakis claimed that the trauma from the fall aggravated his asymptomatic spinal stenosis, resulting in cord compression and cauda equina syndrome. He also claimed incontinence, drop foot, impotence and depression. Saridakis sought treatment within 10 days of the incident and ultimately required four surgeries at Stanford University Medical Center, in Stanford. The surgeries were performed over a period of 18 months, with the first surgery performed on the T11-12, T12-L1, L1-2 and L2-3 levels in February 2016. The second and third surgeries consisted of anterior and posterior lumbar fusions at the L3-4 and L4-5 levels and were performed in June 2016. The fourth surgery was then performed as a result of an injury to the abdominal muscles during the anterior fusion.

Saridakis claimed that he suffers from consistent pain, difficulty walking, drop foot, impotence, and feelings of hopelessness and depression. He also claimed he suffers from a permanent loss of strength to his lower extremities, and a permanent loss of bowel and bladder control. He alleged that as a result, he is unemployable.

The plaintiff's expert life care planner, in conjunction with the plaintiff's physical medicine expert, prepared an extensive life care plan that states that Saridakis requires medical and psychological treatment for life. The experts estimated that Saridakis' future medical costs, at present value, would total 1.2 million.

Saridakis sought recovery of $600,000 in past medical costs, $1.2 million in future medical costs, and $900,000 in past and future wage loss. He also sought recovery of damages for his past and future pain and suffering.

Plaintiff's counsel noted that Saridakis previously presented a workers' compensation claim, but City College of San Francisco denied that he was an employee and followed up with several emails advising him that he was not an employee. However, in October 2017, one month before the case was initially set to start trial, prior counsel for City College wrote Saridakis stating that City College had reassessed his workers' compensation claim and that it was now prepared to proceed with workers' compensation. Based on City College's response, plaintiff's counsel filed a motion in limine, prior to trial, to prevent the defendants from arguing workers' compensation exclusivity. However, when the case was actually assigned to trial, the defendants' prior counsel withdrew and the trial was held over until February 2018, during which time the case was sent to Judge Charlene Kiesselbach for all purposes. Kiesselbach vacated the trial date and reset the motion to be heard on the workers' compensation issue. The matter was extensively briefed, and Kiesselbach ruled that the defendants' initial attorneys had failed to plead exclusivity in the answer to the complaint and, therefore, had waived that defense.

Defense counsel contended that Saridakis had been involved in an automobile accident in 2013, resulting in cervical myelopathy and two level cervical fusions. Counsel asserted that Saridakis' weakness and incontinence was because of that prior accident and that Saridakis' MRIs showed that he had severe spinal stenosis in his lumbar area, which was allegedly the cause of his eventual spinal cord injuries.

Result:

The parties agreed to a $6.5 million settlement, which was paid by City College and its insurer on behalf of both defendants.

Trial Information:

Judge: Charlene Kiesselbach

Editor's Comment: This report is based on information that was provided by plaintiff's and defense counsel.

Writer Priya Idiculla

Boat passenger: Operator failed to keep proper lookout

Type: Verdict-Plaintiff

Amount: $5,991,387

Actual Award: $2,096,985

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Hayward, CA

Injury Type(s):
- *arm* - contracture, arm
- *brain* - traumatic brain injury
- *hand/finger* - hand

Case Type:
- *Recreation* - Boating
- *Negligence* - Negligent Entrustment
- *Admiralty/Maritime* - Boating Accidents

Case Name: Jeffrey Koopen, an Incompetent Person, by and through his Guardian Ad Litem, Jacobus Koopen v. Rick Aberle, Colin Troia and Does 1 to 20, No. HG06-266136

Date: January 23, 2012

Plaintiff(s):
- Jeff Koopen (Male, 25 Years)

Plaintiff Attorney(s):
- Christopher A. Appleton; Boskovich & Appleton; San Jose CA for Jeff Koopen

Plaintiff Expert (s):
- Wes Dodd; Maritime; Goodyear, AZ called by: Christopher A. Appleton
- Carol R. Hyland M.A., M.S.; Life Care Planning; Lafayette, CA called by: Christopher A. Appleton
- Deborah L. Doherty M.D.; Physical Medicine; Kentfield, CA called by: Christopher A. Appleton

Defendant(s):

- Colin Troia
- Rick Aberle

Defense Attorney(s):

- Renee Welze Livingston; Livingston Law Firm; Walnut Creek, CA for Colin Troia
- Alison M. Crane; Bledsoe, Cathcart, Diestel, Pedersen & Treppa, L.L.P.; San Francisco, CA for Rick Aberle
- Jeffrey V. Ta; Bledsoe, Cathcart, Diestel, Pedersen & Treppa, L.L.P.; San Francisco, CA for Rick Aberle

Defendant Expert(s):

- David C. Bradshaw M.D.; Physical Medicine; Castro Valley, CA called by: for Alison M. Crane, Jeffrey V. Ta

Insurers:

- State Farm Mutual Automobile Insurance Co.

Facts:

On Sept. 23, 2005, plaintiff Jeffrey Koopen, 25, a pool maintenance technician, was a passenger on a 17-foot ski power boat operated by Rick Aberle, 40, on the New Melones Reservoir in Calaveras County. Koopen was part of a large group staying on a rented houseboat. At about 10:15 p.m., Koopen and others, including Scott Denney, were traveling on Aberle's power boat to meet friends at the lake´s launch ramp. Koopen was the original driver of the boat, but he stopped halfway through the trip and Aberle took over. The boat ultimately struck an unlit island and came to a sudden stop near Carson Cove. Koopen, Denney and the owner of the boat, Colin Troia were all ejected from the boat and sustained injuries. Koopen suffered a disabling brain injury.

Jacobus Koopen, acting as Jeffrey Koopen's guardian ad litem, sued Aberle and Troia. He alleged that Aberle was negligent in the operation of the boat and that Troia was negligent for entrusting the boat to Aberle.

Denney brought a separate action against Aberle and Troia, but it was subsequently consolidated for trial. However, Denney's claim regarding his leg injury was settled in advance of trial.

Troia settled with Jeffrey Koopen in advance of trial. Thus, the matter proceeded to trial against Aberle only.

Plaintiffs' counsel contended that Aberle failed to keep a proper lookout, operated the boat too fast and was impaired and/or intoxicated at the time of the accident.

Prior to the trial, Aberle declared bankruptcy. Jeffrey Koopen filed an adversary proceeding in the Bankruptcy Court alleging that Aberle was intoxicated at the time of the accident and, therefore, any debt arising from this litigation should be deemed non-dischargeable. The stay was lifted in Bankruptcy Court for a trial to liquidate the damages claim.

Aberle claimed that he was not intoxicated at the time of the accident and denied that his conduct fell below the standard of care.

Injury: Jeffrey Koopen was airlifted to Doctor's Medical Center in Modesto with serious head injuries and was in a coma for several months. He sustained a traumatic brain injury with resulting mental instability and physical disabilities.

Koopen is wheelchair bound and is unable to stand or walk short distances without someone being close by. His right dominant hand and arm are significantly limited, and his left hand and arm are also limited, but to a lesser degree. He is now also unable to speak well. Koopen has had several surgeries to increase the functionality of his arms and foot, as well as the implantation of a Baclofen pump to control spasticity. He is currently cared for by his parents.

Aberle was not ejected from the boat, but received an injury to his nose.

Result: The jury found that Aberle was not intoxicated at the time of the accident, but it it found in Koopen's favor on the negligence count. Thus, the jury found Aberle 35 percent responsible for the crash, Jeffrey Koopen 10 percent liable and Troia 55 percent liable.

Koopen was awarded a total special damages award of $5,991,386.81. However, he would only recover $2,096,985.38, based on Aberle's portion of liability. No past or future general damages were awarded.

Jeff Koopen

$427,051 Personal Injury: Past Medical Cost

$4,534,095 Personal Injury: Future Medical Cost

$185,640 Personal Injury: Past Lost Earnings Capability

$795,246 Personal Injury: FutureLostEarningsCapability

$49,354 Personal Injury: other past economic loss

Trial Information:

Judge: David Hunter

Demand: approximately $25 million, including $15 million in general damages

Offer: $90,000 (the amount available under the applicable insurance policy) was offered before trial

Trial Deliberations: 1.5 days

Jury Vote: Intoxication (1-11); Negligence (9-3)

Jury Composition: 5 male, 7 female

Editor's Comment: This report is based on information that was provided by Aberle's counsel. Counsel for Troia and Koopen did not contribute to the report.

Writer Priya Idiculla

VerdictSearch

Motorist's unsafe left turn caused accident: pedestrians

Type: Settlement

Amount: $5,500,000

State: California

Venue: Marin County

Court: Superior Court of Marin County, Marin, CA

Injury Type(s):

- *head*
- *brain* - stroke; subdural hematoma; epidural/extradural hematoma
- *elbow* - fracture, elbow
- *other* - abrasions; craniotomy; dysarthria; unconsciousness
- *sensory/speech* - communicative impairment; aphasia
- *paralysis/quadriplegia* - hemiparesis

Case Type:

- *Motor Vehicle* - Crosswalk; Left Turn; Pedestrian; Question of Lights

Case Name: Aimee Choy and Janet Grady v. Alison Kreshin and Nathan Cohen, No. 1900982

Date: October 17, 2019

Plaintiff(s):

- Aimee Choy (Female, 90 Years)
- Janet Grady (Female, 74 Years)

Plaintiff Attorney(s):

- Donald E. Krentsa; Meisel, Krentsa & Burneikis; San Francisco CA for Aimee Choy, Janet Grady
- Andrew H. Meisel; Meisel, Krentsa & Burneikis; San Francisco CA for Aimee Choy, Janet Grady

Plaintiff Expert (s):

- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: Donald E. Krentsa, Andrew H. Meisel
- David Palestrant M.D.; Critical Care; Kentfield, CA called by: Donald E. Krentsa, Andrew H. Meisel
- Rajeev Kelkar Ph.D.; Accident Reconstruction; Los Altos, CA called by: Donald E. Krentsa, Andrew H. Meisel
- Christopher A. Simmons M.D.; Internal Medicine; Walnut Creek, CA called by: Donald E. Krentsa, Andrew H. Meisel

Defendant(s):

- Nathan Cohen
- Alison Kreshin

Defense Attorney(s):

- Wilma J. Gray; McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP; Walnut Creek, CA for Alison Kreshin, Nathan Cohen
- Cyrus A. Nazarian; McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP; Walnut Creek, CA for Alison Kreshin, Nathan Cohen

Defendant Expert(s):

- David C. Bradshaw M.D.; Physical Rehabilitation; Castro Valley, CA called by: for Wilma J. Gray, Cyrus A. Nazarian
- Steven L. McIntire M.D.; Neurology; Palo Alto, CA called by: for Wilma J. Gray, Cyrus A. Nazarian
- Miranda Van Horn R.N.; Life Care Planning; Atwater, CA called by: for Wilma J. Gray, Cyrus A. Nazarian
- Timothy Gillihan C.P.A.; Accounting (Forensic); Oakland, CA called by: for Wilma J. Gray, Cyrus A. Nazarian

Insurers:

- United States Liability Insurance Group
- USAA

Facts:

On Dec. 26, 2018, plaintiff Aimee Choy, 90, and plaintiff Janet Grady, 74, a retiree, were crossing Magnolia Street, at the intersection with Ward Street, in Larkspur, proceeding east in a marked pedestrian crosswalk on the north side of the intersection. The intersection was controlled by traffic signals and pedestrian crossing signals, which were activated when a button for the pedestrian signal is pressed to indicate a pedestrian may walk. When Choy and Grady were about half way across Magnolia Street, they were struck by a pickup truck operated by Alison Kreshin, who was attempting to make a left turn from eastbound Ward Street onto northbound Magnolia Street on a green traffic signal. Choy claimed injuries to her head, and Grady claimed injuries to her head and elbow.

Choy and Grady sued Kreshin and the believed owner of the pickup truck, Nathan Cohen. Choy and Grady alleged that Kreshin was negligent in the operation of her vehicle and that Cohen was vicariously liable for Kreshin's actions.

Plaintiffs' counsel contended that an independent witness observed Kreshin make a fast, left turn on a green light, and then strike Choy and Grady in the crosswalk. Counsel also contended that another independent witness observed that the pedestrian crossing signal indicated "walk" when Choy and Grady were struck in the crosswalk.

Kreshin claimed that she came to a stop at a red traffic signal at the intersection and that when the light changed to green, she saw the red "don't walk" pedestrian signal and began to turn slowly. She claimed that she did not notice Choy and Grady crossing the street until after the accident.

Defense counsel noted that Choy and Grady were wearing dark clothing at the time of the incident. Counsel asserted that Choy and Grady did not use the button to activate the pedestrian signal, so it was not signaling "walk" for Choy and Grady, and that Choy and Grady did not see or look for left-turning vehicles prior to attempting to cross at the intersection.

Injury:

Grady sustained a head injury and was rendered unconscious or semi-conscious at the scene. She also sustained an elbow fracture and abrasions. Grady ultimately regained consciousness either in the ambulance or in the emergency room at Marin General Hospital, in Kentfield, where she was interviewed by the police. She remained in the intensive care unit for three days.

Grady's head injury fully healed, and both her elbow fracture and abrasions were resolved. However, she claimed that she has residual stiffness in the injured elbow.

Grady sought recovery of $102,094.61 in past medical costs, per Howell. She also sought recovery of damages for her past pain and suffering.

Choy sustained a traumatic brain injury, including a subdural and epidural hematoma, but was ambulatory and talking with paramedics at the scene. She was then transferred by ambulance to Marin General Hospital, where she was interviewed by the police. Choy remained in the intensive care unit for four days.

On Jan. 28, 2019, almost one month after being discharged from the Marin General Hospital, Choy was hospitalized at John Muir Health-Walnut Creek Medical Center, in Walnut Creek, for observation of the traumatic brain injury. She was discharged in stable

condition on Feb. 6, 2019, but she then developed slurred speech on Feb. 12, 2019. As a result, she was seen in the emergency room at Kaiser Permanente Walnut Creek Medical Center, in Walnut Creek, and then transferred back to John Muir Health-Walnut Creek Medical Center. During the latest hospitalization, Choy suffered from aphasia, dysarthria and right-sided hemiparesis. She underwent a left, frontal temporoparietal craniotomy on Feb. 18, 2019.

Choy claimed that her recovery was complicated by persistent aphasia, dysarthria and right-sided hemiparesis and that, at some point between Feb. 10, 2019, and Feb. 23, 2019, she suffered a stroke.

Plaintiffs' counsel asserted that Choy will require assistance with most activities of daily living 24 hours a day, seven days a week, for the rest of her life.

At his deposition, the plaintiffs' critical care expert opined that Choy's stroke was caused by complications of the traumatic brain injury, including the subdural hematoma that Choy sustained in the motor vehicle accident.

Plaintiffs' counsel brought a preference motion based on Choy's age and health, and it was granted with a trial date of Oct. 8, 2019. Counsel contended that Choy was extremely active, independent and engaged before the incident, but that as a result of the accident, Choy's statistical life expectancy was less than five years from the date of incident. Counsel also contended that Choy had a passion for travel and had completed some 91 international trips over the course of her lifetime, many of those solo and many of those in the years just before the incident. At age 90, Choy went dogsledding in Norway and had toured Rome on a Segway. At the time of the incident, she had two international trips planned, one to China to see the Pandas, and she hoped to travel to every continent before she passed. Plaintiffs' counsel contended that Choy was left with right-sided weakness, such that Choy could ambulate only short distances with a walker and an assistant to ensure she does not fall. Counsel contended that other than that, Choy will require a wheelchair to get around.

Choy sought recovery of $305,272.08 in past medical costs and $1.04 million in future medical costs, based on a life care plan. She also sought recovery of damages for her past and future pain and suffering.

Defense counsel did not disagree that Choy will require the assistance alleged, but disputed the cost of that care. Counsel also asserted that Choy's stroke was the cause of the permanent disability, not the traumatic brain injury, and that the stroke was unrelated to the subject incident.

Result: The parties agreed to a $5.5 million settlement based on Kreshin's $500,000 primary policy limit and $5 million excess policy limit. Of the total settlement, Choy recovered $5,175,000 and Grady recovered $325,000. The case settled with no admissions of fault.

Trial Information:

Editor's Comment: This report is based on information that was provided by plaintiffs' and defense counsel.

Writer Priya Idiculla

Fall due to leaking hydraulic fluid caused spinal injuries: suit

Type: Verdict-Plaintiff

Amount: $4,383,682

Actual Award: $3,479,318

State: California

Venue: San Francisco County

Court: Superior Court of San Francisco County, San Francisco, CA

Injury Type(s):
- *back* - fusion, lumbar; herniated disc, lumbar; herniated disc at L4-5
- *neck* - disc protrusion, cervical
- *other* - prosthesis; physical therapy; steroid injection; loss of consortium
- *neurological* - radiculopathy

Case Type:
- *Slips, Trips & Falls* - Slip and Fall
- *Premises Liability* - Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Luis Adolfo Marquez and Norma Meza v. PG&E and Golden Gate Disposal & Recycling Co., and Does 1 to 50, No. CGC-11-515481

Date: July 29, 2014

Plaintiff(s):
- Norma Meza (Female)
- Luis Adolfo Marquez (Male, 48 Years)

Plaintiff Attorney(s):
- Geraldine Armendariz; Law Office of Geraldine Armendariz; San Francisco CA for Norma Meza
- Steger P. Johnson; Jones, Clifford, Johnson, Dehner, Wong, Morrison, Sheppard & Bell, LLP; San Francisco CA for Luis Adolfo Marquez
- J. Kevin Morrison; Jones, Clifford, Johnson, Dehner, Wong, Morrison, Sheppard & Bell, LLP; San Francisco CA for Luis Adolfo Marquez

Plaintiff Expert (s):

- Alex Barchuk M.D.; Physical Medicine; Kentfield, CA called by: Geraldine Armendariz, Steger P. Johnson, J. Kevin Morrison
- Brian McAllister; Repair & Maintenance; Gilbert, AZ called by: Geraldine Armendariz, Steger P. Johnson, J. Kevin Morrison
- Carol R. Hyland M.A., M.S.; Life Care Planning; Lafayette, CA called by: Geraldine Armendariz, Steger P. Johnson, J. Kevin Morrison
- David Rondinone Ph.D., P.E.; Mechanical; Berkeley, CA called by: Geraldine Armendariz, Steger P. Johnson, J. Kevin Morrison
- Frank A. Mainzer M.D.; Radiology; San Francisco, CA called by: Geraldine Armendariz, Steger P. Johnson, J. Kevin Morrison
- Alireza Bagherian D.C.; Chiropractic; San Francisco, CA called by: Geraldine Armendariz, Steger P. Johnson, J. Kevin Morrison
- Kenneth I. Light M.D.; Orthopedic Surgery; San Francisco, CA called by: Geraldine Armendariz, Steger P. Johnson, J. Kevin Morrison

Defendant(s):

- Industrial Crew LLC
- Pacific Gas & Electric Company
- Golden Gate Disposal & Recycling Co.

Defense Attorney(s):

- Keith G. Bremer; Bremer Whyte Brown & O'Meara, LLP; Newport Beach, CA for Pacific Gas & Electric Company
- Christopher F. Johnson; Maranga | Morgenstern; San Francisco, CA for Golden Gate Disposal & Recycling Co., Industrial Crew LLC
- Richard M. Ozowski; Maranga | Morgenstern; San Francisco, CA for Golden Gate Disposal & Recycling Co., Industrial Crew LLC
- Rachel A. Mihai; Bremer Whyte Brown & O'Meara, LLP; Newport Beach, CA for Pacific Gas & Electric Company

Defendant Expert(s):

- Alan L. Nelson M.S., C.V.E.; Vocational Rehabilitation; Oakland, CA called by: for Keith G. Bremer, Christopher F. Johnson, Richard M. Ozowski, Rachel A. Mihai
- Bruce M. McCormack M.D.; Neurosurgery; San Francisco, CA called by: for Keith G. Bremer, Christopher F. Johnson, Richard M. Ozowski, Rachel A. Mihai
- Joanna Moss Ph.D.; Economics; San Francisco, CA called by: for Keith G. Bremer, Christopher F. Johnson, Richard M. Ozowski, Rachel A. Mihai
- Michael J. Kuzel M.S., P.E.; Engineering; Phoenix, AZ called by: for Keith G. Bremer, Christopher F. Johnson, Richard M. Ozowski, Rachel A. Mihai
- Richard W. Klopp Ph.D., P.E.; Mechanical; Menlo Park, CA called by: for Keith G. Bremer, Christopher F. Johnson, Richard M. Ozowski, Rachel A. Mihai
- Timothy R. Sells M.A.; Life Care Planning; Sacramento, CA called by: for Keith G. Bremer, Christopher F. Johnson, Richard M. Ozowski, Rachel A. Mihai
- William K. Hoddick M.D.; Radiology; Walnut Creek, CA called by: for Keith G. Bremer, Christopher F. Johnson, Richard M. Ozowski, Rachel A. Mihai

Insurers:

- Chubb Group of Insurance Cos.
- American States Insurance Co.

Facts:

On Nov. 16, 2009, at approximately 5:15 p.m., plaintiff Luis Marquez, 48, a janitor employed by Able Building Maintenance Co., was depositing recycling materials in a recycling compactor, as part of his work at the Pacific Gas & Electric Co. building in San Francisco, when he slipped and fell on a piece of cardboard, which had hydraulic fluid that had leaked from the compactor underneath it.

The subject recycling compactor was previously sold by Golden Gate Disposal & Recycling Co. to PG&E in 1995, but Golden Gate Disposal continued to maintain the machine on a contractual basis through 2001, when it declared bankruptcy. From that point on, Golden Gate Disposal only serviced the compactor on a pre-authorized basis at the request of PG&E. In 2008, Industrial Crew LLC began subcontracting for Golden Gate Disposal, and its work included servicing the subject compactor.

Marquez claimed that when he slipped due the hydraulic fluid that had leaked, he landed awkwardly on his walkie-talkie, which was situated on his hip/lower back. He claimed that as a result, he sustained serious injuries to his neck and back.

Thus, Marquez sued Pacific Gas & Electric Co., Golden Gate Disposal & Recycling Co., and Industrial Crew LLC. Marquez alleged that the defendants were negligent in their failure to properly maintain the recycling compactor, creating a dangerous condition.

Marquez's counsel contended that the recycling compactor was supposed to retain hydraulic fluid, but that it was later discovered to have holes in the floor, causing it to leak the fluid. Counsel argued that the compactor wore down due to wear and tear and that it was negligently maintained due to PG&E only contacting Golden Gate Disposal to service the machine when it wasn't operational, in that there were no measures taken to maintain the safety of the compactor. Counsel further argued that PG&E had notice of the compactor leaking on several occasions, but that it failed to take any remedial action.

Golden Gate Disposal and Industrial Crew claimed that they were only responsible for servicing the compactor to make it operational. However, they claimed that they each warned PG&E about the compactor leaking, but that PG&E ignored the information. Golden Gate Disposal and Industrial Crew ultimately agreed to $500,000 total settlement, of which Marquez received $450,000 and his wife received $50,000. The matter then continued against PG&E only.

PG&E claimed that it relied on Golden Gate Disposal to fully maintain the subject compactor, as well as relied on Marquez's employer, Able Building Maintenance Co., to report any issues with the machine. It also claimed that Marquez was inattentive and negligent when approaching the compactor and stepping on the cardboard, making Marquez at fault for the accident.

Injury:

Marquez was taken by ambulance to an emergency room, where he was diagnosed with a herniated disc at L4-5 and a protruding disc at C5-6. He subsequently received various conservative treatments consisting of physical therapy, water therapy, steroid injections, facet joint injections and pain medication. On May 3, 2011, Marquez underwent a prosthetic disc replacement at L4-5 and a fusion at L5-S1 the following day. However, when he continued to complain of increasing pain symptoms in his lower back, Marquez underwent a removal of the prosthetic disc at L4-5 on May 13, 2013, and underwent a fusion at L4-5 the following day. He then continued to receive physical therapy and pain medication since the surgery.

Marquez claimed he regularly uses a wheelchair due to his reduced mobility, which has been worsened by permanent nerve damage in the form of radiculopathy to his lower extremities. He alleged that as a result, he is now prohibited from activities like bike riding, playing and coaching soccer with his children, and other physical activities. He also alleged he hasn't returned to work since the accident and cannot return due to his permanent condition. In addition, Marquez claimed he will require another fusion at L3-4 due to the wear on his lumbar spine, as well as either an artificial disc replacement or fusion at C5-6.

Thus, Marquez sought recovery of $394,136.26 in past medical costs, roughly $3.7 million in future medical costs/life care planning, $225,662 in past lost earnings and $513,884 in future lost earnings. He also sought recovery of damages for his past and future pain and suffering.

Marquez's wife, Norma Meza, claimed her family life has been affected by the loss of her husband's household services, as well as the loss of his care, comfort and society. Thus, she sought recovery of damages for her loss of consortium.

Marquez's worker's compensation carrier, Zurich North America, filed an intervening complaint, seeking reimbursement for paid worker's compensation benefits. However, the claim was later dismissed. Thus, it did not participate at trial.

Counsel for PG&E argued that Marquez was not permanently injured in the slip-and-fall accident. Instead, counsel argued that Marquez's current condition was due to pre-existing injuries caused by motor vehicle accidents occurring in 1992 and 1999, which Marquez failed to disclose to his treating physicians and which Marquez sought chiropractic treatment following each accident. In addition, PG&E's counsel argued that Marquez should be able to return to work, in that Marquez had other future employment options.

Result:

The jury found PG&E 79 percent at fault for the accident, Able Building Maintenance 10 percent at fault, and Marquez 11 percent at fault. The jury also found that Marquez's and Meza's damages totaled $4,383,682, including $4,133,682.26 for Marquez and $250,000 for Meza. After reductions based on comparative fault and prior settlements, the plaintiffs' total recovery is $3,479,317.90.

Luis Adolfo Marquez

$394,136 Personal Injury: Past Medical Cost

$1,000,000 Personal Injury: Future Medical Cost

$225,662 Personal Injury: Past Lost Earnings Capability

$513,884 Personal Injury: FutureLostEarningsCapability

$500,000 Personal Injury: Past Pain And Suffering

$1,500,000 Personal Injury: Future Pain And Suffering

Norma Meza

$50,000 Personal Injury: Past Loss Of Consortium

$200,000 Personal Injury: Future Loss Of Consortium

Trial Information:

Judge: Charles F. Haines

Demand: $2 million (C.C.P. § 998) to PG&E

Offer: $600,000 (C.C.P. § 998) prior to trial, $875,000 during trial (rejected) from PG&E

Trial Length: 1 months

Trial Deliberations: 3 days

Jury Composition: 9 male, 3 female

Post Trial: Plaintiffs' counsel will file a memorandum of costs, and the plaintiffs also reached a resolution with Zurich North America regarding reimbursement for paid worker's compensation benefits.

Editor's Comment: This report is based on information that was provided by counsel for Marquez, Golden Gate Disposal and Industrial Crew. Counsel for Meza and PG&E did not respond to the reporter's phone calls.

Writer Dan Israeli

VerdictSearch

Building owner's negligence caused fatal apartment fire: daughter

Type: Verdict-Plaintiff

Amount: $3,000,000

State: California

Venue: San Francisco County

Court: Superior Court of San Francisco County, San Francisco, CA

Injury Type(s):
- *other* - death; unconsciousness
- *pulmonary/respiratory* - smoke inhalation

Case Type:
- *Wrongful Death*
- *Premises Liability* - Apartment; Tenant's Injury; Negligent Assembly or Installation

Case Name: Aurora Belo and Maria Lourdes Ramona S. Belo v. Bally Hallinan Properties; BallyHallinan Properties; BallyHallinan Family LLC; BallyHallinan Family Limited Partnership, a partnership; Shane Hallinan, individually, and as a partner of Bally Hallinan Properties, BallyHallinan Properties, BallyHallinan Family LLC, and BallyHallinan Family Limited Partnership; Matthew Hallinan, individually, and as a partner of Bally Hallinan Properties, BallyHallinan Properties, BallyHallinan Family LLC, and BallyHallinan Family Limited Partnership; Michael Anthony Caudillo; and Does 1-100, and each of them, No. CGC16552777

Date: May 07, 2018

Plaintiff(s):
- Aurora Belo
- Estate of Maria Lourdes Ramona S. Belo (Female, 55 Years)

Plaintiff Attorney(s):
- Conor M. Kelly; Walkup, Melodia, Kelly & Schoenberger; San Francisco CA for Estate of Maria Lourdes Ramona S. Belo, Aurora Belo
- Andje M. Medina; Altair Law LLP; San Francisco CA for Estate of Maria Lourdes Ramona S. Belo, Aurora Belo

Plaintiff Expert (s):
- John D. Loud P.E., C.F.E.I.; Electrical; Menlo Park, CA called by: Conor M. Kelly, Andje M. Medina
- Robert S. Griswold C.R.E., C.P.M.; Property Management; San Diego, CA called by: Conor M. Kelly, Andje M. Medina

Defendant(s):

- Shane Hallinan
- Matthew Hallinan
- Michael Anthony Caudillo
- Bally Hallinan Family LLC
- Bally Hallinan Properties
- Bally Hallinan Family Limited Partnership

Defense Attorney(s):

- David S. Webster; Wood, Smith, Henning & Berman LLP; Concord, CA for Bally Hallinan Properties, Bally Hallinan Family Limited Partnership, Bally Hallinan Family LLC, Michael Anthony Caudillo, Matthew Hallinan, Shane Hallinan
- Sarah E. Fama; Wood, Smith, Henning & Berman LLP; Concord, CA for Bally Hallinan Properties, Bally Hallinan Family Limited Partnership, Bally Hallinan Family LLC, Michael Anthony Caudillo, Matthew Hallinan, Shane Hallinan

Defendant Expert(s):

- Brian Vandal P.E., C.F.E.I.; Electrical; San Jose, CA called by: for David S. Webster, Sarah E. Fama
- Bryan A. Spitulski C.F.E.I.; Fire Safety/Protection; Modesto, CA called by: for David S. Webster, Sarah E. Fama
- Daniel M. Bornstein Esq.; Property Management; San Francisco, CA called by: for David S. Webster, Sarah E. Fama
- Steven G. Reed C.F.E.I.; Cause & Origin; Boise, ID called by: for David S. Webster, Sarah E. Fama

Facts:

On the night of June 29, 2014, plaintiff's decedent Maria Lourdes Ramona S. Belo, known as "Lorraine Belo," 55, a former hotel concierge, was home at her 300-square-foot studio apartment, in a 40-unit building at 627 Taylor St., in San Francisco, when a fire started in her hallway closet and quickly spread to her living space, causing her front door to be engulfed in flames. It is unknown whether she was awake or asleep when the fire started. The San Francisco Fire Department responded to the apartment building and found Belo on her kitchen floor, right beneath a window that served as an access point to her fire escape. Belo was unconscious from smoke inhalation. She died several days later.

The decedent's daughter, Aurora Belo, sued a family run corporation that owned the building and rented the apartment to her mother, Bally Hallinan Family LLC, which was doing business as Bally Hallinan Properties, formerly known as Bally Hallinan Family Limited Partnership, and erroneously sued as Bally Hallinan Properties. Michael Caudillo, Matthew Hallinan and Shane Hallinan were also initially named as defendants in the complaint, but they were dismissed prior to trial.

Plaintiff's counsel contended that Bally Hallinan had owned the subject building since the 1930s and that the fire started because of a negligently installed electrical outlet in the decedent's closet. Counsel argued that the outlet had been added to the electrical system approximately 10 to 20 years before the fire and that this type of electrical addition required a permit and should have been performed by a qualified electrician. However, no permit was obtained for the installation and Bally Hallinan had no records showing who installed the outlet.

The plaintiff's experts testified that the subject electrical outlet was ungrounded -- meaning that there was no ground wire that would trip the circuit breaker in the event of an electrical short -- and that it was installed in a careless manner with loose, resistive

wiring. The experts also opined that the faulty wiring caused the electrical outlet to overheat and start the fire. Plaintiff's counsel noted that the fire department's arson investigator determined that the fire was electrical in nature.

Defense counsel denied the fire was electrical. Based on photographs of the outlet, the defense's experts opined that it was grounded. They also opined that the fire damage in and around the outlet suggested that it was attacked externally by fire, rather than being the source of the fire. The defense experts did not put forth an alternative fire cause, but defense counsel questioned the mental condition of the decedent throughout trial and suggested that she had intentionally started the fire herself.

Defense counsel contended that the decedent was a hoarder and that she contributed to her own death as a result of her hoarding. Counsel also presented evidence that the common area fire equipment was inspected and approved by the San Francisco Fire Department days before the fire and that the department inferred that a unit smoke detector was installed by Bally Hallinan. In addition, defense counsel presented photographs taken immediately after the fire, which showed numerous large boxes throughout the small studio apartment, and noted that the fire department described the subject closet as having personal possessions stacked waste high.

Plaintiff's counsel countered that Bally Hallinan's employees had been in the decedent's unit numerous times, but never concluded that it was a fire hazard. Counsel also presented witnesses who testified that the apartment always had a clear path of travel from the living area to the front door and kitchen, where the decedent was found. However, defense counsel contended that Bally Hallinan never entered or inspected the closet before the fire.

Injury:

Lorraine Belo suffered severe smoke inhalation and was rendered unconscious. She was transported to a hospital, where she remained for nine days before dying from complications associated with smoke inhalation.

Plaintiff's counsel elicited undisputed testimony that it takes only a few seconds for someone to be overcome by smoke in a fire.

The decedent's daughter, Aurora Belo, who was 29 years old at the time of her mother's death, sought recovery of $5 million in non-economic damages for the loss of her mother's love, companionship, comfort, care, assistance, protection, affection, society, and moral support. Since Aurora Belo was financially independent from her mother, she did not make a claim for economic damages.

Defense counsel strongly disputed the Aurora Belo's damages, arguing that she was not entitled to any damages for the loss of her mother.

Defense counsel contended that Aurora Belo and her mother had a complex history. The decedent was a single mother at the time of Aurora Belo's birth and that when Aurora Belo was around 2 years old, the decedent decided to send her daughter to the Philippines, where Aurora Belo could live with, and be financially supported by, her grandparents while the decedent stayed in the United States. Over the next 17 years, Aurora Belo lived primarily in the Philippines and saw her mother only every few years. During that time, Aurora Belo stayed in communication with her mother by phone and they wrote each other letters. When Aurora Belo turned 18, she came to San Francisco to live with and be closer to her mother. The two lived together in a one-bedroom apartment for almost two

years before Aurora Belo, then 20 years old, decided to move out on her own for the first time in her life. She moved into an apartment in San Francisco with roommates, but she and her mother continued to have a strong relationship. In 2011, Aurora Belo and the decedent had a falling out because Aurora Belo began dating a younger man, whom the decedent viewed as unstable and not committed, and Aurora Belo relocated with him to Arizona. During the two years before the decedent passed away, Aurora Belo did not speak to her mother on the phone or exchange written communication with her, so she basically had little contact with her mother.

Defense counsel also presented evidence that, approximately one year before her death, the decedent had requested a change to her lease, which prohibited all family members, including Aurora Belo, from coming to the decedent's apartment or contacting her.

Defense counsel argued that Aurora Belo was estranged from her mother and other local family members, so Aurora Belo had not lost any relationship with the decedent. During closing arguments, defense counsel argued that Aurora Belo had not suffered any damages and asked the jury to return a defense verdict. Counsel also argued that if the question of damages was reached, than no money should be awarded.

In response to the complex family history, plaintiff's counsel contended that the decedent and her daughter never stopped loving one another. Counsel pointed out that Aurora Belo and her mother had been separated previously and that they always came back together. Counsel also contended that even during the two-year period when they did not talk, Aurora Belo and the decedent loved each other and would check-in on the wellbeing of the other through various family members. Plaintiff's counsel further argued that Aurora Belo and the decedent's relationship would have mended once Aurora Belo and her boyfriend became engaged, which occurred after the decedent's passing.

Result: The jury found that Bally Hallinan was negligent and that its negligence was a substantial factor in causing the decedent's death. It also found that the decedent was negligent, but that her conduct was not a substantial factor in causing her death. The jury determined that Aurora Belo's damages totaled $3 million, including $1.5 million for past non-economic loss and $1.5 million for future non-economic loss.

Aurora Belo

$1,500,000 Wrongful Death: Past Loss Of Society Companionship

$1,500,000 Wrongful Death: Future Loss Of Society Companionship

Trial Information:

Judge: Garrett L. Wong

Demand: $250,000 (at mandatory settlement conference on day of trial)

Offer: $150,000 (at mandatory settlement conference on day of trial)

Trial Length: 12 days

Trial Deliberations: 1 days

Jury Vote: 12-0 (negligence of Bally Hallinan); 11-1 (damages and no causation as to the decedent); 10-2 (causation as to Bally Hallinan); 9-3 (negligence of the decedent)

Jury Composition: 7 male, 5 female

Post Trial: Defense counsel moved for a new trial and for judgment notwithstanding the verdict. The motions were both denied. The plaintiff obtained a judgment in excess of her C.C.P. § 998 offer, and will recover prejudgment interest on the entire verdict and post-offer expert fees.

Editor's Comment: This report is based on information that was provided by plaintiffs' and defense counsel.

Writer Priya Idiculla

VerdictSearch

Fall down darken stairway results in quadriplegia

Type: Settlement

Amount: $2,900,000

State: California

Venue: Marin County

Court: Superior Court of Marin County, Marin, CA

Injury Type(s):
- *neck* - fracture, cervical
- *other* - pins/rods/screws; loss of consortium
- *face/nose* - facial laceration; fracture, facial bone; fracture, orbit
- *urological* - neurogenic bladder
- *surgeries/treatment* - laminectomy; open reduction; internal fixation
- *paralysis/quadriplegia* - tetraplegia; quadriplegia

Case Type:
- *Slips, Trips & Falls* - Staircase
- *Premises Liability* - Stairs or Stairway; Dangerous Condition

Case Name: Ida Kasamoto and Don Kasamoto v. Commonweal, No. CIV1002215

Date: August 12, 2011

Plaintiff(s):
- Don Kasamoto (Male, 70 Years)
- Ida Kasamoto (Female, 75 Years)

Plaintiff Attorney(s):
- Steven R. Cavalli; Gwilliam, Chiosso, Cavalli & Brewer; Oakland CA for Ida Kasamoto, Don Kasamoto
- Dale Minami; Minami Tamaki LLP; San Francisco CA for Ida Kasamoto, Don Kasamoto
- B. Mark Fong; Minami Tamaki, LLP; San Francisco CA for Ida Kasamoto, Don Kasamoto

Plaintiff Expert (s):

- Alex Barchuck M.D.; Physical Medicine; Kentfield, CA called by: Steven R. Cavalli, B. Mark Fong
- Dale H. Fietz M.S.S. P.E.; Safety; Petaluma, CA called by: Steven R. Cavalli, B. Mark Fong
- Paul Kayfetz; Photographic Documentation; Bolinas, CA called by: Steven R. Cavalli, B. Mark Fong
- Karen L. Aznavoorian M.A.; Life Care Planning; Fresno, CA called by: Steven R. Cavalli, Dale Minami, B. Mark Fong
- Kenneth Ziedman Ph.D.; Ergonomics/Human Factors; Point Reyes Station, CA called by: Steven R. Cavalli, Dale Minami, B. Mark Fong

Defendant(s):

- Commonweal

Defense Attorney(s):

- James C. Hyde; Ropers, Majeski, Kohn & Bentley PC; San Jose, CA for Commonweal

Insurers:

- State Farm Mutual Insurance Co.

Facts:

On Feb. 20, 2009, plaintiff Ida Kasamoto, 75, and her husband attended a retreat at Commonweal in Bolinas, a nonprofit health and research institute that has three houses on its property. The Pacific House is a two story building and all but one of its twelve bedrooms is on the second floor, which is accessed by a stairwell. When Kasamoto was attempting to go to the restroom in the evening, she fell down the dark stairs, rendering her a quadriplegic. There were no witnesses to the fall and Kasamoto, herself, does not remember it. She was found lying at the bottom of the stairs in a pool of blood by another member of the retreat.

Kasamoto sued Commonweal. She alleged that the defendant failed to properly maintain its stairway, creating a dangerous condition.

Plaintiff's counsel argued that the defendant's stairs were not compliant with building codes. Counsel asserted that the stairwell area was too dark. Lights were added to the stairwell in question in September 1987 during the property's renovation, but counsel contended that these lights were removed sometime in the mid-1990s, after guests complained about their brightness. Plaintiff's counsel pointed out that the manager of the retreat center testified that the lights should have been left on upstairs at all times. According to plaintiff's counsel, one of the retreat participants decided that the upstairs hallway lights were too bright and used the dimmer switch to lower them. Counsel noted that subsequent to the accident, lights were re-installed with a motion sensor.

Plaintiff's counsel further contended that the handrail on the stairs ended a step-and-a-half too short. Thus, counsel contended that it was possible that while Kasamoto was walking down the dark stairs, she thought she had reached the end of the stairs when the railing ran out.

Defense counsel argued that since the plaintiff had no recollection of the accident, it was impossible for her to prove the fall was due to any sort of negligence on their part.

Injury:

After the fall, Kasamoto was airlifted to John Muir Hospital, where she remained from Feb. 21, 2009, until April 13, 2009. She was then transferred to California Pacific Medical Center, where she stayed from April 13, 2009, until June 5, 2009.

Kasamoto suffered a C4-5 spinal cord fracture, rendering her a C6 ASIA Class C quadriplegic with central cord syndrome. She underwent open reduction and internal fixation; laminectomies at C3-4, C4-5, C5-6, and C6-C7; allograft arthrodesis at C4-5 and C5-6; lateral mass instrumentation at C4-5 and C5-6 using Synthes Synapse screw and rod system. Kasamoto also suffered a right orbital fracture and orbital lacerations. In addition, she suffered numerous complications during her hospitalization, including the need for endotracheal intubation, tracheostomy placement, gastric resection and insertion of a feeding tube.

Kasamoto stated that she was left with a neurogenic bowel and bladder, and is dependent on others for her daily living activities. She is confined to a wheelchair, which has changed her daily life dramatically. She alleged that she is no longer able to take walks, travel, entertain friends, go shopping, read, paint, cook, write, swim or play the piano. Her husband and son have been her primary caregivers. She stated that her future life care plan includes making her home wheelchair accessible, getting a wheelchair accessible van, obtaining attendant care and continued medical monitoring.

Through Sept. 20, 2010, Kasamoto's past medical bills were $2,085,061.75 (the Medicare lien was compromised to $280,000), not including the value of home care, which has been provided by her son and husband. According to the plaintiff's counsel, the value of the home care amounts to an additional $185,000 (for 742 days at a rate of $250 per day). In addition, she claimed between $3,584,343 and $3,983,835 in future medical costs, depending on her life expectancy.

Kasamoto's husband presented a derivative claim seeking an award for loss of consortium based upon his wife's injuries.

Result:

The parties reached a $2.9 million settlement, based on the defendant's $3 million insurance policy.

The plaintiffs made a demand for $2.9 million at mediation three weeks prior to the agreed upon settlement. The case settled after four depositions were taken and before a trial date was set.

Trial Information:

Judge: Lynn Duryee

Editor's Comment: This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Writer Stephen DiPerte

Plaintiff claimed defective water drainage in stairwell caused fall

Type: Verdict-Plaintiff

Amount: $2,626,379

Actual Award: $1,176,233

State: California

Venue: Sonoma County

Court: Superior Court of Sonoma County, Sonoma, CA

Injury Type(s):

- *knee* - fracture, knee
- *ankle* - sprain/strain
- *brain* - internal bleeding
- *elbow*
- *other* - loss of consortium; decreased range of motion
- *shoulder* - dislocation
- *epidermis* - contusion
- *mental/psychological* - cognition, impairment; memory, impairment

Case Type:

- *Premises Liability* - Hospital; Stairs or Stairway; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Slip and Fall

Case Name: Jack Tuttle and Megan Tuttle v. Ceramic Tile World, Inc.; Dal-tile Distribution, Inc.; Dal-tile Services, Inc.; Crane of Ukiah, Inc.; Selberg Associates, Inc.; Ukiah Valley Medical Plaza, L.P.; Gary Peterson and Carol Peterson, Individually and Doing Business as Peterson Tile; and Ukiah Adventist Hospital dba Ukiah Valley Medical Center, No. SCV248442

Date: December 05, 2014

Plaintiff(s):

- Jack Tuttle (Male, 50 Years)
- Megan Tuttle (Female, 50 Years)

Plaintiff Attorney(s):

- Laura Liccardo; The Liccardo Law Firm, LLP; San Jose CA for Jack Tuttle, Megan Tuttle
- Paul S. Liccardo; The Liccardo Law Firm; Saratoga CA for Jack Tuttle, Megan Tuttle
- Salvador A. Liccardo; The Liccardo Law Firm, LLP; Redondo Beach CA for Jack Tuttle, Megan Tuttle

Plaintiff Expert (s):

- J. Richard Mendius M.D.; Neurology; Santa Rosa, CA called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo
- Alex Barchuk M.D.; Physical Medicine; Kentfield, CA called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo
- Gary Stimac M.D.; Radiology; Bellevue, WA called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo
- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo
- Louis Y. Cheng Ph.D.; Injury Biomechanics; Alameda, CA called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo
- Robert A. Egan M.D.; Neuro-ophthalmology; Tualatin, OR called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo
- Deborah L. Doherty M.D.; Physical Medicine; Kentfield, CA called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo
- Michael McDermott M.D.; Orthopedics; Santa Rosa, CA called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo
- Richard P. Olcese Psy.D.; Neuropsychology; Santa Rosa, CA called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo
- Richard J. Andolsen M.D.; Family Medicine; Healdsburg, CA called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo
- Thaddeus J. Whalen, Jr. Ph.D.; Economics; Saratoga, CA called by: Laura Liccardo, Paul S. Liccardo, Salvador A. Liccardo

Defendant(s):

- Gary Peterson
- Carol Peterson
- Crane of Ukiah Inc.
- Dal-tile Services Inc.
- Ceramic Tile World Inc.
- Selberg Associates, Inc.
- Ukiah Adventist Hospital
- Dal-tile Distribution Inc.
- Ukiah Valley Medical Plaza, L.P.

Defense Attorney(s):

- Martin J. Ambacher; McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP; Walnut Creek, CA for Ukiah Valley Medical Plaza, L.P., Ukiah Adventist Hospital
- Nolan S. Armstrong; McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP; Walnut Creek, CA for Ukiah Valley Medical Plaza, L.P., Ukiah Adventist Hospital
- None reported for Ceramic Tile World Inc., Dal-tile Distribution Inc., Dal-tile Services Inc., Crane of Ukiah Inc., Selberg Associates, Inc., Gary Peterson, Carol Peterson

Defendant Expert(s):

- Alan D. Shonkoff Ph.D.; Neuropsychology; Berkeley, CA called by: for Martin J. Ambacher, Nolan S. Armstrong
- Gary P. McCalla M.D.; Emergency Medicine; Santa Rosa, CA called by: for Martin J. Ambacher, Nolan S. Armstrong
- Mark Luoto M.D.; Emergency Medicine; Ukiah, CA called by: for Martin J. Ambacher, Nolan S. Armstrong
- James Y. Soong M.D.; Neurology; San Francisco, CA called by: for Martin J. Ambacher, Nolan S. Armstrong
- Margo R. Ogus Ph.D.; Economics; Palo Alto, CA called by: for Martin J. Ambacher, Nolan S. Armstrong
- Jerome A. Barakos M.D.; Neuroradiology; San Francisco, CA called by: for Martin J. Ambacher, Nolan S. Armstrong
- Thomas G. Sampson M.D.; Orthopedic Surgery; San Francisco, CA called by: for Martin J. Ambacher, Nolan S. Armstrong

Facts:

At around 9 a.m. on April 28, 2010, plaintiff Jack Tuttle, 50, a medical sales representative, slipped on the second floor landing of Ukiah Valley Medical Center, a medical complex in Ukiah.

The medical complex was newly constructed 2.5 years before the accident, and Tuttle admitted to not using the handrail at the time of the incident. However, Tuttle claimed he fell down two flights of stairs and sustained injuries to his ankle, knee, shoulder, elbow, and head.

Tuttle sued the operator of Ukiah Valley Medical Center, Ukiah Adventist Hospital; the owner of the premises, Ukiah Valley Medical Plaza, L.P.; the general contractor who built the hospital, Crane of Ukiah Inc.; the architect, Selberg Associates Inc.; the tile subcontractors who installed tile at the medical center, Gary Peterson and Carol Peterson, individually and doing business as Peterson Tile; a tile manufacturer, Ceramic Tile World Inc.; and tile distribution companies, Dal-tile Distribution Inc. and Dal-tile Services Inc.

Dal-tile Distribution and Dal-tile Services were ultimately dismissed from the case, and several other defendants settled out. Thus, the matter proceeded to trial against Ukiah Adventist Hospital only.

Tuttle claimed that it rained for two days prior to and including the date of his fall and that the medical complex included an open atrium that allowed rain water to reach the landing and stairwell areas. He claimed that as a result, he slipped on water that had ponded on the tile at the top landing of the two-flight stairwell. Although Tuttle admitted that he never used handrails, he claimed the handrail was not extended sufficiently so that when he attempted to reach for the handrail after slipping, he was unsuccessful. Thus, he alleged the stairwell was defective due to level variations on the top landing, lack of water drainage, and code violations of the stairs themselves.

At the commencement of trial, Ukiah Adventist Hospital admitted sole liability, and stipulated that neither Tuttle nor any other defendant was liable.

Injury:

Tuttle sustained fractures of a knee, a dislocation of a shoulder, a sprained ankle, and an elbow contusion. He was subsequently taken to the emergency room at Ukiah Valley Medical Center, located across the street from the accident location. There was no indication of a head injury in the E.R. medical record nor was a CT scan taken at that time. However, three days later, Tuttle complained of continued symptoms and was taken to the emergency room at Santa Rosa Memorial Hospital, in Santa Rosa, where an immediate CT of the head demonstrated a frontal lobe bleed. Subsequent treatment included two knee surgeries, two shoulder surgeries, and an arm surgery, as well as neuropsychological treatment for the head injury.

Tuttle claimed that he was left with a residual limp and a deformity in walking stride. He also claimed he suffers limitations on bending, lifting and climbing, and has some impairment of memory, concentration, and executive function.

Tuttle never returned to work.

The plaintiff's treating neurologist opined that Tuttle suffers from chronic traumatic encephalopathy (CTE). However, according to plaintiff's counsel, Tuttle's testimony at trial gave the jury the impression that Tuttle's brain injury was minor.

Tuttle sought recovery for his past and future medical expenses, past and future loss of earnings, and other past and future economic losses. He also sought recovery of damages for his past and future pain and suffering.

Tuttle's wife, Megan, sought recovery for her loss of consortium.

Defense counsel denied Mr. Tuttle suffered any frontal lobe bleed, and the defense's medical experts supported the claim that there was no head trauma or neurological impairment.

Defense counsel contended that the plaintiff's treating neurologist initially diagnosed Mr. Tuttle as suffer a post-traumatic personality disorder consistent with an injury to the frontal lobe of the brain, which should resolve overtime. However, defense counsel contended that without having any further visits with Mr. Tuttle, the plaintiff's treating neurologist later changed his diagnosis from post-concussive syndrome to CTE based solely on a review of additional medical records and depositions provided to him by plaintiffs' counsel. Thus, defense counsel contended that the plaintiff's treating neurologist's opinions were based almost exclusively on Mr. Tuttle's subjective complaints of ongoing cognitive impairment, including substantial impairment of executive functioning and vision loss.

According to plaintiff's counsel, Judge Arthur Wick allowed evidence to be admitted regarding details of similar head symptoms and injuries arising from a rear-end crash 20 years earlier, including the 10 years it took to allegedly recover therefrom, despite Mr. Tuttle not complain of any symptoms during the 10 years before subject accident. This evidence allegedly diminished the testimony of the plaintiff's treating neurologist's diagnosis of CTE.

Result:

The jury determined that the Tuttles' damages totaled $2,626,378.86, including $2,476,378.86 for Mr. Tuttle and $150,000 for Ms. Tuttle.

Jack Tuttle

$445,136 Personal Injury: Past Medical Cost

$652,273 Personal Injury: Future Medical Cost

$205,000 Personal Injury: Past Lost Earnings Capability

$350,000 Personal Injury: FutureLostEarningsCapability

$360,000 Personal Injury: Past Pain And Suffering

$430,000 Personal Injury: Future Pain And Suffering

$16,985 Personal Injury: past economic loss

$16,985 Personal Injury: future economic loss

Megan Tuttle

$150,000 Personal Injury: loss of consortium

Trial Information:

Judge:	Arthur Wick
Demand:	$4,350,000 (C.C.P. § 998) from Mr. Tuttle; $350,000(C.C.P. § 998) from Ms. Tuttle
Offer:	$550,000 (C.C.P. § 998) from Ukiah Adventist Hospital to Mr. Tuttle; $50,000 (C.C.P. § 998) from Ukiah Adventist Hospital to Ms. Tuttle
Trial Length:	17 days
Trial Deliberations:	2 days
Jury Vote:	Unanimous

Post Trial: Judge Wick reduced the verdict based on a portion of the settlements and a workers' compensation lien that was purchased by Ukiah Adventist Hospital. However, he did not award pre-judgment interest, some discretionary costs, and technical presentation trial costs. Thus, a final amended judgment was entered on April 6, 2015, awarding $1,176,233, including $1,026,233 for Mr. Tuttle and $150,000 for Ms. Tuttle. Thus, the Tuttles are appealing the amended judgment.

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel, and counsel for Ukiah Adventist Hospital and Ukiah Valley Medical Plaza. Counsel for the remaining defendants were not asked to contribute.

Writer Priya Idiculla

Plaintiff: Homeowners could have cheaply illuminated ditch

Type: Verdict-Plaintiff

Amount: $2,111,204

Actual Award: $1,055,602

State: California

Venue: Marin County

Court: Superior Court of Marin County, Marin, CA

Injury Type(s):

- *ankle* - fracture, ankle; fracture, bimalleolar
- *other* - decreased range of motion
- *surgeries/treatment* - open reduction

Case Type:

- *Premises Liability* - Residence; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Falldown

Case Name: In Re: The Matter of Penelope Markrack, No. CIV 1204817

Date: December 14, 2015

Plaintiff(s):

- Penelope Markrack (Female, 67 Years)

Plaintiff Attorney(s):

- Steven J. Brady; Brady Law Group; San Rafael CA for Penelope Markrack

Plaintiff Expert(s):

- Dale H. Feitz; Safety; Petaluma, CA called by: Steven J. Brady

Defendant(s):

- Terri Tiret
- Steven E. Tiret
- State of California
- California Department of Transportation

Defense Attorney(s):

- Brian J. Har; Law Offices of Mark T. Lobre; San Francisco, CA for Steven E. Tiret, Terri Tiret
- None reported; San Francisco, CA for California Department of Transportation, State of California

Insurers:

- Allstate Insurance Co.

Facts:

During the early evening of Jan. 17, 2012, plaintiff Penelope Markrack, 67 was attending a party of Singers Marin, an association of choruses in which Markrack was a member. The party took place at the residence of Steven Tiret and Terri Tiret, in Marin County. The Tirets had advised the members to park on Tiburon Boulevard, and Markrack did so.

In front of the Tirets' property, there was a 28-inch-deep drainage culvert that ran under the driveway entrance/exit to Tiburon Boulevard. There was also a 5-foot stucco wall in front of the culvert, making it so that one could see the culvert while entering the property, but could not see it when exiting the property, as it was concealed by the wall.

Markrack had a glass of wine while attending the party. When she left later that night, Markrack attempted to walk on the inside of the car parked closest to the driveway and fell into the drainage culvert, injuring her left ankle.

Markrack sued the Tirets, as well as the state of California and the California Department of Transportation. Markrack alleged that the defendants failed to properly maintain the area near the culvert, creating a dangerous condition.

The state and Caltrans were dismissed from the case because it was determined that the roadway was used exclusively by the adjacent homeowners for the Tirets' enjoyment and that the state had no control or duty to keep it in a reasonably safe fashion. Thus, the matter continued against the Tirets only.

Markrack claimed that she had not noticed the culvert on her way into the party and that the culvert was concealed by the wall on her way out, so she was unaware of the culvert's existence. She also claimed that it was extremely dark out and that cars were traveling at high rates of speed on Tiburon Boulevard, making her afraid to walk on the outside of the row of parked cars. Thus, Markrack contended that the culvert was a dangerous condition and that the Tirets should have lit the area properly.

The plaintiff's safety expert opined that there were a number of inexpensive ways to illuminate the culvert or to have it back filled so that the danger would have been removed. Specifically, the expert opined that the Tirets could have purchased solar stakes for $1 apiece or even spent $39 for a multi-LED, motion-sensor-activated, solar-powered light. Thus, the expert testified that the unlit culvert was unsafe.

Defense counsel contended that the state owned the culvert and that the Tirets were not required to take any action. Counsel also contended that Markrack was at fault for not seeing the ditch on her way into the residence or remembering it on her way out.

Injury: Markrack sustained a bimalleolar fracture of her left ankle. She was subsequently taken to a hospital, where she immediately underwent an open reduction of her left ankle.

Markrack claimed that she suffers residual, intermittent pain and a decreased range of motion of her left ankle. Specifically, she claimed that she has to rest during the day and again after long walks. She also claimed that she has to frequently put ice on her ankle and elevate it at the end of the day.

Result: The jury apportioned 50 percent liability to Markrack and the remaining 50 percent to the Tirets. It also determined that Markrack's damages totaled $2,111,204.45. After apportionment, Markrack's recovery should be $1,055,602.22.

Penelope Markrack

$46,204 Personal Injury: Past Medical Cost

$65,000 Personal Injury: Future Medical Cost

$2,000,000 Personal Injury: past non-economic damages

Trial Information:

Judge: Roy O. Chernus

Demand: $500,000 (C.C.P. § 998)

Offer: None

Trial Length: 5 days

Trial Deliberations: 3 days

Jury Vote: 9-3

Jury Composition: 6 male, 6 female

Post Trial: The court entered judgment for Markrack in the amount of $1,118,674.57, which the Tirets ultimately paid.

Editor's Comment: This report is based on information that was provided by plaintiff's counsel. Counsel for Steven and Terri Tiret did not respond to the reporter's phone calls, and counsel for the state of California and the California Department of Transportation was not asked to contribute.

Writer Priya Idiculla

VerdictSearch

Plaintiff injured when cable car derailed, sped downhill

Type: Settlement

Amount: $2,026,848

State: California

Venue: San Francisco County

Court: Superior Court of San Francisco County, San Francisco, CA

Injury Type(s):
- *leg* - fracture, leg; fracture, femur
- *head* - closed head injury
- *other* - hematoma; unconsciousness; comminuted fracture
- *face/nose* - fracture, facial bone; fracture, occipital bone
- *pulmonary/respiratory* - respiratory arrest

Case Type:
- *Transportation* - Rail
- *Motor Vehicle* - Passenger; Streetcar; Intersection

Case Name: Alma Del Bosque v. City and County of San Francisco, Herbert Lynn Anderson, Lemuel Jerome Muldrow and Does 1 through 100, No. CGC-09-484208

Date: January 06, 2011

Plaintiff(s):
- Alma Del Bosque (Female, 51 Years)

Plaintiff Attorney(s):
- Douglas S. Saeltzer; Walkup, Melodia, Kelly, & Schoenberger, P.C.; San Francisco CA for Alma Del Bosque
- Spencer J. Pahlke; Walkup, Melodia, Kelly, & Schoenberger, P.C.; San Francisco CA for Alma Del Bosque

Defendant(s):
- Herbert Lynn Anderson
- Lemuel Jerome Muldrow
- City and County of San Francisco

Defense Attorney(s):
- James F. Hannawalt; Office of the City Attorney; San Francisco, CA for City and County of San Francisco, Herbert Lynn Anderson, Lemuel Jerome Muldrow

Facts: On July 13, 2008, plaintiff Alma Del Bosque, 51, unemployed, was a passenger in cable car No. 12 on the Powell-Mason line in San Francisco. The car lost control at the intersection of Mason and Washington Streets, began traveling downhill at a high rate of speed and derailed from the tracks.

Del Bosque, as well as other passengers, sustained injuries.

Del Bosque sued the City and County of San Francisco, Herbert Lynn Anderson, the gripman, and Lemuel Jerome Muldrow, the conductor, alleging negligence.

Del Bosque claimed that when the cable car came to a stop at the intersection of Mason and Washington, the conductor and the gripman decided to both get out of the cable car at the same time to push. After pushing the car from behind and getting it moving, they attempted to get back onboard, only to find one of the doors jammed closed. With the door closed, they were unable to reach the main brake in the front of the cable car. Muldrow jumped off the cable car and attempted to run to the front of the car, but he tripped and fell in the process. The cable car then continued to pick up speed, reaching 15-20 mph before derailing around the turn onto southbound Powell Street.

Del Bosque contended that San Francisco Municipal Railway rules indicate that both operators cannot be off the cable car at the same time.

The defense admitted that Anderson and Muldrow were both out of the car, but argued that it was necessary to move the cable car.

Injury: Del Bosque sustained an open comminuted fracture of the right femur, an occipital condyle fracture with comminuted bone fragment, a left parietal subgaleal hematoma, a right frontal subgaleal hematoma, a closed head injury, loss of consciousness and respiratory failure. She claimed she was bedridden for 14-16 months and lost her home.

Subsequently, Del Bosque relocated to another city for orthopedic surgical care and follow-up. She is able to ambulate, but only with pain and limited mobility.

Del Bosque incurred approximately $500,000 in medical expenses. She sought recovery of general and special damages, costs of suit and pre-judgment interest.

Result: The parties agreed to settle for $2,026,848, which is to be paid by the City and County of San Francisco.

Trial Information:

Judge: Charlotte Walter Woolard

Editor's Comment: This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Writer Priya Idiculla

Hip condition made worse by undocumented fall: plaintiff

Type: Verdict-Plaintiff

Amount: $1,844,400

State: California

Venue: San Mateo County

Court: Superior Court of San Mateo County, San Mateo, CA

Injury Type(s):
- *hip* - fracture, hip; hip replacement; fracture, acetabulum

Case Type:
- *Elder Law*
- *Slips, Trips & Falls* - Slip and Fall
- *Nursing Homes* - Negligent Supervision

Case Name: Pauline Gogol, by and through her Guardian Ad Litem, Jennifer Gogol v. Mills-Peninsula Health Services dba Mills-Peninsula Skilled Nursing / Mills-Peninsula Health Services dba Mills-Peninsula Skilled Nursing v. MGA Healthcare Inc. and Relief Nursing Services Inc., No. CIV509469

Date: July 02, 2012

Plaintiff(s):
- Pauline Gogol (Female, 85 Years)

Plaintiff Attorney(s):
- Niall P. McCarthy; Cotchett, Pitre & McCarthy, LLP; Burlingame CA for Pauline Gogol
- Anne Marie Murphy; Cotchett, Pitre & McCarthy, LLP; Burlingame CA for Pauline Gogol
- Brian M. Schnarr; Cotchett, Pitre & McCarthy, LLP; Burlingame CA for Pauline Gogol

Plaintiff Expert (s):
- Carol R. Hyland M.A.; Vocational Rehabilitation; Lafayette, CA called by: Niall P. McCarthy, Anne Marie Murphy, Brian M. Schnarr
- Kathryn L. Locatell M.D.; Geriatrics; Sacramento, CA called by: Niall P. McCarthy, Anne Marie Murphy, Brian M. Schnarr

Defendant(s):

- MGA Healthcare Inc.
- Relief Nursing Services Inc.
- Mills-Peninsula Health Services

Defense Attorney(s):

- Cyrus A. Tabari; Sheuerman, Martini & Tabari; San Jose, CA for Mills-Peninsula Health Services
- Andrew P. Sclar; Ericksen, Arbuthnot, Inc.; San Francisco, CA for Relief Nursing Services Inc.
- Reuben B. Jacobson; Lewis Brisbois Bisgaard & Smith LLP; San Francisco, CA for MGA Healthcare Inc.
- Susan Fish; Sheuerman, Martini & Tabari; San Jose, CA for Mills-Peninsula Health Services

Defendant Expert(s):

- Scott J. Kush M.D.; Life Expectancy & Mortality; Menlo Park, CA called by: for Cyrus A. Tabari, Andrew P. Sclar, Reuben B. Jacobson, Susan Fish
- Mario. G. Giorgianni M.D.; Physical Medicine; Los Gatos, CA called by: for Cyrus A. Tabari, Andrew P. Sclar, Reuben B. Jacobson, Susan Fish
- Sheila A. Banducci; Nursing; Walnut Creek, CA called by: for Cyrus A. Tabari, Andrew P. Sclar, Reuben B. Jacobson, Susan Fish
- Michael D. Ries M.D.; Orthopedic Surgery; San Francisco, CA called by: for Cyrus A. Tabari, Andrew P. Sclar, Reuben B. Jacobson, Susan Fish

Insurers:

- Lloyd's of London
- Great Divide Insurance Co.
- Sutter Insurance Services Corporation

Facts:

On June 25 or 26, 2011, plaintiff Pauline Gogol, 85, a retiree, was a resident of Mills-Peninsula Skilled Nursing, a nursing home in Burlingame, where she was recovering from total right hip replacement surgery that was performed on June 7, 2011. She claimed her right hip was reinjured at the nursing home by an undocumented fall or drop.

Gogol, by and through her sister and guardian ad litem, Jennifer Gogol, sued Mills-Peninsula Health Services, which was doing business as Mills-Peninsula Skilled Nursing. She alleged that the nursing home's actions constituted negligence and elder abuse in violation of the California Elder Abuse and Dependant Adult Civil Protection Act.

The case was prosecuted through a guardian ad litem because Pauline Gogol suffered from cognitive limitations and was unable to testify.

Plaintiff's counsel contended that Gogol suffered a fall or drop at Mills-Peninsula, but that the incident was left undocumented in an attempt to cover it up. Counsel also contended that Gogol's reinjured hip was left untreated until her sister discovered the injury during a visit to the nursing home. In addition, plaintiff's counsel argued that Gogol had a significant change in condition during the time period of her alleged fall or drop, as reflected by the fact that she had walked during physical therapy on the afternoon of June 25, but that she was in pain and unable to bear any weight on her leg when her sister came to visit her on June 26.

Mills-Peninsula claimed that Gogol never suffered a fall or drop, and that there was no cover up. Defense counsel contended that Gogol was seen by two physicians on June 26, prior to being seen by her sister, and that neither physician diagnosed the injury. Counsel also noted that the plaintiff's sister admitted at trial that she did not see any bruising, scratches or other manifestation of trauma during her visit on July 26. Thus, defense counsel argued that Gogol's injury occurred as a result of a transfer or some other non-negligent cause. The defense's expert orthopedic surgeon published a paper in a December 2011 orthopedic journal about this very injury happening as a result of minor trauma.

Mills-Peninsula filed a cross-complaint against MGA Healthcare Inc. and Relief Nursing Services Inc., which were two outside companies that Mills-Peninsula had hired to provide "sitters" to watch Gogol. It alleged that if there was any negligence, then liability should be borne by MGA Healthcare and/or Relief Nursing Services, as the employers of the sitters.

The cross-defendants' counsel argued that there was no evidence that an injury took place during the time that the employees of MGA Healthcare and Relief Nursing Services were responsible for monitoring Gogol, and that there was no evidence that any of the sitters (two from Relief Nursing Services and one from MGA Healthcare) were negligent in any manner or breached the standard of care. However, the cross-claim for indemnity was bifurcated, so counsel for the cross-defendants did not present opening statements or closing arguments.

Injury: Gogol suffered a hip dislocation and fracture to her right hip socket (the acetabulum). Her sister, a retired nurse, claimed that the hip appeared to be dislocated when she saw her on June 26. Gogol underwent emergency right hip surgery on June 27, 2011, and the surgeon who performed the procedure reported significant trauma and compared the injury to something that would be seen in an auto accident. As a result, the hip was not able to be repaired and the newly placed prosthesis had to be removed, leaving Gogol with no right hip.

Gogol was left wheelchair-bound and without a right hip for four months after the surgery. In November 2011, she underwent a successful revision surgery and a new prosthetic hip was implanted. Plaintiff's counsel claimed that Gogol's recovery from the incident and additional surgeries have been slow, causing her to not be able to return home and to need to live at a board and care facility. In March 2012, Gogol sustained another injury, a femur fracture just above the knee, which also impeded her recovery. At the time of trial, she was still recovering from that injury.

Plaintiff's counsel contended that Gogol is now largely wheelchair-bound, although she has gradually been able to use a walker. Thus, counsel asked the jury to award Gogol $37,800 in damages for her past medical costs, $933,000 in damages for her future medical costs, $545,000 in damages for her past pain and suffering, and $900,000 in damages for her future pain and suffering.

Defense counsel contended that Gogol's injuries were a complication of her underlying hip replacement, due to her age, osteoporosis and the manner in which the original surgery had been done. Counsel also contended that Gogol suffered from previously undiagnosed dementia, which was made worse by the initial surgery. Thus, defense counsel argued that even without the injury, Gogol would not have been safe to go home and likely would have needed to live in a board and care facility for the rest of her life.

Plaintiff's counsel countered that Gogol was on a path to recovery after the surgery on June 7, 2011, and that she would have returned home absent the injury that left her with no hip and in a wheelchair.

Result: The jury ruled in favor of Gogol and awarded her $1,844,400 in total damages.

Pauline Gogol

$29,400 Personal Injury: Past Medical Cost

$750,000 Personal Injury: Future Medical Cost

$152,500 Personal Injury: Past Pain And Suffering

$912,500 Personal Injury: Future Pain And Suffering

Trial Information:

Judge: Gerald J. Buchwald

Demand: $975,000 (C.C.P. § 998)

Offer: $125,000 (C.C.P. § 998)

Trial Length: 12 days

Trial Deliberations: 3 hours

Jury Composition: 8 male, 4 female

Post Trial: A confidential settlement was reached prior to the start of the punitive damages phase of the case and prior to the awarding of attorneys' fees. Mills-Peninsula subsequently dismissed its cross-complaint against MGA Healthcare and Relief Nursing Services following the settlement.

Editor's Comment: This report is based on information that was provided by plaintiff's counsel and counsel for Mills-Peninsula and MGA Healthcare. Counsel for Relief Nursing Services did not respond to the reporter's phone calls.

Writer Dan Israeli

VerdictSearch

Sidewalk's offset should have been remedied, plaintiff alleged

Type: Verdict-Plaintiff

Amount: $1,772,227

Actual Award: $1,595,004

State: California

Venue: Santa Clara County

Court: Superior Court of Santa Clara County, Santa Clara, CA

Injury Type(s):
- *other* - decreased range of motion
- *shoulder* - Bankart lesion; rotator cuff, injury (tear)
- *surgeries/treatment* - arthroscopy

Case Type:
- *Premises Liability* - Sidewalk; Dangerous Condition of Public Property
- *Slips, Trips & Falls* - Trip and Fall

Case Name: Bob Thibadeau v. City of Cupertino and State of California, No. 1-12-CV-234911

Date: June 05, 2015

Plaintiff(s):
- Bob Thibadeau (Male, 62 Years)

Plaintiff Attorney(s):
- Robert H. Bohn, Jr.; Bohn & Fletcher LLP; San Jose CA for Bob Thibadeau

Plaintiff Expert (s):
- Brad P. Avrit P.E.; Safety; Marina del Rey, CA called by: Robert H. Bohn, Jr.
- James A. Mills M.A.; Economics; Los Altos, CA called by: Robert H. Bohn, Jr.
- Spiro N. Papas M.D.; Orthopedics; Pittsburgh, PA called by: Robert H. Bohn, Jr.
- Edward Damore M.D.; Orthopedic Surgery; San Jose, CA called by: Robert H. Bohn, Jr.

Defendant(s):

- City of Cupertino
- State of California

Defense Attorney(s):

- Irene B. Moy; California Department of Transportation, Bay Area Legal Office; Oakland, CA for State of California
- Thomas J. Trachuk; Dang & Trachuk; Oakland, CA for City of Cupertino
- Taylor J. Pohle; California Department of Transportation, Bay Area Legal Office; Oakland, CA for State of California

Defendant Expert(s):

- Nevin Q. Sams P.E., T.E.; Engineering; Livermore, CA called by: for Irene B. Moy, Taylor J. Pohle
- Philip W. McLeod Ph.D.; Economics; Lafayette, CA called by: for Irene B. Moy, Taylor J. Pohle
- Robert Bruckman M.D.; Orthopedic Surgery; San Francisco, CA called by: for Irene B. Moy, Taylor J. Pohle
- Stephen J. Fenton P.E.; Engineering; Greenwood Village, CO called by: for Irene B. Moy, Taylor J. Pohle

Facts:

On Nov. 22, 2011, plaintiff Bob Thibadeau, 62, chief scientist and executive for a computer security company, was jogging on a sidewalk along the North Wolfe Road overcrossing of Interstate 280, in Cupertino, when he tripped and fell. Thibadeau sustained injuries to his left shoulder.

Thibadeau sued the believed maintainers of the sidewalk, the city of Cupertino and the state of California, through its Department of Transportation. Thibadeau alleged that the defendants failed to repair and/or maintain the sidewalk, creating a dangerous condition.

The state, which maintains the freeway and bridges over the freeway, contended that, pursuant to a state-city freeway maintenance agreement, the city was required to maintain the surface of the roadway overpass and its adjacent sidewalks and that any liability rested with the city of Cupertino. However, the city's counsel made an evidentiary-sanctions motion, alleging that the state had a duty to inspect and notify the city of any defect before the city had any duty to fix it. Thus, the city's counsel contended that the state never notified the city of the alleged offset that Thibadeau tripped on or requested any repairs to the area. The court granted the city's motion, and the city ultimately agreed to a $50,000 settlement with Thibadeau three weeks before trial. The matter then continued against the state only.

Thibadeau claimed he tripped on an offset that measured 1.5- to 2-inches high and that was obscured by leaves and shadows.

Plaintiff's counsel contended that the California Department of Transportation (Caltrans) failed to properly train its employees how to recognize or report sidewalk hazards and, in fact, had no clear standards as to what constitutes a reportable hazard, as the subject offset should have been reported within Caltrans or to the city of Cupertino. Counsel also contended that Caltrans had a responsibility to inspect for such hazards and protect against them by reporting them to the city so that such hazards could be remedied. Plaintiff's counsel further contended that Caltrans failed to inspect and report such hazards for years, thereby allowing the subject dangerous condition to exist for years. In addition, counsel contended that Caltrans failed to keep the sidewalk reasonably clear of leaves, which had been a problem noted for years.

Caltrans' counsel contended that the subject sidewalk did not constitute a dangerous condition. Counsel argued that the city should have known about the subject condition and taken care of it. Counsel also argued that Thibadeau had been over the area many times in the past and should have known about the alleged offset.

Injury: Thibadeau sustained a rotator cuff tear and a bony Bankart lesion of the left, dominant shoulder. He also sustained a common complication of a dislocation to the left, anterior shoulder. Thibadeau was subsequently taken by ambulance to El Camino Hospital, in Mountain View, where his shoulder dislocation was reduced and he was released. He later underwent two arthroscopic surgeries.

Thibadeau claimed that his work was impacted as a result of pain and significant range of motion issues with his left shoulder. As a result, he currently works as a part-time professor at Carnegie Mellon University, in Pittsburgh. He also claimed that he will need a reverse shoulder arthroplasty in the future.

Thus, Thibadeau sought recovery of $41,367 in past medical costs; between $60,000 and $180,000 in future medical costs for either one or three future surgeries; $107,205 in past lost earnings, including the loss of a $50,000 bonus; and between $310,741 and $1,310,741 in future lost earnings over one to five years, as he plans to continue working as long as he is able. Thibadeau also sought recovery of past and future non-economic damages for his pain and suffering.

Caltrans' counsel argued that there was no wage loss, as Thibadeau continued to earn the same salary for three years after the accident and as Thibadeau voluntarily resigned from his position in December 2014. Caltrans' counsel further argued that Thibadeau failed to rehabilitate himself properly.

Result: The jury determined that Caltrans was 90 percent liable for the accident and that Thibadeau was 10 percent liable. It also determined that Thibadeau's damages totaled $1,772,227. After apportionment, Thibadeau's recovery will be $1,595,004.30.

Bob Thibadeau

$41,367 Personal Injury: Past Medical Cost

$60,000 Personal Injury: Future Medical Cost

$57,205 Personal Injury: Past Lost Earnings Capability

$963,705 Personal Injury: future lost earning capacity

$100,000 Personal Injury: past non-economic damages

$550,000 Personal Injury: future non-economic damages

Trial Information:

Judge: Theodore C. Zayner

Demand: $399,999 (C.C.P. § 998)

Offer: $75,000

Trial Length: 3 weeks

Trial Deliberations: 3 days

Jury Vote: 12-0 as to liability; 12-0 as to damages; 10-2 as to comparative fault

Post Trial: The plaintiff's request for recovery of $81,405 in costs is pending.

Editor's Comment: This report is based on information that was provided by plaintiff's and defense counsel.

Writer Priya Idiculla

Plaintiff not told of modified gate in loft prior to fall: lawsuit

Type: Settlement

Amount: $1,600,000

State: California

Venue: San Francisco County

Court: Superior Court of San Francisco County, San Francisco, CA

Injury Type(s):

- *back*
- *head* - fracture, skull
- *neck* - fracture, neck; fracture, cervical; herniated disc, cervical; herniated disc at C5-6
- *brain* - brain damage; traumatic brain injury; internal bleeding; epidural/extradural hematoma
- *chest* - fracture, rib
- *other* - plate; swelling; puncture wound; catheterization; pins/rods/screws; hardware implanted; compression fracture; decreased range of motion; scar and/or disfigurement
- *shoulder* - fracture, shoulder; fracture, scapula; fracture, shoulder; fracture, clavicle
- *epidermis* - numbness
- *face/nose* - face; fracture, facial bone; fracture, occipital bone
- *neurological* - radiculopathy
- *sensory/speech* - anosmia
- *mental/psychological* - amnesia; anxiety
- *pulmonary/respiratory* - pneumothorax; collapsed lung; contusion, pulmonary

Case Type:

- *Premises Liability* - Failure to Warn; Dangerous Condition
- *Slips, Trips & Falls* - Fall from Height

Case Name: Tadayuki Furui v. Georgia Rew, dba The Pretty Pretty Collective and Does 1 through 10, No. CGC-19-574484

Date: April 22, 2021

Plaintiff(s):

- Tadayuki Furui, (Male, 40 Years)

Plaintiff Attorney(s):

- Frank S. Moore; Law Offices of Frank S. Moore, APC; San Francisco CA for Tadayuki Furui

Plaintiff Expert (s):

- Bruce M. McCormack M.D.; Neurosurgery; San Francisco, CA called by: Frank S. Moore
- Gerald R. Fulghum C.S.P.; Safety; Carson City, NV called by: Frank S. Moore
- Mr. E. Robert Miller C.P.M.; Property Management; Burlingame, CA called by: Frank S. Moore

Defendant(s):

- Carol Ray
- Georgia Rew
- J.J. Panzer
- Cutler Properties, LLC
- Real Management Company

Defense Attorney(s):

- James M. Treppa; Bledsoe, Diestel, Treppa & Crane LLP; San Francisco, CA for Georgia Rew
- Thomas S. Gelini; Bennett, Samuelsen, Reynold, Allard, Cowperthwaite & Gelini; Alameda, CA for Carol Ray, Cutler Properties, LLC, Real Management Company, J.J. Panzer
- Jennifer A. Kung Gelini; Bennett, Samuelsen, Reynold, Allard, Cowperthwaite & Gelini; Alameda, CA for Carol Ray, Cutler Properties, LLC, Real Management Company, J.J. Panzer
- Joseph V. Diestel; Bledsoe, Diestel, Treppa & Crane LLP; San Francisco, CA for Georgia Rew

Insurers:

- State Farm Insurance Cos.
- Munich Reinsurance Co.

Facts:

On April 12, 2018, plaintiff Tadayuki Furui, 40, a chef, was helping his girlfriend, Georgia Rew, clean a chandelier at a mezzanine/loft in Rew's salon, The Pretty Pretty Collective, which was located in a building at 3290 22nd St., in San Francisco. Furui leaned against what appeared to be a guard or railing, but upon leaning against it, it opened, and Furui plummeted more than 10 feet to the floor below. Furui sustained injuries to his face, head, neck, back, chest and a shoulder.

Furui sued Rew, as the building's tenant and as doing business as The Pretty Pretty Collective; the entity that owned the property, Cutler Properties, LLC; the principal of Cutler Properties, Carol Ray; the property management company for Cutler Properties, Real Management Co.; and the owner of Real Management, J.J. Panzer. Furui alleged that the landlord, property manager and their respective principals had a non-delegable duty to maintain premises in safe condition, but that they failed to do so, creating a dangerous condition. He also alleged that Rew was negligent for failing to warn of the dangerous condition.

Furui's counsel contended that, prior to Rew becoming a tenant of the building, the mezzanine/loft was inaccessible, but that Rew obtained permission in writing from Cutler Properties and Real Management to refurbish the mezzanine/loft area. Counsel contended that Rew removed walls in that area, which had previously prevented anyone from falling, and, instead, placed rails that were modified to appear as a gate, which is what Furui fell through. Plaintiff's counsel asserted that Rew did not warn Furui of the modification, which was not in compliance with the California Building Code, as the converted gate would not withstand weight-bearing loads required by the building code. Counsel also asserted that the dangerous condition was created by Rew, under the permission of the owners and property managers, without supervision, and that Rew failed to obtain a permit from the City and County of San Francisco. In addition, plaintiff's counsel asserted that even if Rew had warned Furui, the preexisting rail was also not in compliance with the California Building Code.

Ray, Cutler Properties, Panzer and Real Management contended that they had no duty to inspect the location under inapplicable legal authorities that did not address the non-delegable duty doctrine. They also contended that they had a lease agreement with Rew wherein Rew agreed to defend and indemnify the property owners and property managers. Their counsel further contended that Rew admitted in deposition that she was obligated to defend and indemnify the owners and property managers. (The contractual indemnification/defense agreement was the subject of summary judgment, though the case resolved prior to the motion for summary judgment being heard.)

Rew claimed that the rail, which was functioning as a gate, was secured by a small latch and eye-hook, making it an open and obvious condition.

In response, Furui claimed that he never saw the small latch and eye-hook. Furui's counsel contended that even though Cutler Properties and Real Management had written indemnity from Rew in the lease, they had their own insurance coverage.

Injury:

Furui sustained a moderate traumatic brain injury, as he was not following commands of the emergency medical technician at the scene. Furui also had a skull fracture; an occipital condyle fracture; intracranial bleeding; a herniated cervical disc at the C5-6 level; neck fractures; a clavicle (collarbone) fracture; thoracic fractures at T4, T5 and T6; a scapula fracture; multiple fractured ribs; and a collapsed lung (pneumothorax) with pulmonary contusions. He was taken to Zuckerberg San Francisco General Hospital and Trauma Center, in San Francisco, where he was admitted from the date of the accident until April 17, 2018.

While at the hospital, Furui underwent a head CT, which showed a skull fracture extending through the orbit and sinuses, and a small, right, frontal epidural hematoma. It was also determined that Furui had approximately 20 hours of anterograde amnesia. However, other than a procedure to install a chest tube for the pneumothorax, he was treated conservatively throughout his stay.

Furui later underwent reparative surgery to fix the right scapular fracture with the use of plates and screws at a Kaiser facility on April 25, 2018. He also attempted to treat his cervical condition conservatively and used a few cervical collars. However, he remained in a hard cervical collar for six weeks, which healed his occipital condyle fracture and spinal cord damage at C5-6. Furui also went through rehabilitation for the injuries to his back, shoulder, scapula and neck. In addition, Furui engaged in breathing exercises for five months to improve his lung capacity strength, but, otherwise, the rib fractures, pneumothorax and pulmonary contusions healed without residuals.

Furui claimed he had spinal cord compression syndrome in the weeks to months after the incident and that he had extensive bruising in and around the affected areas. He also claimed he continues to suffer from anosmia (a loss of smell), as well as lumbar and cervical radiculopathy, and chronic radicular pain to his lower back. (The CT scan taken on the date of accident showed a spur at C5-6, but the MRI report on July 25, 2018, showed possible myelomalacia or cord injury.) In addition, Furui claimed that he is left with a scar on his shoulder and a small puncture wound in the chest, where a pigtail catheter was inserted.

Furui alleged that he continues to suffer pain with any overhead reaching, lifting or attempt to throw a ball. He also alleged that he suffers from shoulder weakness with any overhead work and that he cannot hold his right arm above shoulder level for more than a few moments. Furui claimed that the pain to his shoulder and neck triggers migraine headaches, dizziness and nausea and that he now tires more easily. He alleged that he also continues to experience episodic tingling and numbness in his toes, hands and fingers, which can last from a few hours to a whole day, and which will occur once or twice every other week. Furui claimed that his condition is associated with spreading tightness and stiffness in his neck. In addition, Furui claimed that he has developed a fear and anxiety of heights, and anxiety when driving for fear of accidents or physical impacts.

Although Furui returned to work quickly and ultimately went to work at a restaurant opened by his former wife, he claimed that his loss of smell will have some impact on his

career as a chef.

The plaintiff's expert neurological surgeon wrote a report opining that Furui will possibly need future spinal fusions and two other spinal surgeries in the future.

Furui sought recovery of $156,233.95 in past medical costs and an unspecified amount of future medical costs. He also sought recovery of damages for his past and future pain and suffering.

Defense counsel contended that, after the April 25, 2018 surgery, Furui underwent physical therapy and did relatively well and that the last note reflected some limitations in range of motion, but no significant limitation on activities of daily living for his right shoulder. Counsel also contended that the spinal surgery clinic had discussed a single level fusion at the C5-6 level with Furui, but that the surgery was never scheduled. Counsel contended that as a result, Furui's last treatment was on Oct. 18, 2018.

Defense counsel asserted that any treatment received after Oct. 18, 2018, appeared to be litigation driven, and not related to the injuries Furui sustained in the subject accident. Specifically, defense counsel contended that on June 2, 2020, Furui sent an email to his primary care physician that his attorney and his consulting medical expert told him that he needed a new MRI and a "neuropsych assessment" to see if he is suffering from residual effects of a traumatic brain injury. Additionally, counsel contended that, in December 2020, Furui told his orthopedic physician that he had daily shoulder pain and that he had been working on his lawsuit and needed to define his body condition and future potential problems. However, defense counsel asserted that the subsequent neuropsychological testing revealed that Furui was within normal limits and had no evidence of cognitive difficulties. Thus, counsel asserted that Furui does not meet the criteria for a neurocognitive disorder. In addition, defense counsel asserted that Furui's self-reported symptoms of post-traumatic stress disorder do not indicate a diagnosis of PTSD and that Furui's brain MRI in 2020 was normal.

Defense counsel noted that Furui was working part-time as a line chef since 2014, as the records received do not go any further back. Defense counsel also noted that after Furui's rehabilitation, Furui went to work with his ex-wife at her café in North Beach and that Furui is now working full-time. The defense further noted that Furui appears to be the manager and started his new full-time position in October 2019, earning $24 per hour, plus tips.

Defense counsel contended that on July 16, 2019, Furui asked his doctor, via an email, to help him fill out the Employment Development Department form, while the period of disability is identified as April 12, 2018 until Nov. 1, 2018, or 6.5 months of disability. In addition, defense counsel asserted that allegations of future treatment -- including orthopedic evaluations, physical therapy, repeat imaging and/or hardware removal -- was speculative.

Result: The parties agreed to a $1.6 million settlement. Rew's insurer tendered its $1 million policy, and the remaining defendants' insurer agreed to pay $600,000 from its policy that had a $1 million limit.

Trial Information:

Trial Length: 0

Trial Deliberations: 0

Editor's Comment: This report is based on information that was provided by plaintiff's counsel of Cutler Properties, Panzer, Ray and Real Management. Rew's counsel did not respond to the reporter's phone calls.

Writer Priya Idiculla

VerdictSearch

Plaintiff claimed sidewalk drop off violated building code

Type: Verdict-Plaintiff

Amount: $1,371,224

Actual Award: $746,224

State: California

Venue: Santa Clara County

Court: Superior Court of Santa Clara County, Santa Clara, CA

Injury Type(s):

- *ankle* - fracture, ankle; trimalleolar fracture
- *other* - loss of consortium
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:

- *Premises Liability* - Sidewalk; Dangerous Condition
- *Slips, Trips & Falls* - Trip and Fall

Case Name: George Kolbe and Welma Kolbe v. Good Samaritan Hospital of Santa Clara Valley, Flora Terra Landscape Management, Balfour Beatty Construction, LLC, Balfour Beatty LLC, Landrgo, Granite Construction Company, and Balfour-Beatty, No. 1-11-CV-201396

Date: December 16, 2013

Plaintiff(s):

- Welma Kolbe (Female, 50 Years)
- George Kolbe (Male)

Plaintiff Attorney(s):

- Andrew C. Bryman; Law Office of Bryman & Apelian APC; Calabasas CA for George Kolbe, Welma Kolbe

Plaintiff Expert (s):

- H. Ronald Fisk M.D.; Neurology; Los Angeles, CA called by: Andrew C. Bryman
- Tye J. Ouzounian M.D.; Orthopedic Surgery; Tarzana, CA called by: Andrew C. Bryman
- Brad P. Avrit P.E.; Safety; Marina del Rey, CA called by: Andrew C. Bryman
- Eric Collins; Forensic Audio & Video; Burbank, CA called by: Andrew C. Bryman
- Peter Abaci M.D.; Pain Management; Los Gatos, CA called by: Andrew C. Bryman
- Nicholas Abidi M.D.; Orthopedic Surgery; Santa Cruz, CA called by: Andrew C. Bryman

Defendant(s):

- Landrgo
- Balfour-Beatty
- Balfour Beatty LLC
- Granite Construction Company
- Balfour Beatty Construction LLC
- Flora Terra Landscape Management
- Good Samaritan Hospital of Santa Clara Valley

Defense Attorney(s):

- Mark S. Lee; Nelson, Perlov & Lee; Los Altos, CA for Granite Construction Company, Balfour Beatty Construction LLC, Balfour Beatty LLC, Balfour-Beatty
- None reported; Los Altos, CA for Landrgo, Flora Terra Landscape Management, Good Samaritan Hospital of Santa Clara Valley

Defendant Expert(s):

- Curt P. Comstock M.D.; Orthopedic Surgery; San Jose, CA called by: for Mark S. Lee
- Jose L. Ochoa M.D., Ph.D., D.Sc.; Neurology; Portland, OR called by: for Mark S. Lee
- Daniel S. Merrick P.E.; Engineering; Morgan Hill, CA called by: for Mark S. Lee

Facts:

On June 6, 2009, plaintiff Welma Kolbe, 50, a nurse, completed her shift at Good Samaritan Hospital in Santa Clara and was on a sidewalk adjacent to a picnic area on the hospital's premises. The sidewalk was constructed in 2004 as part of a larger project that was completed in early 2006. While Kolbe was on the sidewalk, she mis-stepped, causing her left foot to hit the paver, and she fell face down. She sustained injuries to her left ankle.

Kolbe sued Good Samaritan Hospital of Santa Clara Valley; Balfour Beatty Construction, LLC; Balfour Beatty LLC; Balfour-Beatty; Flora Terra Landscape Management; Landrgo; and Granite Construction Co.

It was ultimately determined Balfour Beatty's predecessor-in-interest, Centex Rodgers Inc., was the general contractor on the hospital's construction project and Granite Construction was the subcontractor who had created the sidewalk. After the project was completed, Balfour Beatty Construction purchased Centex Rodgers, its assets and its liabilities. It was also determined that Good Samaritan could not be sued in California due to Labor Code immunity. In addition, Flora Terra Landscape Management and Landrgo were let out of the case, as were Balfour Beatty LLC and Balfour-Beatty. Thus, the matter only continued against Balfour Beatty Construction, as the successor-in-interest to Centex Rodgers, and Granite Construction.

Kolbe claimed that she was unaware of the change in elevation of the walk surface from

the sidewalk to the picnic area and that as a result, she mis-stepped and fell. Plaintiff's counsel contended that Balfour Beatty Construction and Granite Construction were responsible for the pouring and creation of the sidewalk during the construction project, which resulted in an approximate 8- to 12-inch vertical drop to the adjacent picnic area. Counsel also contended that Balfour Beatty Construction and Granite Construction created, and were aware of, the dangerous condition and that they violated the Uniform Building Code, which did not allow for a drop off where there was a single step that exceeded 7 inches.

Defense counsel contended that construction records disclosed that Balfour Beatty Construction and Granite Construction had recognized that the condition created a trip hazard and had requested direction from the architect, who recommended the installation of an earthen fill slope from the edge of the sidewalk to the picnic area floor. Counsel subsequent presented documentary evidence that the corrective work was performed in February 2005, but that later aerial photographs taken during the construction project showed no earthen fill slope. Thus, the parties stipulated that when Balfour Beatty Construction and Granite Construction left the project in late 2005, or early 2006, there was no fill slope in place adjacent to the subject sidewalk.

Counsel for Balfour Beatty Construction and Granite Construction argued that the fill slope was removed by, or at the direction of, the hospital. Counsel also argued that there was a change in elevation at the subject location, that the drop off was open and obvious, and that Kolbe appreciated the drop off before she stepped down. Counsel further argued that Kolbe's employer, Good Samaritan, should have been aware of the step down since the work performed by Balfour Beatty Construction and Granite Construction was completed 3.5 years earlier and that the hospital had safety personnel who would walk the premises to evaluate it for safety. Thus, counsel for Balfour Beatty Construction and Granite Construction argued that Good Samaritan was negligent for not repairing the condition before the incident.

Injury:

Kolbe sustained a trimalleolar fracture of the left ankle. She was subsequently treated at the scene and then brought to the hospital's emergency room. During the next year, she underwent approximately six months of physical therapy, on-and-off.

Kolbe claimed that she now suffers from complex regional pain syndrome, also known as reflex sympathetic dystrophy or causalgia, a chronic pain condition. As a result, she claimed she could not return to work as a bedside nurse, and continues to undergo physical therapy and take prescription medicine.

Thus, Kolbe sought recovery of damages for her past and future medical expenses, and past and future pain and suffering. Her husband, George Kolbe, presented a derivative claim, seeking recovery of damages for his loss of consortium.

Counsel for Balfour Beatty Construction and Granite Construction argued that Mrs. Kolbe did not have CRPS, but that instead Mrs. Kolbe suffered an injury to her sural nerve (a sensory nerve in the leg made up of collateral branches off of the common tibial and common fibular nerve), which could have been repaired by surgery. As a result, counsel argued Mrs. Kolbe's treating physicians committed malpractice, and Judge Joseph Huber allowed some of those physicians' names to appear on the verdict form.

Result: The jury determined that Balfour Beatty Construction was 25 percent liable for the accident, that Granite Construction was 25 percent liable, that Good Samaritan was 45 percent liable, and that Mrs. Kolbe was 5 percent liable. It also determined that Mrs. Kolbe's damages totaled $1,371,224 and that Mr. Kolbe did not suffer a loss of consortium.

Thus, Balfour Beatty Construction and Granite Construction were jointly and severally liable for Mrs. Kolbe's economic damages, and liable for their respective percentages of Mrs. Kolbe's non-economic damages. After a reduction for the set off of the worker's compensation benefits, in accordance with the percentages of employer fault found by the jury, Balfour Beatty Construction and Granite Construction were liable for the net amount of $746,224.02, together with Mrs. Kolbe's costs of suit.

Welma Kolbe

$52,432 Personal Injury: Past Medical Cost

$145,300 Personal Injury: Future Medical Cost

$58,852 Personal Injury: Past Lost Earnings Capability

$14,640 Personal Injury: FutureLostEarningsCapability

$225,000 Personal Injury: past non-economic damages

$875,000 Personal Injury: future non-economic damages

Trial Information:

Judge: Joseph Huber

Demand: $500,000

Offer: $450,000

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel, and counsel for Balfour Beatty Construction LLC, as successor-in-interest for Centrex Rodgers Inc., and Granite Construction Co. Counsel for the remaining defendants were not asked to contribute.

Writer Priya Idiculla

Plaintiff claimed multiple injuries after being dropped

Type: Verdict-Plaintiff

Amount: $1,370,935

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Injury Type(s):
- *hip*
- *back* - bulging disc, lumbar
- *other* - bursitis; ligament, tear; hardware implanted; tendinitis/tendinosis; reconstructive surgery
- *shoulder* - fracture, shoulder; fracture, clavicle; fracture, shoulder; fracture, collarbone

Case Type:
- *Slips, Trips & Falls*

Case Name: Grace DeWitt v. Odiseo Jimenez and Does 1-20, inclusive, No. RG18909665

Date: December 03, 2020

Plaintiff(s):
- Grace DeWitt (Female, 21 Years)

Plaintiff Attorney(s):
- Elise R. Sanguinetti; Arias Sanguinetti Wang & Torrijos, LLP; Emeryville CA for Grace DeWitt
- Jamie G. Goldstein; Arias Sanguinetti Wang & Torrijos, LLP; Emeryville CA for Grace DeWitt

Plaintiff Expert (s):

- A. Shabi Khan M.D.; Orthopedic Surgery; Daly City, CA called by: Elise R. Sanguinetti, Jamie G. Goldstein
- Kirk L. Jensen M.D.; Orthopedic Surgery; Orinda, CA called by: Elise R. Sanguinetti, Jamie G. Goldstein
- Mary E. Jesko Ed. D.; Life Care Planning; San Diego, CA called by: Elise R. Sanguinetti, Jamie G. Goldstein
- Paul J. Slosar, Jr. M.D.; Orthopedic Surgery; Daly City, CA called by: Elise R. Sanguinetti, Jamie G. Goldstein
- James Mills; Economics; Los Altos, CA called by: Elise R. Sanguinetti, Jamie G. Goldstein
- Katherine Gritton; Psychological Injuries; San Luis Obispo, CA called by: Elise R. Sanguinetti, Jamie G. Goldstein

Defendant(s):

- Odiseo Jimenez

Defense Attorney(s):

- John R. Brydon; Demler, Armstrong & Rowland, LLP; San Francisco, CA for Odiseo Jimenez
- Erin S. McGahey; Demler, Armstrong & Rowland, LLP; San Francisco, CA for Odiseo Jimenez

Defendant Expert(s):

- Thomas G. Sampson M.D.; Orthopedic Surgery; San Francisco, CA called by: for John R. Brydon, Erin S. McGahey

Facts:

On Sept. 18, 2016, plaintiff Grace DeWitt, 21, a student, was walking north on Crandall Way, in San Luis Obispo, with a group of people that included Odiseo Jimenez. When they were between Foothill Boulevard and Campus Way, Jimenez picked up DeWitt and started running with her. Jimenez tripped and fell while carrying Dewitt, causing him to land on top of her, crushing DeWitt between him and the curb. DeWitt claimed injuries to her back, right shoulder and right hip.

DeWitt sued Jimenez, alleging that Jimenez was negligent in his actions.

DeWitt claimed that Jimenez picked her up without her permission and failed to act with due care.

Jimenez conceded liability for the incident.

Injury:

DeWitt claimed she sustained a bulging lumbar disc at the L5-S1 level and a fracture of the distal clavicle with coracoclavicular ligament insufficiency of her right shoulder. She also claimed that she suffered right hip bursitis and tendinosis and that she was diagnosed with sacroiliac joint dysfunction. DeWitt was taken to a hospital, and she underwent a shoulder reconstruction with hardware, which was later surgically removed. She also treated her back injury conservatively with injections.

DeWitt claimed that she will require multiple additional injections, an additional shoulder surgery, and a future arthroscopic surgery on her hip. She also claimed that she will require a sacroiliac fusion.

DeWitt sought recovery for her past and future wage loss, past education expenses, future medical costs, and past and future pain and suffering.

Defense counsel conceded that DeWitt suffered injuries to the right shoulder, but disputed DeWitt's other injuries. Defense counsel also disputed DeWitt's alleged wage loss and education expenses, and argued that DeWitt's future treatment would be limited to her right shoulder.

Result:

The jury found that Jimenez's negligence was a substantial factor in causing DeWitt harm. The jury determined that DeWitt's damages totaled $1,370,935.

$218988 Personal Injury: Future Medical Cost

$200000 Personal Injury: Past Pain Suffering

$800000 Personal Injury: Future Pain Suffering

$19470 Personal Injury: Future Lost Earning Capacity / Medical Procedures

$1010 Personal Injury: Past Education Expenses

$32867 Personal Injury: Future Wage Loss / Delayed Education

$98600 Personal Injury: Past Wage Loss / Delayed Education

$98600 Wrongful Death:

$98600 Wrongful Death:

Trial Information:

Judge: Stephen M. Pulido

Demand: $400,000 (C.C.P. § 998)

Offer: $150,000 (C.C.P. § 998)

Trial Length: 5 days

Trial Deliberations: 7.5 hours

Editor's Comment: This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Writer Priya Idiculla

Plaintiff claimed she fell due to unsecured ramp

Type: Verdict-Plaintiff

Amount: $1,323,800

Actual Award: $640,835

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Injury Type(s):
- *back* - stenosis; fusion, lumbar; nerve impingement; herniated disc, lumbar; herniated disc at L4-5
- *knee* - medial meniscus, tear
- *neck* - stenosis; nerve impingement; herniated disc, cervical; herniated disc at C5-6; herniated disc, cervical; herniated disc at C6-7
- *other* - prosthesis
- *neurological* - nerve impingement
- *surgeries/treatment* - decompression surgery
- *mental/psychological* - depression

Case Type:
- *Slips, Trips & Falls* - Falldown
- *Premises Liability* - Negligent Repair and/or Maintenance

Case Name: Debra Hart v. Storquest Self Storage; Storquest Oakland, LLC; Shred-It USA, Inc.; American States Insurance Co. / American States Insurance Co. v. Shred-It USA, Inc. / Storquest Oakland, LLC v. Shred-It USA Inc. and East Bay Orthorpaedic Specialists Medical Corporation / Shred-It USA Inc. v. Storquest Oakland, LLC / East Bay Orthorpaedic Specialists Medical Corporation v. Storquest Oakland, LLC, No. RG05236587

Date: November 03, 2010

Plaintiff(s):
- Debra Hart (Female)

Plaintiff Attorney(s):

- Marvin K. Lewis; Lewis & Lewis; San Francisco CA for Debra Hart

Plaintiff Expert (s):

- John Toton M.D.; Orthopedic Surgery; Healdsburg, CA called by: Marvin K. Lewis
- John R. Manning Ph.D.; Mechanical; San Francisco, CA called by: Marvin K. Lewis
- Rick B. Delamarter M.D.; Orthopedic Surgery; Santa Monica, CA called by: Marvin K. Lewis
- Jason Smith M.D.; Orthopedic Surgery; Pleasant Hill, CA called by: Marvin K. Lewis
- Kasra Amirdelfan M.D.; Pain Management; Concord, CA called by: Marvin K. Lewis
- Howard P. Rome Ph.D.; Clinical Psychology; San Francisco, CA called by: Marvin K. Lewis
- Philip H. Allman Ph.D.; Economics; San Francisco, CA called by: Marvin K. Lewis
- Ramiro Miranda M.D.; Orthopedics; Walnut Creek, CA called by: Marvin K. Lewis
- Virgil Williams M.D.; Neuroradiology; Concord, CA called by: Marvin K. Lewis
- Randall Smith Ph.D.; Psychology/Counseling; San Francisco, CA called by: Marvin K. Lewis

Defendant(s):

- Shred-It USA Inc.
- Storquest Oakland, LLC
- Storquest Self Storage
- East Bay Orthorpaedic Specialists Medical Corporation

Defense Attorney(s):

- Wilma J. Gray; McNamara, Dodge, Ney, Beatty, Slattery, Borges & Ambacher; Walnut Creek, CA for Storquest Oakland, LLC
- Alison M. Crane; Bledsoe, Cathcart, Diestel, Pedersen & Treppa, L.L.P.; San Francisco, CA for Shred-It USA Inc.
- None reported for Storquest Self Storage, East Bay Orthorpaedic Specialists Medical Corporation

Defendant Expert(s):

- Gary T. Moran Ph.D.; Injury Biomechanics; Alameda, CA called by: for Wilma J. Gray
- Glen R. Stevick Ph.D., P.E.; Mechanical; Berkeley, CA called by: for Wilma J. Gray
- Andrew M. O'Brien M.S., C.R.C.; Vocational Rehabilitation; Sacramento, CA called by: for Wilma J. Gray
- Elaine R. Serina Ph.D.; Biomechanics; San Carlos, CA called by: for Wilma J. Gray
- Gordon C. Lundy M.D.; Orthopedic Surgery; San Francisco, CA called by: for Wilma J. Gray
- Joanna L. Berg Ph.D.; Psychology/Counseling; Oakland, CA called by: for Wilma J. Gray
- Michael Sutro M.D.; Orthopedic Surgery; San Francisco, CA called by: for Wilma J. Gray
- William R. Cimino M.D.; Orthopedics; Walnut Creek, CA called by: for Wilma J. Gray
- William K. Hoddick M.D.; Radiology; Walnut Creek, CA called by: for Wilma J. Gray

Facts:

On Nov. 14, 2003, plaintiff Debra Hart, while performing clerical work for East Bay Orthopaedic Specialists Medical Corporation, fell while she was in the process of cleaning out a storage unit and placing boxes upon a loading dock at a StorQuest Self Storage location in Oakland. She claimed that a ramp placed at the edge of the loading dock caused her to fall to the ground.

She sustained injuries to her neck, lower back and left knee.

Hart sued StorQuest Self Storage/StorQuest Oakland LLC, the property owner, for premises liability. She also sued Shred-It USA Inc., who provided a truck for the moving of boxes and shredding of papers, for negligence. American States Insurance Co., the workers' compensation insurance carrier, filed a complaint in intervention. StorQuest Oakland also filed a cross-complaint against Shred-It and East Bay Orthopaedic, who had signed a lease agreement for use of a storage unit from StorQuest, where they kept old patient files and documents.

Shred-It settled with Hart for $25,000 and was dismissed from the case.

After a motion for summary adjudication by StorQuest, the cross-complaint against East Bay Orthopaedic was dismissed and East Bay Orthopaedic did not participate in the trial.

The case continued to trial against only StorQuest Oakland.

Hart contended that StorQuest was liable for negligent repair and/or maintenance of the facility. She claimed that she and her supervisor were at the facility to destroy the old medical records of East Bay Orthopaedic. The two women were wheeling the records on a metal dolly from a back locker to the front of the dock. Hart placed the boxes on the edge of the loading dock and the supervisor, who walked down stairs to the sidewalk 20 inches below the dock floor, would then carry the boxes over to the Shred-It truck. Hart stepped on a 36-inch-wide loading ramp, which she claimed was inappropriately placed between the sidewalk and a 20-inch-wide rubber bumper. She claimed it should have been placed on the sidewalk and directly on the loading dock floor instead, as a rubber bumper's purpose is to prevent trucks from backing into the warehouse wall and not as a mount for a ramp.

Hart also claimed the ramp was not centered on the rubber bumper but placed off center by more than six inches so that one side of the ramp was not supported and anyone who stepped on that portion of the ramp could fall below and become injured. When Hart stepped on the unsupported part, her foot fell 20 inches to the ground while the rest of her body was held up by one of the ramp parts that remained on the rubber bumper.

According to plaintiff's counsel, there was no reason to step on the ramp, but Hart did so because she thought it was safe.

Hart claimed the ramp came in two parts so that it could be carried with each part weighing 40 pounds. The two ramp parts would be assembled by a pin on one part fitting on a cylinder on the other part. She contended that because the ramp was mounted off-center on the rubber bumper by more than six inches, when she stepped on the ramp, it was unsupported.

The former StorQuest employee who was accused of misplacing the ramp on the rubber

bumper disappeared a couple of months after the accident. The StorQuest supervisor admitted that the employee was not trained in placing the ramp.

StorQuest argued that Hart was inattentive while moving boxes and that she accidently stepped off the edge of the loading dock or somehow tripped, falling forward to the sidewalk level. StorQuest argued that the ramp pieces were not involved in the subject accident.

StorQuest noted that Hart did not recall what happened -- she testified that she was up on the loading dock moving boxes and the next thing she knew, she was on her right knee on the sidewalk below.

Injury:

A post-accident MRI demonstrated foramina stenosis of L4-L5 and central stenosis at L5-S1. A series of MRI's demonstrated an original disc herniation at C6-7. A later MRI demonstrated a regression of the herniation at C6-7 and a progression of a herniation at C5-6. Hart contended that this was critical since the regression proved that both neck injuries were caused by trauma and that degenerative disc disease only becomes progressively worse. Plaintiff's counsel argued this would counter the defense expert's contention that all of Hart's surgeries had nothing to do with trauma.

Hart contended that the accident caused her to require a total prosthetic disc replacement of the low back surgery to repair a herniated disc at L4-5 and she also required a fusion of L5-S1. In addition, she underwent surgery to repair the C5-6 herniation and surgery to repair a torn medial meniscus. The neck surgery, a decompression surgery, included snipping of an osteophyte that was impinging on a nerve with no discectomy or fusion.

Hart claimed she will have some permanent residual pain in her back. The plaintiff's forensic orthopedist stated that a future back surgery would, by reasonable medical certainty, be probable in the future. Plaintiff's physician also stated that Hart would require another surgery to replace the prosthetic device in her low back.

Hart claimed she suffered psychological injuries that caused her to feel more pain than a normal individual. Her family was migratory field workers and she too, beginning at 8 years old, worked alongside them and she could not cope without thinking of herself as a hard-working person.

Prior to the accident Hart had two separate jobs -- she was a night janitor for about four hours a day and worked as a low-level file clerk and secretarial assistance during an eight hour day for about $9 an hour. The plaintiff's treating pain specialist claimed that he thought Hart could go back to work on a limited basis, but that she would have to stop working for the day when her pain became intolerable. He also stated that Hart should not remain on pain medications for the rest of her life due to complications. If Hart worked, she would have to do so with pain, he contended.

Hart admitted that she could go back to work when her pain was insubstantial but would have troubles since approximately once every three-to-six months she would have unbearable pain for two days.

Hart's husband claimed that he took over many of the heavy household services after the incident.

The defendants contended that Hart did not have neck symptoms reported in the medical records until two and a half months after the accident.

The defense's expert orthopedist agreed with plaintiff's counsel that the fall caused Hart's neck condition. However, he claimed that Hart was faking a limp since the two surveillance films he examined failed to demonstrate any limp whatsoever. Each of the defense's surveillance films showed a variability of substantial limping to a normal gait.

The defense's expert radiologist testified that although the three areas of pain that existed after the accident -- the low back, knee and neck -- all ended up having surgery, the three surgeries resulted from mere aging, not from trauma from the accident on the loading dock.

The defense's expert psychologist claimed that Hart never showed any pain or had any limp during her two days of testing and evaluation. The expert claimed that she personally followed Hart when she walked to the ladies room and testified that the Hart had no limp. While Hart complained of a depression, surveillance films taken as the trial was ongoing showed her laughing in a restaurant with a close friend.

During the opening statement, before the films were taken, plaintiff's counsel responded that Hart loved to laugh and still does it on a regular basis. On the witness stand, Hart stated that she always was laughing with friends prior to the showing of the third surveillance film. Plaintiff's psychologist stated that Hart suffered from a dysthymic condition where it is a type of depression where laughing with friends is not inconsistent.

Result:

The jury found for Hart, but assigned her 20 percent contributory negligence. The jury assigned 50 percent liability to Storquest Oakland, 20 percent to East Bay Orthorpedic and 10 percent to Shred-It USA.

The jury awarded Hart $1,323,800 in damages. After liability assignment, she was entitled to $1,059,040. However, Hart is only set to receive $615,835.21 from the award because the only party at trial, StorQuest, was only 50 percent responsible.

With the addition of her prior $25,000 settlement with Shred-It, Hart is to recover a total of $640,835.21.

Debra Hart

$297,000 Personal Injury: Past Medical Cost

$100,000 Personal Injury: Future Medical Cost

$135,800 Personal Injury: Past Lost Earnings Capability

$291,000 Personal Injury: FutureLostEarningsCapability

$500,000 Personal Injury: non-economic damages

Trial Information:

Judge:	Kenneth Mark Burr
Trial Deliberations:	3.5 days
Editor's Comment:	This report is based on information that was provided by counsel for Hart and StorQuest Oakland. Remaining counsel did not contribute.
Writer	Priya Idiculla

Ceiling installer claimed hole covered by carpet caused fall

Type: Verdict-Plaintiff

Amount: $1,323,716

Actual Award: $1,191,345

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Injury Type(s):
- *back*
- *neck*
- *other* - back and neck; physical therapy; strains and sprains; decreased range of motion
- *shoulder* - rotator cuff, injury (tear)

Case Type:
- *Construction* - Accidents; Scaffolds and Ladders
- *Worker/Workplace Negligence* - OSHA
- *Slips, Trips & Falls* - Fall from Height
- *Premises Liability* - Dangerous Condition

Case Name: Dustin L. Hansen v. East Bay Floorcovering, Inc., EMT Electric, Inc. and Iron Construction, Inc., No. RG15765238

Date: August 16, 2016

Plaintiff(s):
- Dustin L. Hansen (Male, 33 Years)

Plaintiff Attorney(s):
- Joseph J. Appel; Appel Law Firm LLP; Walnut Creek CA for Dustin L. Hansen
- Thomas G. Appel; Appel Law Firm LLP; Walnut Creek CA for Dustin L. Hansen

Plaintiff Expert (s):
- Alan Roth M.D.; Physical Medicine; San Ramon, CA called by: Joseph J. Appel, Thomas G. Appel
- Rommel Hindocha D.C.; Chiropractic; Burlingame, CA called by: Joseph J. Appel, Thomas G. Appel

Defendant(s):

- EMT Electric, Inc.
- Iron Construction, Inc.
- East Bay Floorcovering, Inc.

Defense Attorney(s):

- Alison M. Crane; Bledsoe, Diestel, Treppa and Crane LLP; San Francisco, CA for East Bay Floorcovering, Inc.
- David S. Webster; Wood, Smith, Henning & Berman LLP; Concord, CA for EMT Electric, Inc.
- None reported; San Francisco, CA for Iron Construction, Inc.

Defendant Expert(s):

- Benjamin T. Busfield M.D.; Orthopedics; Antioch, CA called by: for Alison M. Crane, David S. Webster

Insurers:

- Liberty Mutual Insurance Co.
- State Farm Insurance Cos.

Facts:

In May 2014, plaintiff Dustin Hansen, 33, a ceiling installer, was working on a project at a commercial tenant improvement project located in Redwood City. Hansen was working on a 48-inch rolling scaffold in order to install acoustical ceiling tile in an office conference room. While the scaffold was in use, one of its wheels rolled into a 4-inch hole that was hidden by the newly installed carpeting. As a result, the scaffold tipped, sending Hansen four feet to the concrete floor. He sustained injuries to his neck, back and right shoulder.

Hansen sued the company that installed the carpet two days before the incident, East Bay Floorcovering Inc., and the company that had drilled the concrete hole three weeks earlier, EMT Electric Inc.

Iron Construction Inc. was also initially named as a defendant, but it was ultimately dismissed from the case.

Plaintiff's counsel contended that the hole was unprotected, as there was no covering over the hole, as legally required by California's Occupational Safety and Health Administration, and that the hole constituted a dangerous condition. Counsel also contended that instead of properly covering the drilled-out hole, it was only covered with carpeting, effectively creating a hidden trap.

EMT Electric claimed that there was a cone near the defect every day.

East Bay claimed that when its employees came into the subject room to install the carpet, there were no cones and that when they left the room, there were no cones.

Injury: Hansen claimed he sustained sprains and strains of his neck and back, and a tear of his right shoulder's rotator cuff. He drove home from work later that day, but then followed up with an occupational medicine specialist. Hansen initially attempted conservative physical therapy for a few months. He claimed that his neck and back issues partially resolved, but did not resolve his shoulder condition. As a result, he underwent rotator cuff repair surgery three months later, in early September 2014.

Hansen claimed that although conservative care partially resolved his back and neck injuries, he now suffers from chronic range of motion problems. He also claimed that he continues to have range of motion problems with his right shoulder, despite undergoing surgery.

The plaintiff's medical experts opined that Hansen had chronic range of motion problems in his shoulder, neck and back that precluded him from returning to his usual and customary job, as well as his normal activities of daily living. As a result, Hansen alleged that he has not been able to return to work in the same position, as a ceiling installer, and that he is now prevented from doing activities that he previously enjoyed.

The defense's orthopedic expert, who was called by plaintiff's counsel during the plaintiff's case-in-chief, confirmed all of Hansen's injuries and resultant sequelae.

Thus, Hansen sought recovery of approximately $120,000 in past medical costs (based on his medical lien), and unspecified amounts for his future medical costs, past loss of wages, and future loss of wages. He also sought recovery of damages for his past and future pain and suffering.

Result: The jury apportioned 10 percent fault to Hansen, 45 percent fault to East Bay, and 45 percent fault to EMT Electric. It also found that Hansen's employer was not liable. The jury determined that Hansen's damages totaled $1,323,716.28.

After apportionment, Hansen's recovery should total $1,191,344.65.

Dustin L. Hansen

$198,769 Personal Injury: Past Medical Cost

$775,323 Personal Injury: Future Medical Cost

$33,766 Personal Injury: Past Lost Earnings Capability

$35,760 Personal Injury: FutureLostEarningsCapability

$101,298 Personal Injury: Past Pain And Suffering

$178,800 Personal Injury: Future Pain And Suffering

Trial Information:

Judge: Robert B. Freedman

Demand: None reported

Offer: $15,000 from East Bay and EMT Electric

Trial Length: 2 weeks

Trial Deliberations: 2.5 days

Editor's Comment: This report is based on information that was gleaned from court documents and an interview of plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Writer Priya Idiculla

VerdictSearch

Officer denied being on duty when stairway fall occurred

Type: Verdict-Plaintiff

Amount: $1,318,641

Actual Award: $1,208,341

State: California

Venue: Marin County

Court: Superior Court of Marin County, Marin, CA

Injury Type(s):
- *back*
- *knee* - medial meniscus, tear; lateral meniscus, tear; anterior cruciate ligament, tear
- *elbow* - fracture, elbow; cubital tunnel syndrome
- *other* - S1 nerve root; avulsion fracture

Case Type:
- *Slips, Trips & Falls* - Falldown
- *Premises Liability* - Tenant's Injury; Stairs or Stairway; Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Monnie Wright v. State of California, and State of California Department of Corrections and Rehabilitation, No. CIV1200705

Date: June 10, 2016

Plaintiff(s):
- Monnie Wright (Male, 60 Years)

Plaintiff Attorney(s):
- Anthony L. Label; The Veen Firm, P.C.; San Francisco CA for Monnie Wright
- Andje M. Medina; The Veen Firm, P.C.; San Francisco CA for Monnie Wright

Plaintiff Expert (s):

- Tracy D. Albee P.H.N., B.S.N., R.N.; Life Care Planning; Tracy, CA called by: Anthony L. Label, Andje M. Medina
- Lonnie Haughton C.D.T.; Safety (Construction); Oakland, CA called by: Anthony L. Label, Andje M. Medina
- Robert W. Johnson M.B.A.; Economics; Los Altos, CA called by: Anthony L. Label, Andje M. Medina
- Robert N. Anderson Ph.D.; Materials Handling; Los Altos, CA called by: Anthony L. Label, Andje M. Medina
- Thomas P. Yankowski M.S., C.V.E.; Vocational Rehabilitation; Oakland, CA called by: Anthony L. Label, Andje M. Medina
- Michael J. Oechsel M.D.; Orthopedic Surgery; Larkspur, CA called by: Anthony L. Label, Andje M. Medina

Defendant(s):

- State of California
- State of California Department of Corrections and Rehabilitation

Defense Attorney(s):

- Harry T. Gower, III; Office of the Attorney General; San Francisco, CA for State of California, State of California Department of Corrections and Rehabilitation
- Grayson W. Marshall, III; Office of the Attorney General; San Francisco, CA for State of California, State of California Department of Corrections and Rehabilitation

Defendant Expert(s):

- Mark D. Cohen M.S.; Economics; Walnut Creek, CA called by: for Harry T. Gower, III, Grayson W. Marshall, III
- Carla H. Kelley M.R.C., C.R.C.; Vocational Rehabilitation; Oakland, CA called by: for Harry T. Gower, III, Grayson W. Marshall, III
- David M. Atkin M.D.; Orthopedic Surgery; San Francisco, CA called by: for Harry T. Gower, III, Grayson W. Marshall, III

Facts:

On Dec. 14, 2010, plaintiff Monnie Wright, 60, a correctional officer at San Quentin State Prison, in San Quentin, was walking from his residence on the maximum security prison property to his job post.

Wright was both an employee and tenant of the state of California. He rented the home on the San Quentin grounds with the state as his landlord. Wright was in his uniform at the time, wearing a utility belt, and was under a duty to assist if an inmate-related emergency arose on the prison grounds while he was on the property.

As Wright descended the 80-year-old concrete stairway outside of his home, the second to last step collapsed under his foot, causing him to fall backward. Wright sustained injuries to his back, a knee, and his right elbow.

Wright initially filed a workers' compensation claim and received benefits in the form of payments for his medical expenses and disability. However, in July 2012, he went out on early disability retirement. Thereafter, Wright filed a civil suit against the state, and the State of California Department of Corrections and Rehabilitation.

Wright claimed that he was injured at his rental property and not at his place of employment. The state moved for summary judgment on the ground that workers' compensation was Wright's exclusive remedy. The state claimed that Wright was commuting at the time of his fall and that since Wright had already reached his employer's premises ("premises rule"), the employment relationship had begun and Wright was covered by workers' compensation. The trial court granted the state's motion for summary judgment, and applied the "premises line" test as an exception to the going-and-coming rule.

Wright appealed the trial court's decision, arguing that the court was incorrect in applying the "premises line" rule and claimed that, instead, the "bunkhouse rule" was the appropriate test for injuries occurring in employer-owned housing. After a lengthy briefing and oral argument, the Court of Appeal reversed the prior decision, finding that there was a genuine issue of material fact as to whether Wright was acting in the course and scope of his employment at the time he was injured.

After getting the case back from the Court of Appeal, plaintiff's counsel sought to establish that Wright was not in the course and scope of his employment at the time he was injured, which required establishing either that Wright's injuries did not arise out of his employment or that the injuries did not occur in the course of his employment. Counsel also argued that the subject stairway constituted a dangerous condition.

The state's counsel denied that the stairway constituted a dangerous condition. Counsel contended that even if it was dangerous, Wright was negligent in causing his fall by failing to tell the state that the stairway was allegedly dangerous before the fall. The state's counsel relied on a number of affirmative defenses under the government code and argued that the state had no notice of the dangerous condition. Counsel further contended that the state had a reasonable inspection system and that it had never identified the hazard. In addition, defense counsel argued that the state was not negligent because its maintenance and inspection practices were reasonable in light of its budgetary constraints and that Wright was in the course and scope of his employment at the time of the fall, in that Wright was performing a task related to his state employment.

Injury: Wright sustained an avulsion fracture of his right elbow, resulting in cubital tunnel syndrome. He also sustained tears of a knee's medial meniscus, lateral meniscus, and anterior cruciate ligament. In addition, he claimed he suffered an inflammation of the L5-S1 nerve root. Wright subsequently underwent three knee surgeries to repair the ACL and meniscus, as well as surgery to repair the cubical tunnel nerve entrapment in the right elbow.

Although he will not require any future surgery, Wright claimed that the injuries to his back, elbow, and knee caused him to retire from his career as a correctional officer. He also claimed that his injuries and inability to work caused him psychological distress.

Defense counsel argued that Wright was exaggerating the extent of his residual injuries and psychological distress and contended that Wright was able to work in other capacities with the state.

Result: The jury apportioned 5 percent liability to Wright and 95 percent liability to the state. It determined that Wright's damages totaled $1,318,641.

After apportionment, Wright's recovery would have been $1,252,708.95.

Monnie Wright

$539,921 Personal Injury: past economic damages

$278,720 Personal Injury: future economic damages

$350,000 Personal Injury: past non-economic damages

$150,000 Personal Injury: future non-economic damages

Trial Information:

Judge: Stephen P. Freccero

Demand: $1,900,000

Offer: None

Trial Length: 3 weeks

Trial Deliberations: 3 days

Post Trial: Following the deductions pursuant to government code § 985, and the addition of recoverable costs and interests, the state paid Wright $1,208,340.97.

Editor's Comment: This report is based on information that was provided by plaintiff's and defense counsel.

Writer Priya Idiculla

VerdictSearch

Nursing home's failure to give shower resulted in fall: plaintiff

Type: Verdict-Plaintiff

Amount: $1,313,141

State: California

Venue: Monterey County

Court: Superior Court of Monterey County, Monterey, CA

Injury Type(s):

- *knee* - fracture, knee; fracture, tibial plateau
- *other* - plate; pins/rods/screws; hardware implanted
- *surgeries/treatment* - knee surgery; open reduction; external fixation; internal fixation

Case Type:

- *Nursing Homes*
- *Worker/Workplace Negligence*
- *Slips, Trips & Falls* - Slip and Fall

Case Name: Catherine Gheen v. Salinasidence Opco, LLC dba Pacific Coast Post Acute, No. 20CV000195

Date: July 15, 2021

Plaintiff(s):

- Catherine Gheen, (Female, 60 Years)

Plaintiff Attorney(s):

- Ayman R. Mourad; Lanzone Morgan, LLP; Long Beach CA for Catherine Gheen
- Reza Sobati; Lanzone Morgan, LLP; Long Beach CA for Catherine Gheen

Plaintiff Expert (s):

- Stephen F. Gregorius M.D.; Orthopedic Surgery; Salinas, CA called by: Ayman R. Mourad, Reza Sobati

Defendant(s):

- Salinasidence Opco, LLC

Defense Attorney(s):

- D. Scott Barber; Wilson Getty LLP; San Diego, CA for Salinasidence Opco, LLC

Facts:

On Feb. 2, 2019, plaintiff Catherine Gheen, 60, a real estate agent, visited her 90-year-old mother, who resided at Pacific Coast Post Acute, a skilled nursing facility in Salinas. After realizing her mother had soiled herself, Gheen notified a nurse, who washed the soiled area using disposable cloth. When Gheen saw that her mother was still uncomfortable, she brought her to a shower. Gheen slipped and fell as she reached for a towel in the shower. She suffered injuries of a knee.

Gheen sued Pacific Coast Post Acute's operator, Salinasidence Opco, LLC. She alleged that the nursing facility was negligent for refusing to shower her mother, which ultimately created the situation that led to the slip and fall.

Gheen claimed that she asked if her mother could be given a shower, but that the nurse refused because the residents were only allowed two scheduled showers per week and Gheen's mother's next shower was scheduled for a later date. Gheen's counsel argued that the nurse was liable for refusing to immediately shower Gheen's mother and that the nurse's inaction led to Gheen's fall.

Defense counsel suggested that Gheen never asked if she could give her mother a shower, though witnesses could not recall if Gheen asked or not. Defense counsel contended that Gheen had asked to shower her mother on two prior occasions and that Gheen was told not to do that because of safety issues. Counsel argued that Gheen caused and/or contributed to the accident by showering her mother herself and that the nursing facility should not be held liable for Gheen's own actions.

Injury: Gheen sustained a tibial plateau fracture of her right knee. She was driven by her son to a hospital, where she underwent open reduction and external fixation surgery 12 hours later. She then underwent another surgery 10 days later, during which four metal screws and a plate were implanted.

Gheen claimed she is left with chronic pain in her right knee. She also claimed that despite the pain, she can walk around, but that she cannot squat down or get up a flight of stairs without a running start.

Gheen's treating physician testified that any future knee replacement would be based on Gheen's tolerance of the knee pain and that if Gheen could no longer bear it, then she could get a future knee replacement.

After her fall, Gheen claimed she could not work as a real estate agent for 10 months, but was eventually able to return to work. However, she claimed she will have to be out of work again for a period of time in the future, if she decides to undergo the knee replacement surgery.

The parties stipulated that the fall caused Gheen's knee injury. They also stipulated that Gheen's past medical costs totaled $103,000. Gheen also sought recovery of economic damages for her past and future loss of earnings, and for her future medical costs. In addition, she sought recovery of non-economic damages for her past and future pain and suffering.

Defense counsel denied that Gheen suffered or will suffer any loss of wages due to the freelance nature of her work.

Result: The jury found that the nursing home was liable for the accident. It determined that Gheen's damages totaled $1,313,140.65.

Catherine Gheen

$ 938,140.65 lost earnings

$ 375,000 pain and suffering

$ 1,313,140.65 Plaintiff's Total Award

Trial Information:

Judge: Thomas W. Wills

Demand: $399,999.99 (C.C.P. § 998)

Offer: $150,000 (C.C.P. § 998)

Trial Length: 3 days

Trial Deliberations: 1 days

Post Trial: According to defense counsel, the plaintiff's no-economic damages award was reduced to $250,000 under MICRA due to a post-trial motion.

Editor's Comment: This report is based on information that was provided by plaintiff's and defense counsel.

Writer Priya Idiculla

Patron claimed supermarket's floor was excessively slippery

Type: Verdict-Plaintiff

Amount: $1,077,063

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Injury Type(s):
- *hip* - fracture, hip; hip replacement
- *other* - necrosis; hardware implanted; decreased range of motion; scar and/or disfigurement

Case Type:
- *Premises Liability* - Store; Slip and Fall; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Foreign Substance

Case Name: Amy Jong v. Tawa Supermarket, Inc., separately and doing business as 99 Ranch Market, Welcome Market, Inc. and Does 1 through 30, inclusive, No. RG09480645

Date: July 25, 2011

Plaintiff(s):
- Amy Jong (Female, 67 Years)

Plaintiff Attorney(s):
- Joseph E. Tomasik; Law Offices of Joseph E. Tomasik; Berkeley CA for Amy Jong
- Annie Tomasik Sahhar; Law Offices of Joseph E. Tomasik; Berkeley CA for Amy Jong

Plaintiff Expert (s):
- Brad P. Avrit P.E.; Safety; Marina del Rey, CA called by: Joseph E. Tomasik, Annie Tomasik Sahhar
- Thomas P. Vail M.D.; Orthopedic Surgery; San Francisco, CA called by: Joseph E. Tomasik, Annie Tomasik Sahhar
- Lawrence R. Lievense; Coding & Billing (Medical); Camarillo, CA called by: Joseph E. Tomasik, Annie Tomasik Sahhar

Defendant(s):
- Welcome Market, Inc.
- Tawa Supermarket, Inc., separately and doing business as 99 Ranch Market

Defense Attorney(s):

- Sean P. Moriarty; Cesari Werner & Moriarty; San Francisco, CA for Tawa Supermarket, Inc., separately and doing business as 99 Ranch Market, Welcome Market, Inc.

Defendant Expert(s):

- Ted M. Kobayashi M.S.; Engineering; Livermore, CA called by: for Sean P. Moriarty
- Terence J. McDonnell M.D.; Coding & Billing (Medical); Berkeley, CA called by: for Sean P. Moriarty

Insurers:

- Argonaut Great Central Insurance

Facts:

On April 3, 2009, plaintiff Amy Jong, 67, a retired travel agent, was shopping inside the 99 Ranch Market in Dublin when she slipped and fell on an unidentified liquid on the floor. She sustained a hip fracture.

Jong sued Tawa Supermarket Inc., separately and doing business as 99 Ranch Market, and Welcome Market Inc., for premises liability, as there was conflicting evidence as to which company owned the store. The plaintiff dismissed Tawa Supermarket before closing arguments and the case continued against Welcome Market.

Store employees admitted seeing a clear liquid, which they believed to be water, on the floor next to Jong's body as she was lying next to an open-top refrigeration unit after the fall.

Jong contended that only one janitor was responsible for inspecting the entire store in the 30 minutes before she fell. The plaintiff alleged that the janitor was the not the person who signed the sweep logs, and even if she had inspected the area, visual inspections were not sufficient, and the floor was excessively slippery.

The store claimed that it performed visual inspections of its entire sales floor every 30 minutes on the day of the incident and had sweep logs which indicated that inspections had been done.

Injury: Jong sustained a femoral head fracture in her right hip. She was taken from the store by paramedics to the emergency room. She underwent reconstructive surgery with metal hardware implantation the next day.

Initially, Jong had a good recovery from that surgery, but she later developed necrosis in her hip.

On Nov. 23, 2010, she underwent a total right hip replacement surgery, and while the surgery improved her symptoms, at the time of trial she was still recovering.

Before the fall, Jong's major passion was dancing and she enjoyed tap dancing, Chinese Folk dancing, Hawaiian hula dancing, belly dancing, jazz and line dancing at least four or five times a week. The surgeon who performed the hip replacement surgery testified that he hoped that Jong would be able to return to her previous level of dancing, but it was unclear if she would. The surgeon also opined that Jong might need another hip replacement surgery.

Jong also has extensive scarring on her right thigh from both surgeries.

The defendant disputed that the necrosis was related to Jong's injuries from the incident.

Result: The jury found that Welcome Market owned, leased, occupied and controlled the subject store, and that it was negligent in the maintenance or use of the property. It also found that Welcome Market's negligence was a substantial factor in causing harm to Jong.

The jury awarded Jong $1,077,063 in damages.

Amy Jong

$227,063 Personal Injury: Past Medical Cost

$150,000 Personal Injury: Future Medical Cost

$450,000 Personal Injury: past non-economic loss, including physical pain/mental suffering

$250,000 Personal Injury: future non-economic loss, including physical pain/mental suffering

Trial Information:

Judge: Robert D. McGuiness

Demand: $499,999.99 (CCP 998)

Offer: $130,000 (CCP 998)

Trial Length: 11 days

Trial Deliberations: 4 hours

Jury Vote: 11-1 liability, 10-2 damages

Post Trial: The defendant has filed a motion for new trial.

Editor's Comment: This report is based on information that was provided by plaintiff's and defense counsel.

Writer Priya Idiculla

VerdictSearch

Man fell through skylight while assisting with police investigation

Type: Settlement

Amount: $1,075,000

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Injury Type(s):

- *head* - ear
- *brain* - subdural hematoma; traumatic brain injury
- *other* - fatigue; seizure; craniotomy; prosthesis; hardware implanted
- *shoulder* - fracture, shoulder; fracture, clavicle
- *sensory/speech* - hearing, partial loss of
- *mental/psychological* - cognition, impairment; memory, impairment

Case Type:

- *Negligence* - Police as Defendant
- *Premises Liability* - Failure to Warn
- *Slips, Trips & Falls* - Fall from Height
- *Worker/Workplace Negligence* - Negligent Assembly or Installation

Case Name: Omid K. Mehdavi v. City of Fremont, Fremont Police Department, Christine Leopardi, Biagini Properties, Inc., Davco Waterproofing Service, Inc., Ahmad S. Kakar, Joey Kakar, Ahmad J. Kakar and Mowry East Shopping Center, L.P., No. HG09460732

Date: August 01, 2011

Plaintiff(s):

- Omid Mehdavi (Male, 27 Years)

Plaintiff Attorney(s):

- R. Lewis Van Blois; Van Blois & Associates; Oakland CA for Omid Mehdavi

Plaintiff Expert (s):

- Ron Martinelli Ph.D.; Police Practices & Procedures; Lake Arrowhead, CA called by: R. Lewis Van Blois
- Dean B. Tuft Ph.D.; Accident Reconstruction; Pleasant Hill, CA called by: R. Lewis Van Blois
- Sean Shimada Ph.D.; Biomechanics; Davis, CA called by: R. Lewis Van Blois
- Tito Poza; Audio Transcription; Menlo Park, CA called by: R. Lewis Van Blois
- Carol R. Hyland; Vocational Rehabilitation; Lafayette, CA called by: R. Lewis Van Blois
- Jerry A. Wachtel; Ergonomics/Human Factors; Berkeley, CA called by: R. Lewis Van Blois
- Claude Munday Ph.D.; Neuropsychology; Oakland, CA called by: R. Lewis Van Blois
- Deborah Doherty M.D.; Physical Rehabilitation; Kentfield, CA called by: R. Lewis Van Blois
- Phillip Allman Ph.D.; Economics; San Francisco, CA called by: R. Lewis Van Blois
- Jonathan Mueller M.D.; Neurology; San Francisco, CA called by: R. Lewis Van Blois

Defendant(s):

- Joey Kakar
- Ahmad J. Kakar
- Ahmad S. Kakar
- City of Fremont
- Christine Leopardi
- Biagini Properties, Inc.
- Fremont Police Department
- Mowry East Shopping Center, L.P.
- Davco Waterproofing Service, Inc.

Defense Attorney(s):

- Robert A. Ford; Lewis Brisbois Bisgaard & Smith LLP; San Francisco, CA for Biagini Properties, Inc., Mowry East Shopping Center, L.P.
- Gregory M. Fox; Bertrand, Fox & Elliot; San Francisco, CA for City of Fremont, Fremont Police Department, Christine Leopardi
- None reported for Davco Waterproofing Service, Inc., Ahmad S. Kakar, Ahmad J. Kakar

Defendant Expert(s):

- Don Cameron; Police Practices & Procedures; Martinez, CA called by: for Gregory M. Fox
- Gary T. Moran; Biomechanics; Alameda, CA called by: for Gregory M. Fox
- Glen Stevick; Accident Reconstruction; Berkeley, CA called by: for Gregory M. Fox
- Mark D. Cohen; Economics; Lafayette, CA called by: for Robert A. Ford, Gregory M. Fox
- Durand R. Begault Ph.D.; Audio Transcription; San Francisco, CA called by: for Gregory M. Fox
- Joanna Berg Ph.D.; Neuropsychology; Oakland, CA called by: for Gregory M. Fox
- Thomas Ayres; Ergonomics/Human Factors; Kensington, CA called by: for Gregory M. Fox
- Richard F. Gravina M.D.; Neurology; San Mateo, CA called by: for Gregory M. Fox
- Lawrence J. Deneen; Vocational Rehabilitation; Oakland, CA called by: for Gregory M. Fox

Facts:

On Nov. 20, 2008, plaintiff Omid Mehdavi, 27, a pet store employee, fell 15 feet to the ground, through the skylight on the roof of the Mowry East Shopping Center where he worked. Mehdavi had gone up to the roof to investigate the point of entry for a burglary that had occurred at the pet store.

Mehdavi sued the city of Fremont; Fremont Police Department; Officer Christine Leopardi; the managing agent, Biagini Properties Inc.; Davco Waterproofing Service Inc.; Ahmad S. Kakar; Joey Kakar; Ahmad J. Kakar; and the building's owner, Mowry East Shopping Center LP.

Davco Waterproofing and the Kakars were dismissed.

Plaintiff's counsel stated that while on a canopy where skylights were located 12 feet above the sidewalk, officer Leopardi asked Mehdavi to bring up another ladder so she could climb to a higher part of the roof. As Mehdavi was pulling up the ladder, he walked backwards and fell through a skylight.

Plaintiff's counsel argued that Leopardi told Mehdavi to get a ladder and go up onto the roof. When Leopardi arrived on the canopy, she couldn't climb the 6-foot wall to the higher roof without getting her uniform dirty or torn so she told Mehdavi to get another ladder for her. According to counsel, Leopardi watched Mehdavi bring up the ladder, but she never warned him that he was backing toward a skylight.

Plaintiff's counsel contended that Leopardi failed to exercise ordinary care when she directed Mehdavi to inspect the roof for her and when she told him to bring a ladder up on the canopy. Counsel claimed that Leopardi established a "special relationship" with Mehdavi when she made him an active participant in her investigation, and was responsible for the foreseeable risk of harm to him. Although the Fremont Fire Department was located only minutes away and had assisted the police in past roof top investigations, Leopardi never considered calling for its professional assistance, counsel noted.

Plaintiff's counsel argued that the property managers and the owners were responsible for not installing adequate ventilation for the pet store and for failing to warn people that they

were not permitted to go onto the roof to do the work.

Defense counsel for the city stated that Mehdavi called 911 to report a burglary at the pet store. Leopardi responded and he informed her that he suspected the burglar, a terminated employee, entered through the roof via an exhaust fan Mehdavi and the employee had earlier installed. Mehdavi further informed Leopardi that he was a contractor and could provide a ladder for them to access the roof so he could show her the entry point.

According to the city, Mehdavi set up a 14-foot ladder on his own and climbed onto the roof without Leopardi's knowledge and then walked several times by the skylights and confirmed the entry point. He called down to Leopardi and she climbed up to take photos. Once on the roof, Leopardi was unable to climb a 6-foot wall to a higher roof where the exhaust fan was located. She claimed she asked Mehdavi for a stepladder so she could climb the wall. He allegedly agreed, walked past the skylights and called down for a stepladder, but at his father's suggestion, Mehdavi began dragging the original 14-foot ladder onto the roof while Leopardi had her back turned. While he was walking backward with the ladder, Leopardi heard the dragging noise and turned and was surprised to see Mehdavi with such a large ladder. She claimed that, before she had the chance to call out, he walked backward into a skylight he had earlier walked around several times.

The city argued that police officers routinely involve citizens in investigation of point of entry of burglaries and that Mehdavi, a contractor, volunteered to go onto the roof.

Defense counsel for the shopping center argued that store employees were not allowed onto the roof and Mehdavi should not have been on it.

Injury:

Mehdavi suffered a basilar skull fracture, traumatic brain injury with convulsive seizures, right clavicle fracture, and an injury to his stapes in his middle ear that caused him to lose his hearing. He was hospitalized for 14 days.

Mehdavi underwent surgery for the middle ear damage that implanted a titanium stapes and for his right clavicle fracture. He had to undergo a second surgery for his ear when the prosthetic slipped. After the second surgery, his hearing mostly returned. He also underwent a craniotomy and burr holes to remove subdural hematoma bleeding.

He has permanent cognitive defects including difficulty with multitasking and memory problems and must take anti-seizure medication for the rest of his life.

Mehdavi is unable to perform work as before because his cognitive defects and fatigue due to his medication.

Defense counsel for the city stated that Mehdavi claimed he was unable to care for himself and would need 24-hour care.

Defense counsel for the city challenged the extent of Mehdavi's injuries. Counsel argued that private investigators filmed Mehdavi driving by himself, shopping, snacking, socializing and appearing to have fun in contrast to how he appeared in court and to the expert doctors.

Result: Mowry East and Biagini settled before trial for $375,000. One day before trial was scheduled to start, the city agreed to pay $700,000 to settle the case. Leopardi was dismissed with prejudice.

In total, Mehdavi recovered $1,075,000.

Trial Information:

Judge: Winifred Y. Smith

Editor's Comment: This report is based on information that was provided by plaintiff's counsel and defense counsel for the city of Fremont, the police department and Leopardi. Defense counsel for Biagini Properties and Mowry East Shopping Center did not respond to the reporter's phone calls.

Writer Jaclyn Stewart

Plaintiff alleged permanent knee injury in fall from third floor

Type: Settlement

Amount: $1,066,960

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Injury Type(s):

- *head*
- *knee* - patellar tendon
- *elbow*
- *other* - effusion; hematoma; swelling; abrasions; arthritis; synovitis; infarction; laceration; soft tissue; osteoarthritis; arthritis, traumatic; reconstructive surgery
- *epidermis* - edema
- *foot/heel* - fracture, heel/calcaneus; fracture, calcaneus/heel
- *surgeries/treatment* - arthroscopy; debridement
- *mental/psychological* - emotional distress

Case Type:

- *Premises Liability* - Apartment Building; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Fall from Height
- *Emotional Distress* - Negligent Infliction of Emotional Distress

Case Name: Rafael Deschamps and Antonio Deschamps v. Douglas M. Wong and Janice P. Wong, No. RG09490761

Date: November 23, 2009

Plaintiff(s):

- Rafael Deschamps (Male, 58 Years)
- Antonio Deschamps (Male, 19 Years)

Plaintiff Attorney(s):

- Dale Minami; Minami Tamaki LLP; San Francisco CA for Rafael Deschamps, Antonio Deschamps

Plaintiff Expert (s):

- Carol R. Hyland M.A., M.S.; Life Care Planning; Lafayette, CA called by: Dale Minami
- Scott F. Dye M.D.; Orthopedic Surgery; San Francisco, CA called by: Dale Minami
- Albert J. Ferrari; Safety; Oakland, CA called by: Dale Minami
- Wesley Chan M.D., M.P.H.; Occupational Medicine; Brentwood, CA called by: Dale Minami
- Phillip H. Allman Ph.D.; Economics; San Francisco, CA called by: Dale Minami

Defendant(s):

- Janice P. Wong
- Douglas M. Wong

Defense Attorney(s):

- Stephen H. Cornet; Stephen H. Cornet Esq., A Professional Corporation; Oakland, CA for Douglas M. Wong, Janice P. Wong

Insurers:

- Civil Service Employees Insurance Co.

Facts:

On Jan. 2, 2008, at approximately 8:30 p.m., plaintiff Rafael Deschamps, 58, a warehouse clerk, fell two stories from the third floor of his apartment building at 522 Merritt Ave. in Oakland after a railing collapsed.

Beforehand, Rafael returned home from work with his son, plaintiff Antonio Deschamps, 19, and prepared to park his car in the driveway of his apartment building. His neighbor's girlfriend, however, had blocked the driveway. Rafael went to the front of the apartment and knocked on the neighbor's door, but got no response. He then went up 14 steps to the third floor, and walked to the deck behind the apartments. He walked toward the railing, which connects the outside walls of the apartment and which opens to the outside. He leaned over the railing toward his left so he could shout at his son to ask the neighbor to move the car. Rafael took one step toward the railing, placing his right hand lightly on the top of the railing. The entire railing collapsed and crumbled.

As he was falling, Rafael tried to grab hold of the railing with his left hand, but was unable. He tried to maneuver his legs under his body, but was unable. His head struck a wooden fence, which caused his body and legs to flip over, severely contorting his legs. Antonio and his neighbors heard the commotion and came to his aid. They found Rafael lying on the ground, bleeding profusely.

Rafael and Antonio sued building owner Douglas M. Wong, alleging negligent maintenance. Plaintiffs' counsel claimed exemplary damages, asserting that Wong was guilty of malice, fraud and oppression on the grounds that he allowed his property to deteriorate and fall into disrepair to the extent that significant dangerous conditions developed, including the railing which collapsed when the plaintiff leaned on it. (The defendant's wife, Janice P. Wong, was originally a defendant, but she was dismissed.)

The plaintiff safety expert inspected the premises and found that Wong had neglected the apartment building by failing to conduct routine maintenance. The expert found that Wong had violated a number of building codes, construction standards and permit codes. The expert noted that Wong had obvious notice of the rotted railing because he had attempted to brace the railing with short pieces of wood that were recently added. Plaintiffs' counsel alleged that Wong consciously disregarded known risks around the property, failing to repair or inadequately repairing known dangers, including the railing.

The defense admitted liability for premises liability.

Injury:

Rafael sustained permanent knee injury, including deformity to the right knee below the tibia with the right lower leg rotated inward, edema, effusion on the right knee and a possible calcaneal fracture. He also sustained a laceration and an abrasion to the top of his head, a hematoma and soft-tissue swelling, an abrasion to his right elbow and post-operative anemia. He sustained bone infarcts, osteoarthritis, chronic post-traumatic arthritis, synovitis, atrophy and weakness of the right quadriceps and ligamentous instability.

Rafael underwent right patellar tendon repair, lateral knee reconstruction, ligament reconstruction, arthroscopic surgery, debridement and shrinkage of anterior cruciate ligament (ACL) and degeneration of distal ACL graft.

The plaintiff occupational medicine expert diagnosed Rafael with permanent knee injury and asserted that he did not anticipate significant improvement in his condition because there was atrophy and weakness of the right quadriceps and ligamentous instability. This would continue to affect his gait and balance. Moreover, the expert expected that the knee will become progressively worse over time and might require more definitive orthopedic surgery.

The plaintiff orthopedic surgery expert noted that the right knee was notably unstable in all planes, compared to the left knee. He concluded that Rafael sustained a very severe right knee injury that resulted in ruptures of all the major ligamentous connections between the femur and tibia. Despite multiple attempts to correct this disability, his knee remains unstable in all planes of motion. There was established post-traumatic arthritis, particle of the lateral compartment, as well as the presence of synovitis. The expert concluded that the arthritis process will likely progress over time and recommended that Rafael only engage in sedentary activity and receive ongoing orthopedic care to manage the chronic effects of the fall. This care included anti-inflammatory medications, physical therapy and possibly a new replacement surgery with an artificial knee. The expert opined that Rafael would be unable to return to his position as a warehouse clerk, which required him to lift and carry boxes, stoop, kneel and stand or walk for prolonged periods of time.

The plaintiff forensic economics expert calculated that Rafael's work life expectancy from the date of the accident was 6.7 years. Based on the expert's calculations, plaintiffs' counsel claimed $51,870 in past wage loss and $279,346 in future wage loss.

Before the accident, Rafael was reportedly independent, healthy, employed and active, plaintiff's counsel contended. He enjoyed a range of physical activities including dancing, hiking, walking, soccer, tennis, basketball, baseball and swimming. Since the accident, he has been unable to enjoy working or engaging in physical activities. Plaintiff's counsel claimed $631,628.07 in total special damages.

Antonio claimed negligent infliction of emotional distress from observing his father's accident. His claim was dismissed.

Result:

The case settled for $1,066,960, including $1 million from the insurance company and a waiver of rent for Rafael and Antonio valued at $66,960.

Trial Information:

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel and defense counsel.

Writer Jaclyn Stewart

Plaintiff: Fall at gas station caused neurocognitive deficits

Type: Settlement

Amount: $1,000,000

State: California

Venue: Santa Clara County

Court: Superior Court of Santa Clara County, Santa Clara, CA

Injury Type(s):
- *head* - concussion
- *brain* - brain damage; traumatic brain injury
- *mental/psychological* - cognition, impairment

Case Type:
- *Slips, Trips & Falls* - Falldown
- *Premises Liability* - Dangerous Condition

Case Name: Emily Ezell v. Bozzo's Service Inc. DBA Bozzo's Union 76, No. 17CV313183

Date: April 13, 2018

Plaintiff(s):
- Emily Ezell (Female, 42 Years)

Plaintiff Attorney(s):
- Timothy D. McMahon; Corsiglia, McMahon & Allard, LLP; San Jose CA for Emily Ezell
- Ben H. Stoddard; Corsiglia, McMahon & Allard, LLP; San Jose CA for Emily Ezell

Defendant(s):
- Bozzo's Service Inc.

Defense Attorney(s):
- Thomas A. Rector; Lewis Brisbois Bisgaard & Smith, LLP; San Francisco, CA for Bozzo's Service Inc.

Insurers:
- Nationwide Mutual Insurance Co.

Facts:

On July 27, 2015, plaintiff Emily Ezell, 42, a hairdresser, stopped at her local 76 gas station, in Gilroy, and went to speak with the service garage mechanic, who opened the office door outward toward Ezell and stepped out. As Ezell took a step back to allow room for the door to open and for the mechanic to step out, Ezell planted her foot on a half empty pallet of bottled water, causing her to fall backward and strike the back of her head on a metal shelf behind her.

Ezell initially tried to resolve the claim herself, and the insurer for Bozzo's Union 76 gas station, AMCO Insurance Co., a subsidiary of Nationwide Mutual Insurance Co., tendered its $5,000 no fault medical payments limit for Ezell's medical care, but made no other settlement offers. Then, several months before the two-year statute of limitations ran out, Ezell hired legal counsel, who made a policy limits demand on her behalf. However, Nationwide/AMCO did not respond to the demand.

Thus, Ezell sued the owner of the Bozzo's Union 76, Bozzo's Service Inc.

Ezell claimed that after she entered the mini-mart area of the gas station and asked to speak to the mechanic, she was directed toward the back office. She claimed she noticed a half empty pallet of bottled water on the floor of the mini-mart and stepped around it as she made her way to the back office door. Thus, she contended that the pallet of bottled water constituted a dangerous condition, in that the pallet was specifically a tripping hazard.

Defense counsel contended that Ezell saw the alleged tripping hazard and was able to successfully avoid it on her way to the back office at the 76 Gas Station. Accordingly, defense counsel contended that the pallet of bottled water was an open and obvious danger and that if the gas station owner was liable, Ezell had significant comparative liability.

One insurance adjuster stated simply, "She wasn't watching where she was walking."

Injury:

Bozzo's Union 76 gas station's employees who were present at the time of the incident attended to Ezell and made sure that she was okay. Ezell never lost consciousness and, at first, she was visibly upset, but she was able to collect herself and drive home without assistance. However, later that evening, family members noticed that Ezell seemed overly emotional. As a precaution, they drove her to a hospital for an evaluation. All scans were normal, and brain scans showed no evidence of bleeding or acute trauma. Ezell was subsequently diagnosed with a concussion and she was sent home to rest.

Despite the negative brain scans, Ezell claimed she never felt like herself following the fall.

Shortly before the suit was filed, Ezell had undergone neuropsychological testing that revealed "major neurocognitive deficit due to traumatic brain injury," despite the fact that no bleeding or other evidence of a brain injury was seen on any diagnostic scans. Otherwise, Ezell had no limitations/restrictions.

Result:

Following the initial written discovery, plaintiff's counsel renewed the policy limits demand and attached the recently received neuropsychological report. This time, Nationwide/AMCO accepted the policy limits demand, and the case was settled for $1 million without having to subject Ezell to an independent medical exam or deposition.

Trial Information:

Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.
Writer	Priya Idiculla