Worker's electric shock blamed on low-hanging power lines

Type: Verdict-Plaintiff

Amount: $8,234,522

State: California

Venue: San Diego County

Court: Superior Court of San Diego County, Vista, CA

Injury Type(s):
- *arm*
- *other* - electric shock; loss of consortium
- *amputation* - arm; arm (below the elbow)

Case Type:
- *Construction* - Accidents
- *Workplace* - Workplace Safety; Construction Site

Case Name: Edward R. Bisby Jr. and Tricia Lee Bisby v. James Weitzeil, No. GIN051999

Date: January 23, 2009

Plaintiff(s):
- Tricia Lee Bisby (Female, 30 Years)
- Edward R. Bisby, Jr. (Male, 30 Years)

Plaintiff Attorney(s):
- Gerald B. Singleton; Law Offices of Gerald B. Singleton; San Diego CA for Edward R. Bisby, Jr., Tricia Lee Bisby

Defendant(s):
- James Weitzeil

Defense Attorney(s):
- David A. Lander; David A. Lander Law Offices; Temecula, CA for James Weitzeil

Facts:

On Feb. 8, 2006, plaintiff Edward R. Bisby Jr., a construction worker in his 30s, was installing a tennis court fence on an estate when a tension bar came into contact with some low-hanging power lines, and gave him an electric shock.

Bisby sued his employer, James Weitzeil, claiming that the defendant was negligent for not taking into account that a patio for the tennis court had previously been installed under the power lines, causing them to be near enough to the surface to cause an accident. The lines were close enough to the ground to be in violation of the applicable standards, reportedly.

Weitzeil claimed that he was not negligent, and that Bisby was comparatively negligent.

Injury:

Bisby was rushed to a hospital, where he was diagnosed with catastrophic electrical injuries. He underwent 31 surgeries.

Bisby lost his right (dominant) arm below the elbow to amputation. He still has some use of his left arm, but might lose it with time, allegedly.

Bisby submitted $1,478,978.79 in past medical bills. His future medical expenses were estimated at about $100,000.

Bisby's past and future lost wages were estimated at $513,000. He also sought damages for pain and suffering.

His wife, plaintiff Tricia Bisby, 30s, a housewife, sought damages for loss of consortium.

Result:

The court found in favor of the plaintiffs, awarding $8,234,522.

Trial Information:

Judge: Thomas P. Nugent

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

Writer Elizabeth Peterson

Apartment doorway constituted a tripping hazard: lawsuit

Type: Mediated Settlement

Amount: $1,200,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):
- *leg* - scar and/or disfigurement, leg
- *ankle* - fusion, ankle; fracture, ankle; fracture, bimalleolar
- *other* - atrophy; sutures; effusion; swelling; abrasions; arthritis; synovitis; arthrodesis; physical therapy; pins/rods/screws; hardware implanted; arthritis, traumatic; decreased range of motion; scar and/or disfigurement
- *epidermis* - contusion
- *surgeries/treatment* - open reduction; internal fixation

Case Type:
- *Premises Liability* - Apartment; Tenant's Injury; Dangerous Condition
- *Slips, Trips & Falls* - Trip and Fall

Case Name: Paulette Clarke-Knights v. 1834 Caton Partners LLC., Goldmont Realty Corp., 25-35 Tennis Court LLC., and Talpion Fund Management LP, No. 509737/2018

Date: March 07, 2023

Plaintiff(s):
- Paulette Clarke-Knights , (Female, 49 Years)

Plaintiff Attorney(s):
- Sameer Chopra; Chopra & Nocerino, LLP; Garden City NY for Paulette Clarke-Knights
- Alex Nocerino; Chopra & Nocerino, LLP; Garden City NY for Paulette Clarke-Knights

Plaintiff Expert (s):	• Jake J. Porter III M.D.; Foot & Ankle; Stockbridge, GA called by: Sameer Chopra, Alex Nocerino • Edmond A. Provder C.R.C.; Vocational Rehabilitation; Lodi, NJ called by: Sameer Chopra, Alex Nocerino • Robert L. Schwartzberg P.E.; Engineering; Commack, NY called by: Sameer Chopra, Alex Nocerino • Leonard R. Freifelder Ph.D.; Economics; New York, NY called by: Sameer Chopra, Alex Nocerino
Defendant(s):	• Goldmont Realty Corp. • 1834 Caton Partners LLC • 25-35 Tennis Court LLC. • Talpion Fund Management LP
Defense Attorney(s):	• Carl L. Steccato; Wood Smith Henning & Berman LLP; New York, NY for 1834 Caton Partners LLC, Goldmont Realty Corp., 25-35 Tennis Court LLC., Talpion Fund Management LP
Defendant Expert(s):	• Edward A. Toriello M.D.; Orthopedic Surgery; Middle Village, NY called by: for Carl L. Steccato • Joseph P. Pessalano M.A., C.R.C.; Vocational Rehabilitation; Medford, NY called by: for Carl L. Steccato
Insurers:	• American Alternative Insurance Corp. • Allied World

Facts:

On Aug. 3, 2017, plaintiff Paulette Clarke-Knights, 49, a part-time phlebotomist, was inside her apartment, located at 1834 Caton Avenue, in the borough of Brooklyn. She had lived in the apartment for more than 10 years.

As Clarke-Knights walked from the apartment's kitchen into the adjacent hallway, she tripped on a decorative door saddle in the entryway and fell to the ground. Clarke-Knights claimed an injury to an ankle.

Clarke-Knights sued various entities who owned and/or managed the premises, including 1834 Caton Partners LLC., Goldmont Realty Corp., 25-35 Tennis Court LLC. and Talpion Fund Management LP. She claimed the defendants were liable for a dangerous condition that caused her fall.

Plaintiff's engineering expert examined the doorway in question and concluded that there was an abrupt change in elevation between the underside of the door saddle and the flooring in the hallway. The expert also concluded that there was a height differential between the kitchen floor and the hallway floor. Thus, the expert opined that the excessive elevation change between the walkway surfaces constituted a tripping hazard.

Defense counsel argued that Clarke-Knights had resided within the apartment for over a decade and, therefore, should have known about any hazardous conditions.

Injury:

Clarke-Knights was placed in an ambulance and transported to Kings County Hospital Center, in Brooklyn. She was admitted to the hospital Aug. 3, 2017, and remained hospitalized until Aug. 11, 2017.

Clarke-Knights was diagnosed with a fracture of her right ankle. The injury was a bimalleolar fracture: a fracture of each of an ankle's malleoli, which are the bony protuberances. She claimed the injury caused derangement, synovitis, post-traumatic arthritis, effusion, swelling, abrasions, contusions, decreased range of motion and atrophy of the ankle. She also claimed a tibial tendon deficiency.

Four days after the fall, Clarke-Knights underwent open reduction and internal fixation surgery on her ankle. She required sutures and was left with permanent scarring.

The following November, Clarke-Knights had surgery remove a symptomatic syndesmotic screw from the ankle. Then, in May 2019, doctors surgically removed additional hardware.

Clarke-Knights' final ankle surgery took place in July 2021. The procedure included a subtalar arthrodesis, a talonavicular arthrodesis and allografting. Clarke-Knights underwent physical therapy after her first and fourth surgeries.

Clarke-Knights claimed she will require additional testing and conservative care in the future. She said her injuries hinder her ability to bend, shop and exercise for extended periods of time. She also said she has trouble showering and dancing.

Clarke-Knights sought recovery of approximately $370,893 in past lost wages, $62,459 in past lost health insurance, $823,860 in future lost wages, $201,190 in future lost health insurance and $69,540 in future lost pension benefits. She also sought past and future medical expenses, and damages for her past and future pain and suffering.

Defense counsel maintained that Clarke-Knights only has a moderate disability and that Clarke-Knights is able to return to work in some capacity.

Result:

After multiple negotiation sessions, the parties agreed to a pretrial settlement, which was established via the guidance of mediator Robyn Weisman. The defendants' primary insurer agreed to tender its $1 million policy. The defendants' excess insurer agreed to pay an additional $200,000 from a policy that provided $10 million of coverage. Thus, the settlement totaled $1.2 million.

Paulette Clarke-Knights

Trial Information:

Judge:	Robyn D. Weisman
Trial Length:	0
Trial Deliberations:	0
Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.
Writer	Melissa Siegel

Strict Product Liability of Developer & Manufacturer, Defective Light

Type: Verdict-Plaintiff

Amount: $1,187,000

State: California

Venue: Alameda County

Court: Superior Court of Alameda County, Oakland, CA

Case Type:
- *Products Liability*

Case Name: Wayne Brock v. Shapell Industries, Inc.; and Devine Lighting Company, No. H172440-0

Date: February 20, 1997

Plaintiff(s):
- Wayne Brock (0 Years)

Plaintiff Attorney(s):
- John M. Anton; Boxer, Elkind and Gerson; Oakland CA for Wayne Brock
- Steven M. Bernard; Bernard and Wood; Newark CA for Wayne Brock

Plaintiff Expert (s):
- Dr. Barry Ben-Zion; Economics; Santa Rosa, CA called by:
- Gregg T. Pottorf M.D.; Orthopedics; Castro Valley, CA called by:

Defendant(s):
- Devine Lighting Company
- Shapell Industries, Inc.

Defense Attorney(s):
- Elise M. Balgley; Bernard and Wood; Newark, CA for Shapell Industries, Inc.
- Nelson C. Barry III; Bishop, Barry and Howe; San Francisco, CA for Devine Lighting Company

Defendant Expert(s):

- G. Michael Graham Ed.D; Physical Rehabilitation; Capitola, CA called by: for
- Frank Linhart; Engineering; Pleasanton, CA called by: for
- Blaine F. Nye; Economics; Menlo Park, CA called by: for
- Bernard L. Gabrielson Ph.D.; Engineering; Morgan Hill, CA called by: for
- Charles Di Raimondo M.D.; Orthopedics; Concord, CA called by: for
- Ricahrd Stoppoloni; Electrical; Burlingame, CA called by: for

Facts:

October 30, 1992, plaintiff, a 54-year-old employee of Peach Tree Community Association Services, was injured while performing maintenance work at the Marina Seagate condominium project in San Leandro. Plaintiff was attempting to fix a light on one of the tennis courts, as he had two or three times previously after the wind had blown it down. Plaintiff and his manager positioned a 28-foot aluminum extension ladder, owned by the association, at an angle against a light. As the manager held the ladder with both hands, plaintiff reached through the ladder to try to put the light lens back in position. The pole started turning and plaintiff fell to the ground. The manager stated that the lens had a clasp and all plaintiff should have had to do was snap it into position. The condominium project included several tennis courts, which in accordance with plans and details drawn for defendant developer, Shapell Industries, included Elsco enviro-lights, then produced by Elsco Lighting Products, Inc. of Stockton. Plaintiff alleged that defendant Levine Lighting Company of North Kansas City, Missouri, the corporate successor to Elsco, was subject to strict liability for injuries caused by defects in the products of Elsco. Plaintiff contended that the Elsco enviro-lights specified in the plan and installed on behalf of Shapell Industries were defective because of the manner in which they were designed, manufactured and installed because they lacked an adequate warning, and caused injuries when used in a normal or reasonably foreseeable manner; that the lens was defective in design, based on evidence of the more secure latching mechanism designed and added to newer Elsco enviro-lights; that engineering drawings of the Elsco enviro-light made it clear that a bolt intended to prevent rotation may not have been shipped with the product, but clearly was left out at the time of installation, was not present when the premises were sold by Shapell, and was not present at the time of plaintiff"s injuries; and that had the bolt been placed as intended, or in accordance with the subsequent warning, plaintiff would not have been injured. Plaintiff further contended that defendant Shapell Industries was widely known to be engaged in mass-production as opposed to "occasional or isolated" construction of housing; and that accordingly, it was subject to strict liability for injuries caused by defects in the Marina Seagate condominium project. Defendant Shapell contended that plaintiff"s use of the ladder was unforeseeable; that plaintiff had asked for a manlift for this task and was comparatively negligent, and plaintiff"s employer was also comparatively negligent; and that despite its own inspections and failure to discover the defect, it was obvious and "patent" such that the statute of limitations had expired. Jury out approximately three hours after a five-week trial.

Injury: Dr. Pottorf testified that plaintiff suffered a comminuted fracture dislocation of the right talus, a nondisplaced fracture of the right navicular, a displaced fracture of calcaneal sustentaculum tali of the right foot, and a comminuted fracture of the left calcaneus with compression component; notwithstanding open reduction and external fixation, plaintiff"s right foot fractures progressed to nonunion of the talonavicular joint with degenerative changes of the calcaneocuboid joint; that following manipulation and casting, plaintiff"s left foot fractures progressed to malalignment, degenerative arthritis and ankylosis; that on January 24, 1995, plaintiff underwent reoperation and triple arthrodesis on his right foot, and in October of 1995, a similar procedure was performed on his left foot; that at the time of trial, plaintiff could walk on his fused ankles about two blocks with a cane; and that he would not be able to return to work. Plaintiff attorney reports that according to form interrogatory responses, there was insurance coverage of $2 million as to Shapell Industries and $1 million as to Devine Lighting. SPECIALS: Medical to date stipulated to be in excess of $90,000. Dr. Ben- Zion testified that plaintiff"s past wage loss was $112,000, and his future loss of earning capacity was $96,000 to $157,000, depending on whether he would have worked to age 62 or 65. Dr. Nye testified that plaintiff"s lost earnings should be discounted because most people his age work less than plaintiff. Dr. Graham testified that notwithstanding plaintiff"s ankle injuries, prior injuries, vision problems and limited education, he should return to sedentary work. Plaintiff earned $10 per hour for a 40-hour week. Shapell purchased for $30,000, an assignment of a lien of about $150,000 from plaintiff"s employer"s workers" compensation carrier, National American Insurance Company.

Result: Settlement Talks: Demand $700,000. Offer $250,000 plus lien by Shapell, and offer $35,000 by Devine. Verdict: DEFENSE VERDICT as to Devine Lighting. PLAINTIFF VERDICT $387,000 (economic damages). PLAINTIFF VERDICT $800,000 (noneconomic damages) reduced pursuant to Prop. 51 to $720,000. The jury found that Shapell was 90% at fault and plaintiff"s employer was 10% at fault; and that the statute of limitations had not expired. Plaintiff"s pretrial settlement for $50,000 with Marina Seagate Homeowners" Association was found to be in good faith. In post-trial motions, plaintiff alleged that Shapell was only entitled to offset $18,000 of the workers" compensation lien it purchased, and was not entitled to offset any of the pretrial settlement with the homeowners" association. Motion for new trial, JNOV, and to vacate the judgment was made by defendant--taken off the calendar due to settlement discussions, with expectations of settlement in the near future. 10-2 (noneconomic damages)

February 20,1997

Trial Information:

Judge: Ken M. Kawaichi

Trial Length: 5 weeks

Trial Deliberations: 3 hours

Writer S Domer

Consumer Protection-DTPAContracts-Breach of WarrantyProducts Liability-Breach of Warranty

Type: Verdict-Plaintiff

Amount: $691,628

State: Texas

Venue: El Paso County

Court: El Paso County Court at Law No. 5, TX

Case Type:
- *Consumer Protection* - DTPA
- *Contracts* - Breach of Warranty
- *Products Liability* - Breach of Warranty

Case Name: Oralia B. Franco, Trustee for the Bankruptcy Estate of Scott Nichols and Colleen Nichols, both individually and d/b/a Scott Nichols' Centre Court vs. Burco, Inc., H. F. Burkstaller and W(Bob) Cox., No.

Date: May 11, 1998

Plaintiff(s):
- Scott Nichols and Colleen Nichols, both individually (Female)
- Scott Nichols and Colleen Nichols, d/b/a Scott Nichols' Centre Court (Female)
- Oralia B. Franco, Trustee for the Bankruptcy Estate of Scott Nichols and Colleen Nichols (Female)

Plaintiff Attorney(s):
- Steven C. James; Steve C. James & Assoc.; El Paso TX for Oralia B. Franco, Trustee for the Bankruptcy Estate of Scott Nichols and Colleen Nichols
- Melissa A. Dorman; Steve C. James & Assoc.; El Paso TX for Oralia B. Franco, Trustee for the Bankruptcy Estate of Scott Nichols and Colleen Nichols

Plaintiff Expert (s):
- Kevin Smith; Construction; El Paso, TX called by:

Defendant(s):
- Burco, Inc., H. F. Burkstaller and W(Bob) Cox.

Defense Attorney(s):
- William B. Hardie Jr.; Hardie & Baxter; El Paso, TX for Burco, Inc., H. F. Burkstaller and W(Bob) Cox.

Injury: Scott Nichols, in his mid 30s, had been a tennis professional for more than 13 years when he decided to open his own tennis court facility in El Paso. He wanted to build a clay or artificial clay court facility because there were no clay facilities in town and the market was favorable for such a facility. He was allegedly approached by Bob Cox about a patented artificial clay court surface called AquaGran. The surface was supposed to offer superior playability to regular clay courts with less maintenance. Mr. Nichols claimed he was told the courts would be first class and people could be expected to pay a premium to play on them. He and his wife, Colleen, invested approximately $500,000 in the courts, a clubhouse and related amenities. Tennis professionals from several of El Paso's tennis and country clubs testified that the courts were unplayable. Plaintiff alleged many people played once of the AquaGran courts and never came back. Plaintiff claimed the Defendants would not satisfactorily repair the courts and refused to replace them. The Nichols' club was forced to close shortly after opening and Mr. and Mrs. Nichols were forced into bankruptcy. The Defendant claimed the Nichols' business was not viable and would have failed regardless of the tennis courts.

Result: The Jury found the Defendants jointly and severally liable. Awarded: $498,048.00 Actual damages. $99,000.00 Additional. $40,000.00 Attorneys fees. $637,048.00 + 54,580.60 Pre-judgment interest. $691,628.60 Total.

Trial Information:

Judge: Herb Cooper

Trial Length: 0

Writer

Tennis player hit head in slip on recently resurfaced court at club

Type: Settlement

Amount: $575,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Malibu, CA

Injury Type(s):
- *head* - fracture, skull
- *brain* - subdural hematoma; traumatic brain injury; epidural/extradural hematoma
- *other* - craniotomy; unconsciousness
- *mental/psychological* - cognition, impairment; memory, impairment

Case Type:
- *Premises Liability* - Health Club; Trip and Fall; Dangerous Condition
- *Slips, Trips & Falls* - Trip and Fall

Case Name: John Doe v. Roe Tennis Club, Roe Contractor and Roe Material Supplier, No.

Date: January 28, 2009

Plaintiff(s):
- John Doe (Male, 62 Years)

Plaintiff Attorney(s):
- Marilyn H. Nelson; Zukor and Nelson; Beverly Hills CA for John Doe
- Abram Charles Zukor; Zukor and Nelson; Beverly Hills CA for John Doe

Defendant(s):
- Roe Contractor
- Roe Tennis Club
- Roe Material Supplier

Defense Attorney(s):
- Mark Vranjes; Grimm, Vranjes, McCormick & Graham, LLP; San Diego, CA for Roe Contractor
- Jeffrey H. Baraban; Baraban & Teske; Pasadena, CA for Roe Tennis Club
- Roy D. Goldstein; Skebba & Isaac; Los Angeles, CA for Roe Material Supplier

Facts:

On Sep. 18, 2005, the plaintiff, a 62-year-old investor, was playing tennis doubles at a Los Angeles tennis club that had resurfaced its court about two months prior. He tripped and fell when he charged the net, pivoted, and his foot became stuck.

The plaintiff sued the tennis club and the resurfacing contractor and material supplier for premises liability based on a dangerous condition. He alleged that the courts became sticky when resurfaced, and that a number of complaints had been lodged and at least two similar accidents had occurred before his accident.

Plaintiff's counsel argued that the coefficient of friction for the tennis court was dangerously slow.

The defense argued that there was no dangerous condition, and that the defendants had no notice of any prior accidents or complaints regarding the playing surface.

Injury:

The plaintiff fell and hit his head, causing him to lose consciousness and bleed from the ear. When he regained consciousness, he vomited and was speaking gibberish. He alleged a fractured skull with subdural and epidural hematomas, and a mild-to-moderate traumatic brain injury, causing cognitive deficits, problems with short-term memory, confusion, poor judgment, mood swings, lack of inhibition and head pain.

He was taken by ambulance to a hospital, where he underwent a craniotomy and was admitted for several weeks. He subsequently underwent vocational and physical rehabilitation. He claimed that he continues to experience cognitive problems.

The plaintiff sought an unspecified amount for medical expenses and pain and suffering.

The defense disputed the nature and extent of the plaintiff's injury claims.

Result:

The plaintiff settled with the contractor and material supplier for $400,000.

Trial with the tennis club was scheduled for February 2009, but the tennis club settled for $175,000 before trial.

Trial Information:

Judge: Cesar C. Sarmiento

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 Joseph Falso

VerdictSearch

Slips, Trips & Falls-Falldown

Type: Verdict-Plaintiff

Amount: $525,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Case Type:
- *Slips, Trips & Falls* - Falldown

Case Name: Sheldon and Pearl Siegel v. Paerdegat Racquet Club, No. 15609/92

Date: April 29, 1998

Plaintiff(s):
- Sheldon and Pearl Siegel (Male, 59 Years)

Plaintiff Attorney(s):
- Robert Middleman; ; Manhattan NY for Sheldon and Pearl Siegel

Plaintiff Expert (s):
- Ali E. Guy; Physical Medicine; New York, NY called by:

Defendant(s):
- Paerdegat Racquet Club

Defense Attorney(s):
- Morton H. Feder; Feder, Connick & Goldstein, P.C.; Mineola, NY for Paerdegat Racquet Club

Facts: Pltf., a 59-year-old diamond setter at the time, claimed that on 3/4/92 he was injured on a tennis court at Deft.'s club in Brooklyn. Pltf. claimed that while he was playing tennis, his foot became entangled in a torn, frayed dividing net that separated the courts, causing him to fall. Pltf. claimed that this constituted a trip hazard. Deft. argued that Pltf. was comparatively negligent. Note: A prior action resulted in a dismissal on 7/25/95, based on assumption of the risk, which was upheld by the Appellate Division (see, Siegel v. City of New York, et al, 230 A.D.2d 782, 646 N.Y.S.2d 380 [2nd Dept. 1996]). In 1997, the Court of Appeals overturned the dismissal (see, Siegel v. City of New York, et al, 90 N.Y.2d 471, 662 N.Y.S.2d 421 [Ct.App. 1997]), and this trial ensued. The Court of Appeals found that the hazard involved was not an inherent risk of the game.

Offer: $75,000; demand: $150,000.

Injury: Fractured right (dominant) wrist, treated with casting. Pltf. continued to receive physical therapy treatment at the time of trial. He claimed that he was unable to return to work after the accident because he cannot hold the jewelry clamp in his hand. Pltf. testified that he has a permanent deformity in the wrist. Pltf. called Deft.'s expert, Dr. Grable, who testified that Pltf.'s injury will most likely get worse over time. He conceded that it would be difficult for Pltf. to use his left hand for the type of work that he does, but claimed that Pltf. could be trained for other employment.

Result: $525,000. Breakdown: $32,000 for past pain and suffering; $120,000 for future pain and suffering; $120,000 for past lost earnings; $253,000 for future lost earnings.

Trial Information:

Judge: Joseph J. Dowd

Trial Length: 1

Trial Deliberations: 1

Writer

Neighbor's excavation damaged property, cut value

Type: Verdict-Plaintiff

Amount: $450,100

Actual Award: $450,100

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Santa Monica, CA

Case Type:
- *Real Property* - Trespass
- *Premises Liability* - Tree

Case Name: Yorkin v. Beverly Hills Construction, No. SC067115

Date: January 03, 2003

Plaintiff(s):
- Alan Yorkin (Male, 68 Years)

Plaintiff Attorney(s):
- Tyler D. Offenhauser; Bremer &Whyte; Newport Beach CA for Alan Yorkin
- Keith G. Bremer; Bremer & Whyte; Newport Beach CA for Alan Yorkin

Plaintiff Expert (s):
- Glenn Asakawa; Landscaping; San Diego, CA called by: Tyler D. Offenhauser, Keith G. Bremer
- Robert Wallace; Arboriculture; Canoga Park, CA called by: Tyler D. Offenhauser, Keith G. Bremer
- Michael R. Brown; Construction Defects; Santee, CA called by: Tyler D. Offenhauser, Keith G. Bremer
- Stavros Chrsovergis; Geotechnical Engineering; Los Angeles, CA called by: Tyler D. Offenhauser, Keith G. Bremer

Defendant(s):

- Cospec Inc.
- Lisa Farhad
- Del Fern LLC
- Larian Farhad
- Beverly Hills Construction
- Beverly Hills Development Corporation
- Beverly Hills Management Corporation Inc.

Defense Attorney(s):

- Irwin B. Feinberg; Feinberg, Mindel & Klien; Los Angeles, CA for Beverly Hills Construction
- Samuel Wyman; Wolf & Wyman; Irvine, CA for Beverly Hills Construction
- Eoin L. Kreditor; Maher & Maher; Orange, CA for Beverly Hills Construction
- Stanley R. Escalante; Wolfe & Wyman; Irvine, CA for Beverly Hills Construction

Defendant Expert(s):

- Chris Parrish; Geology; Los Angeles, CA called by: for Irwin B. Feinberg, Samuel Wyman, Eoin L. Kreditor, Stanley R. Escalante
- Barrie Coate; Arboriculture; Los Angeles, CA called by: for , Irwin B. Feinberg, Samuel Wyman, Eoin L. Kreditor, Stanley R. Escalante
- Richard W. Rauseo; Building Codes; San Dimas, CA called by: for Irwin B. Feinberg, Samuel Wyman, Eoin L. Kreditor, Stanley R. Escalante

Facts:

Televison writer/producer Bud Yorkin lived in his house for 22 years. His neighbors sold their house. The buyers tore it down and built a home that is currently being marketed at $21.5 million. While constructing the 21,000 square foot residence, defendant Beverly Hills Construction (BCH) excavated more than 40-feet next to Yorkin's property.

Yorkin sued for resulting damage to his land.

BCH denied causing any damage except for the cutting of some tree roots.

Injury:

Yorkin claimed damage to his trees, tennis court and masonry flat work, along with diminution in value of the property.as a whole ($655,290 cost of repair and $50,100 Stearman costs).

Result:

The jury returned a verdict of $400,000 plus $50,100 in Stearman costs. (See,Stearman v. Centex Homes, 78 Cal.App.4th 611 (2000) holding that strict liability damage constitutes property damage and, therefore, is not precluded by the economic loss rule.)

Alan Yorkin

$400,000 Commercial: Cost Of Repair

$50,100 Commercial: Diminution In Value

Trial Information:

Judge:	Cesar C. Sarmiento
Demand:	The plaintiff made a CCP 998 demand to each defendant for $251,000. Before trial, the plaintiff made a joint demand of $400,000.
Offer:	Defendant Beverly Hills Construction Mgmt. made a CCP 998 offer for $25,001. Defendants made a joint offer of $176,000.
Trial Length:	3 weeks
Trial Deliberations:	1.5 days
Jury Vote:	11-1
Post Trial:	Case settled after verdict for $550,000.
Writer	Sidney Bernstein

SUV driver: Golf cart operator contributed to accident

Type: Verdict-Plaintiff

Amount: $450,000

Actual Award: $315,000

State: South Carolina

Venue: Georgetown County

Court: Georgetown County, Court of Common Pleas, SC

Injury Type(s):
- *leg* - fracture, leg
- *brain* - traumatic brain injury
- *other* - physical therapy; loss of consortium
- *surgeries/treatment* - open reduction; internal fixation

Case Type:
- *Motor Vehicle* - Rollover; Left Turn; Multiple Vehicle

Case Name: Eric S. Solheim and Vesna Solheim v. Robert Norris Nelson and Lowell Robert Nelson, No. 2013CP2200315

Date: February 25, 2016

Plaintiff(s):
- Vesna Solheim (Female)
- Eric S. Solheim (Male, 48 Years)

Plaintiff Attorney(s):
- William E. Hopkins Jr.; Hopkins Law Firm, LLC; Pawley's Island SC for Eric S. Solheim, Vesna Solheim
- J. Clay Hopkins; Hopkins Law Firm, LLC; Pawley's Island SC for Eric S. Solheim, Vesna Solheim

Plaintiff Expert (s):
- Leonard Goldschmidt Psy.D.; Neuropsychology; Myrtle Beach, SC called by: William E. Hopkins Jr., J. Clay Hopkins

Defendant(s):
- Lowell Robert Nelson
- Robert Norris Nelson

Defense Attorney(s):

- David S. Cobb; Turner Padget Graham & Laney, P.A.; Charleston, SC for Robert Norris Nelson, Lowell Robert Nelson

Facts:

In April 2009, plaintiff Eric S. Solheim, 48, was operating a golf cart with his 10-year-old daughter as a passenger. Solheim was operating the cart in the private gated community of DeBordieu in Georgetown. He and his daughter were traveling to the tennis court. Robert Norris Nelson, who was operating a sport utility vehicle behind the golf cart, attempted to pass the golf cart on the left just as Solheim attempted to make a left turn. The resulting impact caused Solheim and his daughter to be ejected from the golf cart, which then rolled over twice. Solheim claimed a head injury and a leg fracture. His daughter claimed only scratches and did not require medical attention.

Solheim filed suit against Robert Nelson, alleging that Nelson was negligent in the operation of a motor vehicle. Solheim also sued Robert's father, Lowell Robert Nelson, who owned the SUV Robert was driving.

Solheim alleged that Robert Nelson was driving too fast for conditions. He also claimed Nelson failed to yield the right-of-way and failed to keep a proper lookout. Solheim argued that he was attempting to turn within 200' of an intersection and that Robert Nelson's actions violated a statute prohibiting passing within 200' of an oncoming car.

The defense contended that Solheim did not signal his intention to turn and veered toward the right, which gave the appearance that Solheim was allowing Robert Nelson to pass. Solheim denied veering to the right.

Testimony from an eyewitness favored the defense, although the witness did acknowledge that the accident occurred within 200' of the intersection.

Injury:

Solheim claimed a leg fracture, which required open reduction with internal fixation, as well as a traumatic brain injury. He required rehabilitation and therapy.

Solheim claimed ongoing residuals as a result of his injuries. He sought $203,000 in medicals, as well as damages for pain and suffering. His wife, Vesna Solheim, sought damages for loss of consortium.

The injuries were not contested.

Result:

The jury attributed 70-percent liability to Robert Nelson and 30-percent liability to Eric Solheim. The jury awarded $450,000 to Mr. Solheim, which was reduced to $315,000 to reflect the comparative negligence finding. The jury awarded no damages to Vesna Solheim.

Eric S. Solheim

$450,000 Personal Injury: compensatory damages

Trial Information:

Judge:	Steven H. John
Trial Length:	3 days
Trial Deliberations:	4 hours
Jury Composition:	12 jurors
Post Trial:	There was no appeal. The judgment was paid and this case is closed.
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to a request for comment.
Writer	Margi Banner

VerdictSearch

Negligence-Worker/Workplace Negligence-

Type: Verdict-Plaintiff

Amount: $450,000

State: Texas

Venue: Galveston County

Court: Galveston County District Court, 10th, TX

Case Type:
- *Negligence*
- *Worker/Workplace Negligence*

Case Name: Charles Thacker vs. Holliday Builders, Inc. and The Victorian Owners Assoc. vs. K&D Contractors, No.

Date: September 11, 2000

Plaintiff(s):
- Charles Thacker (Male)

Plaintiff Attorney(s):
- Jack Washburn; Murphrey & Washburn; Houston TX for Charles Thacker

Plaintiff Expert (s):
- Neill B. Longley M.D.; diagnostic radiology; Houston, TX called by:
- Haring J. Nauta M.D.; neurosurgery; Galveston, TX called by:

Defendant(s):
- K&D Contractors

Defense Attorney(s):
- Rick Gibson; Phillips & Akers, A P.C.; Houston, TX for K&D Contractors
- Cathy McAllister; Bush & O'Brien, P.C. for K&D Contractors

Defendant Expert(s):
- Bob Mcpherson; Management Consultants; Needville, TX called by: for
- Raymond Rapp; architecture; Galveston, TX called by: for

Insurers:
- Holliday's carrier: Acceptance
- Victorian's carrier: USF Insurance Company

Injury:

Charles Thacker was a construction worker for a concrete subcontractor doing renovation work. He was operating a back hoe equipped with a hoe ram on October 16, 1996 helping in the demolition of a portion of a tennis court to make room for footings. The hoe ram severed a post tension cable that was under the tennis court. When the tension on the cable was released, it catapulted a small piece - tennis ball-size - of concrete. The chunk of concrete hit Mr. Thacker in his safety glasses causing serious injuries. Plaintiff alleged negligence for failure to warn about the presence of tension cables in the concrete before start of the demolition. Holliday Builders, the general contractor, contended The Victorian Owners Assoc. did not tell it that there were tension cables. Bob McPherson, owners' representative for The Victorian Owners Assoc., testified he told Larry DiBartola, Holliday Builders' project supervisor, a week before the accident about the tension cables. DiBartola denied the conversation. There were some specifications in the project manual which prohibited certain types of tools in certain concrete demolition work. Hoe rams were one of the tools.

It was disputed as to whether or not the specs applied to tennis courts; Holliday Builders asserted they did not, The Victorian Owners Association contended they did apply. The president of Holliday Builders deposition testimony in the summer of 1999 was that the specs applied, i.e. the hoe ram should not have been used. Plaintiff contended he changed his story 180· at trial; said he had not been prepared and was caught off-guard, had since reviewed and researched and determined that the specs did not apply to tennis courts. Defendants also argued that Thacker, who was not licensed and was inexperienced with operating a hoe ram, was at fault for his injuries in that he admittedly saw something in the concrete, didn't know what it was, and failed to investigate. Holliday Builders third-partied K&D Contractors, a WC non-subscriber and Plaintiff's employer, in for contribution.

Multiple skull fractures including fractures of the orbital socket area around his left eye. He underwent nine or 10 hours of reconstructive surgery which included the permanent insertion of pins and plates. He had approximately $50,000 in medical. He did not assert a claim for lost wages even though he was off work for three months.

Result:

Jury found Plaintiff not negligent; found Holliday Builders 90% and The Victorian 10% responsible. On Holliday's separate action against K&D Contractors, found Holliday 70% and K&D 30% at fault. Awarded: $200,000 past actual damages. $250,000 future actual damages. $450,000 Total Award. 12 - 0 (3 day trial) Plaintiff counsel anticipates the total award, with 3 1/2 years of prejudgment interest, will be in excess of $600,000. Pre-trial demand: $300,000 (day of trial) Asked of jury: $250,000 past actuals; $350,000 future actuals Defendant's suggestion to jury: $ 50,000 past damages; $100,000 to $150,000 future Holliday's pre-trial offer: $ 50,000 The Victorian's pre-trial offer: $ 25,000 Holliday's carrier: Acceptance The Victorian's carrier: USF Insurance Company

Trial Information:

Judge: David E. Garner

Trial Length: 3

Writer

Tennis player tripped and fell on recently resurfaced court

Type: Settlement

Amount: $400,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Malibu, CA

Injury Type(s):
- *head* - fracture, skull
- *brain* - subdural hematoma; traumatic brain injury; epidural/extradural hematoma
- *other* - craniotomy; physical therapy
- *mental/psychological* - cognition, impairment; memory, impairment

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

Case Name: John Doe v. Roe Tennis Club, Roe Contractor and Roe Material Supplier, No.

Date: December 10, 2008

Plaintiff(s):
- John Doe (Male, 62 Years)

Plaintiff Attorney(s):
- Abram Charles Zukor; Zukor and Nelson; Beverly Hills CA for John Doe

Defendant(s):
- Roe Contractor
- Roe Tennis Club
- Roe Material Supplier

Defense Attorney(s):
- Mark Vranjes; Grimm, Vranjes, McCormick & Graham LLP; San Diego, CA for Roe Contractor
- Jeffrey H. Baraban; Baraban & Teske; Pasadena, CA for Roe Tennis Club
- Roy D. Goldstein; Skebba & Isaac; Los Angeles, CA for Roe Material Supplier

Facts:

On Sep. 18, 2005, the plaintiff, a 62-year-old investor, was playing tennis doubles at a Los Angeles tennis club that had resurfaced its court about two months prior. He tripped and fell when he charged the net, pivoted, and his foot became stuck.

The plaintiff sued the tennis club and the resurfacing contractor and material supplier for premises liability based on a dangerous condition. He alleged that the courts became sticky when resurfaced, and that a number of complaints had been lodged and at least two similar accidents had occurred before his accident.

Plaintiff's counsel argued that the coefficient of friction for the tennis court was dangerously slow.

The defense argued that there was no dangerous condition, and that the defendants had no notice of any prior accidents or complaints regarding the playing surface.

Injury:

The plaintiff fell and hit his head, causing him to lose consciousness and bleed from the ear. When he regained consciousness, he vomited and was speaking gibberish. He alleged a fractured skull with subdural and epidural hematomas, and a mild-to-moderate traumatic brain injury, causing cognitive deficits, problems with short-term memory, confusion, poor judgment, mood swings, lack of inhibition and head pain.

He was taken by ambulance to a hospital, where he underwent a craniotomy and was admitted for several weeks. He subsequently underwent vocational and physical rehabilitation. He claimed that he continues to experience cognitive problems.

The plaintiff sought an unspecified amount for medical expenses and pain and suffering.

The defense disputed the nature and extent of the plaintiff's injury claims.

Result:

The plaintiff settled with the contractor and material supplier for $400,000.

Trial with the tennis club is scheduled for February 2009.

Trial Information:

Judge: Cesar C. Sarmiento

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 Joseph Falso

Student tripped while playing tennis in gym class

Type: Verdict-Plaintiff

Amount: $366,666

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):
- *knee* - anterior cruciate ligament, tear

Case Type:
- *Government* - Municipalities
- *Premises Liability* - Notice; School; Trip and Fall; Dangerous Condition

Case Name: Bernadette Appellaniz v. City University of New York and the City of New York, No. 104962/97

Date: May 05, 2003

Plaintiff(s):
- Bernadette Appellaniz (Female, 24 Years)

Plaintiff Attorney(s):
- Barry R. Abbott; Hall, Dickler, Kent, Goldstein & Wood, L.L.P.; White Plains NY for Bernadette Appellaniz

Plaintiff Expert (s):
- Ramesh Gidumal M.D.; Orthopedic Surgery; New York, NY called by: Barry R. Abbott

Defendant(s):
- City of New York
- City University of New York

Defense Attorney(s):
- Edgar Matos; Asst. Corp. Counsel, Michael A. Cardozo Corporation Counsel; New York, NY for City University of New York, City of New York

Facts: Plaintiff Bernadette Appellaniz, 24, a student at Borough of Manhattan (N.Y.) Community College, claimed that she tripped and fell during a tennis class in the college's gymnasium. The incident occurred on March 18, 1996.

Appellaniz sued City University of New York, which operates the college, and the city of New York. She claimed that mats had been placed on the gym floor to simulate a tennis court, and that her foot lodged between two mats, causing her to twist her knee. She contended that the mats were in a deteriorated condition, and that they were not lying flat on the floor. She added that the defendants had notice of the dangerous condition, and that their instructors had a duty to repair the hazard or warn of it, but that they did neither.

The defendants argued that Appellaniz had played on the tennis court before, and that she was aware of the defect. They contended that she assumed the risk of injury by opting to participate in the tennis match, and that she was contributorily negligent for not being aware of her surroundings.

Injury: Appellaniz sustained a complete tear of her left-knee anterior-cruciate ligament, and an osteochondral injury to the posterior lip of her left-knee lateral tibial plateau, with joint effusion. She also claimed to have sustained a sprain of her left-knee posterior-cruciate ligament.

Appellaniz contended that her knee is unstable and that it buckles. She underwent physical therapy. Her expert orthopedist testified that surgery would carry the risk of complications, and that Appellaniz would likely develop arthritic changes with or without surgery. He also opined that Appellaniz may need knee-replacement surgery.

The defendants contended that Appellaniz's refusal to undergo surgery constituted a failure to mitigate damages. They argued that a reasonable person would have undergone surgery, and that the recommended surgery is routine and safe.

Result: The jury awarded Appellaniz $366,666.

Bernadette Appellaniz

$266,666 Personal Injury: Past Pain And Suffering

$100,000 Personal Injury: Future Pain And Suffering

Trial Information:

Judge: Norman Siegel

Trial Length: 3 days

Trial Deliberations: 2.5 hours

Jury Vote: 5-1

Jury Composition: 3 male, 3 female

Post Trial: Following the damages verdict, the parties settled for $267,000.

Writer Sue Huners

Resort denied any notice of defect along pathway

Type: Verdict-Plaintiff

Amount: $130,000

State: Virginia

Venue: Federal

Court: U.S. District Court, Eastern District, VA

Injury Type(s):
- *leg*
- *knee*
- *ankle* - fracture, ankle
- *foot/heel* - foot

Case Type:
- *Premises Liability* - Sidewalk; Dangerous Condition; Negligent Repair and/or Maintenance; Amusement Park/Place of Entertainment
- *Slips, Trips & Falls* - Trip and Fall

Case Name: Christine Vaughan Estep v. Xanterra Kingsmill, LLC a Delaware limited liability company, No. 4:16-cv-89-MSD-LRL

Date: March 27, 2017

Plaintiff(s):
- Christine Vaughan Estep (Female, 40 Years)

Plaintiff Attorney(s):
- Mathew W. Smith; Otey Smith & Quarles; Williamsburg VA for Christine Vaughan Estep

Defendant(s):
- Xanterra Kingsmill LLC

Defense Attorney(s):
- Robert T. Hicks; Bean Kinney & Korman PC; Arlington, VA for Xanterra Kingsmill LLC
- Stephen D. Caruso; Bean Kinney & Korman PC; Arlington, VA for Xanterra Kingsmill LLC

Facts:

On Sep. 12, 2013, plaintiff Christine Vaughan Estep, 40, was walking along a path at the Kingsmill Resort in Williamsburg. She alleged that she tripped and fell on a patch of grass. Estep claimed right leg and ankle injuries as a result of the fall.

Estep sued Xanterra Kingsmill, LLC a Delaware limited liability company, for negligence. She alleged that Kingsmill failed to properly maintain its premises in a reasonably safe condition.

Estep alleged that she was participating in a tennis leagues program at the resort. She claimed she was walking along an asphalt path at 9:45 a.m., heading toward the tennis courts, when she tripped on a grassy patch that extended about 14 inches into the paved asphalt path. Estep claimed the grassy patch was a dangerous tripping/slipping condition because there was a hole under the patch that was about 18 inches deep and hidden by long grass.

Kingsmill denied negligence. Kingsmill argued that many people, including Estep, have safely used the paved path on prior occasions and Kingsmill had not received any complaints about the grassy area extending into the paved path. Kingsmill also claimed it had no notice of a hole under the grassy patch and it was not aware of anyone else being injured at the subject area. Kingsmill further argued that the grassy patch was open and obvious and Estep could have walked around it.

Injury:

Christine Estep was taken by ambulance to a local emergency room after the accident. She was diagnosed with fractures of the right ankle and knee, for which she underwent surgery.

Estep claimed residual pain and limitations performing activities of daily living. She also claimed limitations with playing tennis and walking. Estep sought to recover damages for past and future medicals and past and future pain and suffering.

The defense did not actively dispute Estep's injuries, but denied Kingsmill was responsible for the injuries.

Result:

The jury found that Xanterra Kingsmill, LLC was negligent and determined that Christine Estep's damages totaled $130,000.

Trial Information:

Judge: Mark S. Davis

Trial Length: 3 days

Trial Deliberations: 2 hours

Editor's Comment: This report is based on information that was provided by plaintiff's counsel and information gleaned from court documents.

Writer Gary Raynaldo

Animals - Tennis Court - Woman Knocked Down by Dog

Type: Settlement

Amount: $121,000

State: Virginia

Venue: Loudon County

Court: Loudoun County, Circuit Court, VA

Injury Type(s):
- *hip* - fracture, hip

Case Type:
- *Animals* - Dog Bite

Case Name: Daphne Long v. Brenda and Doug Smith, No. CL00049851-00

Date: January 13, 2010

Plaintiff(s):
- Daphne Long (Female, 62 Years)

Plaintiff Attorney(s):
- Robert M. Somer; ; Fairfax VA for Daphne Long

Plaintiff Expert (s):
- Matthew Gavin M.D.; Orthopedics; Leesburg, VA called by:

Defendant(s):
- Brenda and Doug Smith

Defense Attorney(s):
- Bruce F. Robertson; Falls Church, VA for Brenda and Doug Smith

Facts:

A woman playing tennis was knocked to the ground by a large dog and fractured her hip. She sued the dog's owners, who agreed to settle this case for $121,000.

Plaintiff Daphne Long was invited by Defendants Doug and Brenda Smith to play tennis at the community tennis courts in defendants' subdivision. Defendants brought along their son and a large English bulldog named Dozer. Defendants initially had Dozer on a leash while they played tennis prior to plaintiff's arrival. Plaintiff was running late. Defendants had begun to pack up their belongings when plaintiff arrived. Defendant Doug Smith played tennis with plaintiff while Defendant Brenda Smith, her son and an unleashed Dozer played around on an adjacent court. Plaintiff ran toward the net to hit a ball as Dozer was also running toward the ball. They collided and plaintiff was knocked to the ground. Plaintiff suffered a fractured hip and was transported by paramedics to a local hospital.

Plaintiff alleged that defendants were negligent in failing to keep their dog on a leash. Plaintiff alleged severe pain and suffering due to the fractured hip. Defendants agreed to this settlement just prior to trial.

Plaintiff was a female in her early 60's who was employed as a government administrator.

Injury:

Fractured hip requiring orthopedic surgery and resulting in severe pain and suffering. Plaintiff claimed approximately $30,000 in past medical specials and $20,000 in past wage loss.

Result:

$121,000

Trial Information:

Judge:

James H. Chamblin

Writer

Tennis player tripped on court's crack, fractured wrist

Type: Verdict-Plaintiff

Amount: $100,000

Actual Award: $75,000

State: New York

Venue: Bronx County

Court: Bronx Supreme, NY

Injury Type(s):
- *arm* - fracture, arm; fracture, radius
- *other* - physical therapy
- *wrist* - fracture, wrist

Case Type:
- *Government* - Municipalities; Parks and Recreation
- *Premises Liability* - Trip and Fall; Athletic Field; Stairs or Stairway; Negligent Repair and/or Maintenance
- *Dangerous Condition of Public Property*

Case Name: Shirley Taylor-Dunn & Rodney Dunn v. City N.Y. & N.Y.C.D.O.P. & R., No. 22994/03

Date: October 18, 2007

Plaintiff(s):
- Rodney Dunn (Male)
- Shirley Taylor-Dunn (Female, 48 Years)

Plaintiff Attorney(s):
- Patrick J. Mullaney; Burns & Harris; New York NY for Shirley Taylor-Dunn, Rodney Dunn

Plaintiff Expert (s):
- Jerry Lubliner M.D.; Orthopedics; New York, NY called by: Patrick J. Mullaney

Defendant(s):
- City of New York
- New York City Department of Parks and Recreation

Defense Attorney(s):

- Joshua Ruthizer; Assistant Corporation Counsel, Michael A. Cardozo, Corporation Counsel; Bronx, NY for City of New York, New York City Department of Parks and Recreation

Facts:

On June 1, 2002, plaintiff Shirley Taylor-Dunn, 48, a social worker, tripped while playing tennis on court No. 7 of Crotona Park, in the Bronx. She twisted a foot, fell to the ground, and sustained an injury of one wrist.

Taylor-Dunn sued the park's owner, the city of New York, and the park's operator, the New York City Department of Parks and Recreation. She alleged that city was negligent in its maintenance of the tennis court and that its negligence created a dangerous condition.

Although she frequently played tennis on the 20 courts at Crotona Park, Taylor-Dunn claimed that she had never played on court No. 7 before. She contended that she did not see the crack, which she estimated to be about 2 feet long and 2 inches deep, until after she tripped over it.

Victor Torres, a tennis player who also frequented the Crotona Park courts, testified on behalf of the plaintiff. He claimed that he had written a letter to the Parks and Recreation Department complaining about the poor condition of the tennis courts prior to Taylor-Dunn's accident. He testified that he was aware of the crack on court No. 7 and described it as about 8 feet long and 3 inches deep. He claimed that it meandered into the center of the court.

The defendants argued that Taylor-Dunn assumed the risk of injury when she chose to play tennis on the court. Further, they contended that Taylor-Dunn had played tennis at the park before and should have been aware of the condition of the court. They also claimed that the defect was open and obvious.

Injury:

On the Monday after the accident, Taylor-Dunn sought treatment at Montefiore Medical Center, in the Bronx. X-rays confirmed that she had sustained a fracture of the distal region of her left, nondominant arm's radius, which forms an upper portion of the wrist. For the next six weeks, she wore a cast from her knuckles to above her elbow. She also sought treatment on five occasions from Dr. Arnold Wilson, an orthopedist. After her cast was removed, she went to physical therapy for three visits and then continued at-home therapy for several months.

Taylor-Dunn missed only two or three days of work as a result of the fracture. However, she contended that the injury interfered with her work because her job required a lot of typing, which caused her wrist to tighten.

An avid tennis player, Taylor-Dunn claimed that the injury has also affected her game. However, she still continues to play on a regular basis.

Taylor-Dunn sought recovery of damages for her past and future pain and suffering. Her husband initially presented a derivative claim, but his claim was later discontinued.

Result: The jury found the defendants 75-percent responsible for the accident and Taylor-Dunn 25 -percent comparatively negligent. The jury awarded $100,000 for past pain and suffering and nothing for future pain and suffering. Taylor-Dunn's total award was reduced to $75,000 because of her comparative negligence.

Trial Information:

Judge: Edgar Walker

Demand: $100,000

Offer: None

Trial Length: 4 days

Trial Deliberations: 3 hours

Jury Composition: 2 male, 4 female

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

Writer Julie Bratvold

Home's builder delivered shoddy work, purchaser claimed

Type: Verdict-Plaintiff

Amount: $98,000

State: New York

Venue: Suffolk County

Court: Suffolk Supreme, NY

Case Type:
- *Real Estate Transactions*
- *Contracts* - Breach of Contract

Case Name: Simon Barkagan M.D. v. Edge of Woods Estates, Inc. and Joseph B. Andreassi, Jr., No. 2748/08

Date: March 16, 2011

Plaintiff(s):
- Simon Barkagan

Plaintiff Attorney(s):
- Alan Sash; McLaughlin & Stern, LLP; New York NY for Simon Barkagan

Plaintiff Expert (s):
- Joseph Wallwork; Engineering; , called by: Alan Sash

Defendant(s):
- Joseph B. Andreassi Jr.
- Edge of Woods Estates Inc.

Defense Attorney(s):
- Anthony Conforti; Anthony T. Conforti; Southampton, NY for Edge of Woods Estates Inc., Joseph B. Andreassi Jr.

Facts:

In January 2004, plaintiff Simon Barkagan entered into a contract to purchase a home that was being constructed by Edge of Woods Estates Inc. The deal closed in March 2004, but Barkagan claimed that many contracted items were incomplete or defective.

Barkagan sued Edge of Woods Estates and one of its owners, Joseph Andreassi Jr. Barkagan alleged that the home's condition constituted a breach of the sale contract.

Barkagan's counsel ultimately discontinued the claim against Andreassi, and the matter proceeded to a trial against Edge of Woods Estates.

Barkagan claimed that the home's basement, pool and tennis court were incomplete and/or defective. He contended that the tennis court's surface was improperly laid and that, as a result, it bubbled. Barkagan's expert engineer agreed that the work was defective in many regards.

Defense counsel contended that the home and its various features were constructed in a workmanlike manner, and Andreassi denied the existence of any defects.

Defense counsel also contended that Barkagan's claims were barred by provisions of the sale contract.

Injury:

Barkagan claimed that his home's basement, pool and tennis court were incomplete and/or defective. He sought recovery of $139,000, which represented the cost to repair the alleged defects. He also sought recovery of interest.

Result:

The jury found that the home was not properly constructed. It determined that Barkagan's damages totaled $98,000.

Simon Barkagan

$1,330 Personal Injury: cost of completion of unfinished work

$96,670 Personal Injury: cost of repair of defective work

Trial Information:

Judge: Thomas F. Whelan

Post Trial: The parties negotiated a settlement. Terms were not disclosed.

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

Writer Jaclyn Stewart

Tennis player and city traded blame for mishap on worn court

Type: Verdict-Plaintiff

Amount: $86,038

Actual Award: $38,756

State: Florida

Venue: Broward County

Court: Broward County Circuit Court, 17th, FL

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

Case Type:
- *Government* - Municipalities; Parks and Recreation
- *Slips, Trips & Falls* - Slip and Fall
- *Affirmative Defenses* - Contributory Negligence
- *Premises Liability* - Negligent Repair and/or Maintenance; Dangerous Condition of Public Property

Case Name: James Haines v. City of Fort Lauderdale, No. CACE15-017522(21)

Date: December 06, 2016

Plaintiff(s):
- James Haines (Male, 54 Years)

Plaintiff Attorney(s):
- Malcolm A. Purow; Steinger, Iscoe & Greene, P.A.; Fort Lauderdale FL for James Haines
- Mina Grace; Steinger, Iscoe & Greene, P.A.; Fort Lauderdale FL for James Haines

Plaintiff Expert (s):
- Erol A. Yoldas M.D.; Orthopedic Surgery; Fort Lauderdale, FL called by: Malcolm A. Purow, Mina Grace
- John Calvanese D.C.; Chiropractic; Lauderhill, FL called by: Malcolm A. Purow, Mina Grace

Defendant(s):

- City of Fort Lauderdale

Defense Attorney(s):

- Robert H. Schwartz; McIntosh Schwartz, PL; Fort Lauderdale, FL for City of Fort Lauderdale

Facts:

On Feb. 2, 2015, plaintiff James Haines, a bartender in his 50s, was preparing to play tennis at Bayview Park, a city-run park in Fort Lauderdale. When his opponent hit the first shot of the game, Haines slipped on a patch of uneven surface that had worn away and exposed some fiberglass material. He claimed a right-shoulder injury.

Haines sued the City of Fort Lauderdale. He alleged that the city was negligent in its maintenance of the tennis courts and failed to provide notice of a dangerous condition.

Haines specifically contended that the condition was created by an agent of the city who power-washed the tennis court but did so excessively, exposing the fiberglass beneath the surface. Emails obtained during discovery established that city employees had received prior notice that the surface was damaged but they had not repaired the condition until after the accident.

Counsel for the city argued that the court was worn but not dangerous, and in any case Haines was an experienced tennis player and should have noticed the surface was in poor condition and avoided that area. As a result, counsel asserted, Haines was comparatively negligent and at least 50 percent responsible for causing the accident.

Haines claimed that the accident occurred at the beginning of the game and while he saw the court was worn, he did not have time to detect the exposed fiberglass.

Injury:

Haines ultimately claimed he sustained a tear of the rotator cuff of his right (non-dominant) shoulder.

After the incident, Haines presented to his treating chiropractor and complained of pain that stemmed from his right arm and shoulder. An MRI showed a significant rotator-cuff tear.

Haines had about two months of chiropractic treatment but was ultimately recommended for a surgical procedure to repair the tear of the ligaments in his right shoulder.

On July 2, 2015, Haines had an arthroscopy for his shoulder. Despite the surgery, he said, he continues to experience chronic pain in his shoulder. He claimed he suffered a permanent injury and that the accident was the sole proximate cause.

Result:

The jury found that the City of Fort Lauderdale was 60 percent liable and that Haines was 40 percent liable. It awarded Haines $86,038.25 and he recovered a post-apportionment award of $38,756.

James Haines

$46,038 Personal Injury: Past Medical Cost

$40,000 Personal Injury: Past Pain And Suffering

Trial Information:

Judge:	Barbara McCarthy
Demand:	$60,000
Offer:	$10,000
Trial Length:	3 days
Trial Deliberations:	4 hours
Jury Vote:	6-0
Jury Composition:	1 male, 5 female
Editor's Comment:	This report is based on information that was provided by plaintiff's and defense counsel.
Writer	Jacqueline Birzon

Premises Liability-School

Type: Verdict-Plaintiff

Amount: $75,000

State: New York

Venue: Nassau County

Court: Nassau Supreme, NY

Case Type:
- *Premises Liability* - School

Case Name: Sean Entwistle v. Port Washington Union Free School District and Joseph DelGais, No. 25544/97

Date: October 30, 2000

Plaintiff(s):
- Sean Entwistle (Male, 17 Years)

Plaintiff Attorney(s):
- Phil Rizzuto; Waxman & Wincott, P.C.; Woodbury NY for Sean Entwistle

Defendant(s):
- Joseph DelGais
- Port Washington Union Free School District

Defense Attorney(s):
- Paula Pavlides; Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger; Garden City, NY for Port Washington Union Free School District

Insurers:
- New York Schools Insurance Reciprocal

Facts: This in-school accident happened at the Paul D. Schrieber High School in Port Washington on 10/26/96. Pltf., a 17-year-old student, was in a gym class taught by Deft. Joseph DelGais. The scheduled activity for that day was flag football, which was usually played on the football field. However, since the field was very muddy and the gym was occupied by other classes, Deft. brought the class to the tennis courts to play flag football. Pltf. claimed that approximately 30 minutes into the activity he tripped over a torn tennis net as he attempted to catch a pass thrown by Deft., who was acting as a neutral quarterback. Pltf. claimed that Defts. were negligent for allowing the students to play flag football on the tennis courts notwithstanding the defective net. Pltf. also claimed that the school district was negligent for failing to provide adequate supervision under the circumstances.

Defts. contended that the net was not torn at the time of the accident and that they had no notice of any defective condition. They further claimed that the photographs introduced were taken more than 21/2 months after the accident and were not a fair and accurate representation of the accident scene. Defts. also contended that Deft. DelGais had over 14 years of experience teaching physical education and acted reasonably under the circumstances. Deft. DelGais testified that his classes had used the tennis courts to play flag football and many other activities in the past.

Offer: $7,500; demand: $100,000.

Injury: Not before the jury - settled for $75,000 after the liability verdict torn posterior cruciate ligament. Pltf. claimed that the injury was permanent and may require future surgery. Defts. contended that it was a questionable partial tear, and that no surgery was required.

Result: Pltf.'s verdict on liability 6/0. Post-trial motions were denied. The case subsequently settled for $75,000. Jury: 5 male, 1 female.

Trial Information:

Judge: John P. Dunne

Trial Length: 4

Trial Deliberations: 1

Writer

Tennis player fractured elbow in fall on indoor court

Type: Settlement

Amount: $20,000

State: Illinois

Venue: Cook County

Court: Cook County District Court, IL

Injury Type(s):
- *elbow* - fracture, elbow
- *other* - closed reduction
- *shoulder* - rotator cuff, injury (tear)
- *surgeries/treatment* - arthroscopy

Case Type:
- *Recreation*
- *Premises Liability* - Dangerous Condition

Case Name: Renate Oelze v. Score Sports Venture, Score Tennis and Fitness Center, and Abria Inc., No. 2010-L-013558

Date: February 13, 2012

Plaintiff(s):
- Renate Oelze (Female, 50 Years)

Plaintiff Attorney(s):
- Christopher S. Stacey; Law Offices of Christopher S. Stacey; Chicagoe IL for Renate Oelze

Defendant(s):
- Abria Inc.
- Score Sports Venture
- Score Tennis and Fitness Center

Defense Attorney(s):
- David M. Bennett; Pretzel & Stouffer, Chartered; Chicago, IL for Score Sports Venture, Score Tennis and Fitness Center, Abria Inc.

Defendant Expert(s):
- Steven Schmid; Tribology; South Bend, IN called by: for David M. Bennett

Facts:

On Feb. 10, 2006, plaintiff Renate Oelze, late 50s, retired, played tennis at the indoor courts at Score Tennis and Fitness Center in Countryside. When Oelze chased down a deep lob shot, she ran into the curtain that separated the backcourt from the interior wall. The curtain gave way slightly and her foot became entangled in a training rope heaped in a pile behind the curtain. The training rope, when unfurled is a grid of rope squares used to train foot coordination. She fractured her elbow.

Oelize sued the sports complex, naming its various corporate and business entities as defendants, for premises liability. She alleged that the accident was a result of the inappropriate storage of the pile of rope behind the barrier curtain. She was supported by an eyewitness, a tennis pro from another club, who was prepared to testify that the heaping of the training rope behind the barrier curtain was an "atrocious" deviation from standards of tennis court safety.

The defense denied negligence and produced a waiver of liability from ordinary negligence signed by the plaintiff when she entered into a membership contract at the tennis facility. The waiver barred claims for negligence unless the alleged negligent conduct was willful and wanton. The plaintiff did not deny that she signed such a waiver but claimed not to remember signing it.

Based on the waiver, the trial level court granted summary judgment in favor of the defendants. That dismissal was reversed on appeal. However, on remand the burden imposed on plaintiff was to prove reckless misconduct on the part of the defendants.

Injury:

The plaintiff incurred a fractured elbow and a torn rotator cuff from the fall, resulting from her feet becoming entangled in the training rope. The elbow fracture did not require surgery and only entailed a closed reduction of the fracture. On account of her injuries the plaintiff remained passive for several months and it was not until four months later that further examination revealed the torn rotator cuff. That injury was repaired with arthroscopic surgery.

The defense did not deny the causal relationship between the injuries and the accident. The defense primarily focused on liability. Defense counsel maintained that the plaintiff was well treated and healed well.

Result:

During jury selection the case settled for $20,000 immediately prior to trial.

Trial Information:

Judge: Donald Suriano

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 Jon Steiger

Contract - Landscape Work - Collection

Type: Verdict-Plaintiff

Amount: $4,018

State: Georgia

Venue: Cobb County

Court: Cobb County, State Court, GA

Case Type:
- *Contracts*
- *Creditor and Debtor* - Collection

Case Name: Ryan Mullinax v. David Arwood, No. 97A-4954-2

Date: April 16, 1998

Plaintiff(s):
- Ryan Mullinax

Plaintiff Attorney(s):
- Roger D. Howard; ; Atlanta GA for Ryan Mullinax
- Timothy W. Wolfe; ; Atlanta GA for Ryan Mullinax

Defendant(s):
- David Arwood

Defense Attorney(s):
- Joel B. Parris; Cartersville, GA for David Arwood

Defendant Expert(s):
- Dwayne Dale; Land Development/Site Work; Atlanta, GA called by: for

Facts: Plaintiff, a teenaged landscape contractor, contracted to complete landscape work on defendant's tennis court for $4,181. After the work was begun, defendant requested numerous changes and additions to the original plan, creating additional charges of $2,539. Defendant paid only $3,316 of the total charges of $6,721.

Plaintiff alleged that defendant breached the initial and subsequent contracts by failing to pay for the work performed.

Defendant contended that: (1) plaintiff agreed to perform the entire work for $4,181; (2) plaintiff's work was substandard; and (3) he had to hire another contractor to redo the work at a cost of $5,000.

Injury: Breach of contract.

Result: $4,018 including interest.

Trial Information:

Judge: Toby Prodgers

Trial Deliberations: 30 minutes

Writer

Company improperly repaired tennis court, owners contended

Type: Verdict-Plaintiff

Amount: $2,916

Actual Award: $23,276

State: Pennsylvania

Venue: Montgomery County

Court: Montgomery County Court of Common Pleas, PA

Case Type:
- *Contracts* - Breach of Contract
- *Consumer Protection* - Unfair Trade Practices and Consumer Protection Law

Case Name: Timothy Wenhold and Stacy Wenhold v. Sport Builders Inc. and Matthew C. Jacobs, No. 2015-12491

Date: February 02, 2018

Plaintiff(s):
- Stacy Wenhold (Female)
- Timothy Wenhold (Male)

Plaintiff Attorney(s):
- Mark C. Clemm; Clemm and Associates, LLC; Blue Bell PA for Timothy Wenhold, Stacy Wenhold
- Katie M. Clemm; Clemm and Associates, LLC; Blue Bell PA for Timothy Wenhold, Stacy Wenhold

Plaintiff Expert (s):
- Mark Brogan; Sports Facilities; Devon, PA called by: Mark C. Clemm, Katie M. Clemm
- Michael R. Smith P.E.; Engineering; Quakertown, PA called by: Mark C. Clemm, Katie M. Clemm

Defendant(s):
- Matthew C. Jacobs
- Sport Builders Inc.

Defense Attorney(s):	• John J. Miravich; Fox Rothschild LLP; Exton, PA for Sport Builders Inc., Matthew C. Jacobs
Defendant Expert(s):	• Fred Kolkmann; Sports Facilities; Grafton, WI called by: for John J. Miravich

Facts:

In 2011, plaintiffs Timothy and Stacy Wenhold retained Sport Builders Inc. to remediate a tennis court on their property, at 4031 Mill Road, in Collegeville.

In August 2011, Sport Builders remediated the tennis court by applying an acrylic material over its surface.

The Wenholds asserted that, in March 2012, they began noticing cracks and other defects in the tennis court, including multiple water puddles that had formed. They contacted Sport Builders owner Matthew Jacobs, who, several months later, had his company apply another coating on top of the court's surface.

According to the Wenholds, the second coating did not fix the cracks and puddles, and in the ensuing years, through 2015, they repeatedly contacted Jacobs through email and by telephone about the ongoing defects.

Jacobs allegedly replied that he had the Wenholds on his maintenance schedule, that he acknowledged the "weak areas" in the court and that his company would address the issues. However, Jacobs never returned to perform further remediation on the tennis court, the Wenholds claimed.

The Wenholds sued Jacobs and his company, alleging breach of contract and violation of the Unfair Trade Practices and Consumer Protection Law.

The court determined that the Unfair Trade Practices and Consumer Protection Law claim would be determined following the jury's verdict on the contract claim.

The Wenholds' counsel presented photographs of the tennis court which showed cracks approximately an eighth-of-an-inch wide and about a dozen small pools of water. Counsel also presented the emails between the parties corresponding about the court's condition.

The Wenholds' expert in engineering faulted Jacobs and Sport Builders for applying what amounted to a coat of paint to a tennis court that had a seriously compromised infrastructure. According to the expert, the company should have replaced the court's two inches of macadam.

The defense counsel maintained that Sport Builders had repaired the Wenholds' tennis court in accordance with industry standards.

A defense expert on sports facilities testified that the acrylic coating used on the Wenhold's court, known as Guardian Crack Repair Product, had been properly administered.

According to Wenhold's counsel, the defense's expert, on cross-examination, admitted that he would not have used the crack-repair product on his own tennis court in such a circumstance and instead would have advised the defendants to rebuild the court.

Injury:

Wenhold's expert in sports facilities determined that applying new layers of macadam on the tennis court would cost $42,600.

Result: The jury found that Sport Builders and Jacobs had materially breached the contract between the parties. The Wenholds were determined to receive $2,916.

Following the second phase of the bifurcated trial, the court found in favor of the Wenholds and against Sport Builders and Jacobs on their claims based on the of Unfair Trade Practices and Consumer Protection Law.

The court trebled the $2,916 in damages which the jury had determined, for an amount of $8,748. In additioin, the court determined $14,528 in attorney's fees, for a total verdict of $23,276.

Trial Information:

Judge: Jeffrey S. Saltz

Demand: $75,000

Offer: $5,000

Trial Length: 3 days

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

Writer Aaron Jenkins

Defense: Tennis court surface was properly maintained

Type: Verdict-Defendant

Amount: $0

State: Massachusetts

Venue: Norfolk County

Court: Norfolk County, Superior Court, MA

Injury Type(s):
- *ankle* - fracture, ankle

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

Case Name: Sylvie Sader-Alsarabi v. Econo Tennis Management Corp., No. NOCV2010-01839

Date: March 23, 2015

Plaintiff(s):
- Sylvie Sader-Alsarabi (Female, 50 Years)

Plaintiff Attorney(s):
- Francis Harney; ; Boston MA for Sylvie Sader-Alsarabi

Defendant(s):
- Econo Tennis Management Corp.

Defense Attorney(s):
- John H. Bruno II; Masi & Bruno; Plymouth, MA for Econo Tennis Management Corp.

Insurers:
- Hanover Insurance Co. (The)

Facts:

On June 10, 2010, plaintiff Sylvie Sader-Aksarabi, approximately 50, an artist, was playing tennis at the Dedham Health and Fitness Club in Dedham. She allegedly slipped on water or another liquid, fell and broke her ankle.

Sader-Aksarabi sued the owner of the fitness club, Econo Tennis Management Corp., alleging premises liability.

The tennis court was indoor/outdoor. There was a roof, but the sides were open and it had rained heavily the night before. Sader-Aksarabi alleged that Econo Tennis was negligent in failing to clean up the rain or other liquid that had accumulated on the tennis court.

Econo Tennis denied there was a defect and contended that its maintenance staff had dried the surface that morning. If there was in fact moisture present at the time of Sader-Aksarabi's fall, the defense argued that it was a natural accumulation.

Injury:

Sader-Aksarabi suffered a fractured ankle. She went to a clinic attached to the facility where a doctor placed her ankle in a cast. Later, she underwent surgery to repair the ankle.

Sader-Aksarabi claimed approximately $38,000 in medical bills. She also sought lost wages and damages for pain and suffering.

Result:

The jury found for the defendant and a defense verdict was entered.

Trial Information:

Judge: Edward P. Leibensperger

Trial Length: 2 days

Trial Deliberations: 1 hours

Jury Vote: 12-0

Post Trial: There was no appeal and this case is closed.

Editor's Comment: This report is based on information that was provided by defense counsel, as well as court documents. Plaintiff's counsel did not respond to a request for comment.

Writer Peter Hisey

Falldown - Tennis Court - Mats Placed Over Grates

Type: Verdict-Defendant

Amount: $0

State: Massachusetts

Venue: Middlesex County

Court: Middlesex County, Superior Court, Cambridge, MA

Injury Type(s):
- *hand/finger* - hand

Case Type:
- *Government* - Municipalities
- *Premises Liability* - Playground
- *Slips, Trips & Falls* - Falldown

Case Name: Max Ettenberg, M.D. v. Town of Belmont, No. MICV96-02960

Date: May 26, 1999

Plaintiff(s):
- Max Ettenberg, M.D. (Male, 82 Years)

Plaintiff Attorney(s):
- Kathryn A. O'Leary; ; Worcester MA for Max Ettenberg, M.D.

Defendant(s):
- Town of Belmont

Defense Attorney(s):
- Paul R. Mordarski; Boston, MA for Town of Belmont

Facts: Plaintiff retired physician was playing tennis in a tennis program at Defendant Town of Belmont's recreation department. Plaintiff paid a fee to the tennis pro, who in turn paid a fee to defendant to rent the tennis courts. Plaintiff was running with his tennis racquet in his hand when he tripped and fell on mats on metal grates which allegedly were out of place.

Plaintiff alleged that defendant was negligent in overlapping the mats, creating a hazardous condition, and that defendant received a fee for the use of the tennis courts, giving rise to liability.

Defendant contended that plaintiff fell 25 feet from the tennis court and that they acted reasonably in covering the grates with mats. Defendant further contended that they were exempted from liability as a public landowner who opened up their facility free of charge for the purposes of recreational use and that plaintiff was contributorily negligent in failing to look where he was going.

Injury: Chest trauma with residual chest pain and skin avulsion dorsum of the right hand requiring three surgical procedures and resulting in visible scar on right hand. Plaintiff claimed $3,000 to $4,000 in medical specials.

Result: Defense verdict

Trial Information:

Judge: Allan vanGestel

Trial Deliberations: 3.5 hours

Writer

Construction Defects--Cross-Complaint for Indemnity

Type: Verdict-Defendant

Amount: $0

State: California

Venue: Riverside County

Court: Superior Court of Riverside County, Indio, CA

Case Type:
- *Insurance*
- *Premises Liability*

Case Name: Laguna de La Paz Homeowners Association v. Laguna de La Paz, Ltd. and M.B. Johnson Construction Cross-Complaint: M.B. Johnson and Laguna de La Paz Homeowners Association v. Peter Pursley Tennis Courts, Inc., No. 73989

Date: August 14, 1998

Plaintiff(s):
- M.B. Johnson (0 Years)
- Laguna de La Paz Homeowners Association (0 Years)
- Laguna de La Paz Homeowners Association (0 Years)

Plaintiff Attorney(s):
- Robert J. Gilliland, Jr.; Guralnick & Gilliland; Palm Springs CA for Laguna de La Paz Homeowners Association
- Lawrence D. Duignan; Silldorf, Shinnick & Duignan; San Diego CA for Laguna de La Paz Homeowners Association

Plaintiff Expert (s):
- Ninyo; Geotechnical Engineering; Irvine, CA called by: Robert J. Gilliland, Jr., Lawrence D. Duignan
- Carl H. Josephson; Structural; San Diego, CA called by: Robert J. Gilliland, Jr., Lawrence D. Duignan
- William Moser; Engineering; San Diego, CA called by: Robert J. Gilliland, Jr., Lawrence D. Duignan
- Valentine Hoy; Construction; San Diego, CA called by: Robert J. Gilliland, Jr., Lawrence D. Duignan

Defendant(s):

- Laguna de La Paz, Ltd.
- M.B. Johnson Construction
- Peter Pursley Tennis Courts, Inc.

Defense Attorney(s):

- Peter M. Hughes; Buckley & Hughes; San Diego, CA for Laguna de La Paz, Ltd., M.B. Johnson Construction, Peter Pursley Tennis Courts, Inc.

Defendant Expert(s):

- Bob Hendershot; Structural; San Diego, CA called by: for Peter M. Hughes
- John Hardisty; Construction; San Diego, CA called by: for Peter M. Hughes
- Kevin Jordan; Geotechnical Engineering; San Diego, CA called by: for Peter M. Hughes
- Robert O'Neil; Geology; San Diego, CA called by: for Peter M. Hughes

Insurers:

- Allied Insurance Group

Facts:

This case involved nine championship tennis courts surrounded by structural retaining walls and landscaping at a 690-single-family-home complex known as Laguna de la Paz in La Quinta. Laguna de la Paz Homeowners Association was the representative of the homeowners, and assignee of the developer, M.B. Johnson's cross-complaint. Cross-defendant Peter Pursley Tennis Courts was the installer of the tennis courts. The developer and related subcontractors settled prior to trial.

The tennis courts were unusable due to cracking, buckling, heaving, and delamination.

Plaintiff contended that cross-defendant's work breached the standard of care at the time the project was built, that it did not meet the contract requirements, that it failed to conform to the plans, specifications, Uniform Building Code, and applicable trade recommendations, that cross-defendant failed to provide a minimum 4" slab, that it improperly placed the reinforcement bar within or below the slab, and that it failed to provide adequate expansion joints.

Cross-defendant contended that although the slab thickness, reinforcement bar location, and expansion joints were not in strict conformance with the plans and specification, the work was standard in the industry and met the spirit of the building code, plans, specifications, and the subcontract, and that water activated chlorides in the soils, causing the courts' delamination, cracking, buckling, and heaving.

Injury:

Damages: Plaintiff sought $565,000 in repairs and $200,000 in attorney fees and costs.

Defendants report that plaintiff sought over $690,000 to repair the nine courts and $300,000 to $400,000 in attorney fees and costs under the subcontract.

Result: Settlement talks: Demand $187,000 plus fee and costs according to plaintiff attorney, $500,000 to $1 million, according to defense attorney. Offer $10,000.

DEFENSE VERDICT. 10-2

Motion for new trial made by plaintiff based on juror misconduct-granted.

Appeal filed by cross-defendant on the court's granting of the new trial. Cross-defendant filed a writ regarding the court's denial of its summary judgment based on the three-year statute of limitations. The appeal and the writ have been consolidated. August 14, 1998

Trial Information:

Judge: Lawrence W. Fry

Trial Length: 6 weeks

Trial Deliberations: 16 hours

Writer JV Temp1

Falldown - Platform Tennis Court - Drop to Ground

Type: Verdict-Defendant

Amount: $0

State: Maryland

Venue: Baltimore County

Court: Baltimore County, Circuit Court, MD

Injury Type(s):
- *elbow*
- *wrist*
- *shoulder*

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

Case Name: Lawrence Taylor v. Padonia Corporation t/a Padonia Swim Club, No. 89CG2785

Date: September 18, 1991

Plaintiff(s):
- Lawrence Taylor (Male, 40 Years)

Plaintiff Attorney(s):
- Alfred Nance; ; Baltimore MD for Lawrence Taylor

Plaintiff Expert (s):
- Jose Corvera M.D.; Orthopedics; Baltimore, MD called by:

Defendant(s):
- Padonia Corporation t/a Padonia Swim Club

Defense Attorney(s):
- Robert L. Ferguson Jr.; Baltimore, MD for Padonia Corporation t/a Padonia Swim Club
- Jodi K. Ebersole; Baltimore, MD for Padonia Corporation t/a Padonia Swim Club

Insurers:

- Nautilus Ins.

Facts:

Plaintiff was an invitee at Defendant Padonia Swim Club. While playing volleyball, plaintiff chased a volleyball across a platform tennis court. His feet allegedly became entangled in the netting, causing him to fall three to four feet to the ground below the platform.

Plaintiff alleged that: (1) the platform tennis court was a dangerous condition; (2) defendant breached its duty to warn him of the dangerous condition; and (3) defendant was negligent in failing to warn visitors to stay off the platform and in failing to warn of the distance of the dropoff.

Defendant contended that the condition of the platform was open and obvious and that it owed no duty to place plaintiff on notice of a condition which plaintiff was or should have been aware.

Injury:

Fracture of the radial head of the ulnar bone of the right elbow, pain in right shoulder and wrists, and 31% disability of right arm. Plaintiff claimed $6,000 in medical specials and $11,000 in lost income.

Result:

Defense verdict as the defendant was found to be contributorily negligent.

Trial Information:

Judge: Christian M. Kahl

Trial Deliberations: 1.5 hours

Writer

Neighbor's Excavation Blamed for Tennis Court Damage

Type: Verdict-Defendant

Amount: $0

State: California

Venue: Contra Costa County

Court: Superior Court of Contra Costa County, Contra Costa, CA

Case Type:
- *Negligence*

Case Name: Robert McMahon v Michael Novo, No. C95-00443

Date: March 05, 1997

Plaintiff(s):
- Robert McMahon (Male, 63 Years)

Plaintiff Attorney(s):
- Casimir A. Wilson; Bley and Bley; San Francisco CA for Robert McMahon

Plaintiff Expert (s):
- Don Hilldebrandt; Engineering; Oakland, CA called by:
- Ned Clyde; Engineering; , called by:
- Francis Johnson; Project Management; , called by:

Defendant(s):
- Michael Novo

Defense Attorney(s):
- Jacob A.O. Stub; York and Smith; Berkeley, CA for Michael Novo

Defendant Expert(s):
- Norman Joyal; Engineering; , called by: for

Insurers:
- Farmers Exchange

Facts:

In 1980, plaintiff, a 63-year-old contract engineer for a refinery from Clayton, had a tennis court installed in his backyard. In January of 1994, defendant, a general engineering contractor, bought the property next door to plaintiff. In February of 1994 defendant brought earth-moving equipment onto his property and began moving soil to create a level backyard area. Plaintiff contended that defendant used heavy machinery on the hillside, negligently excavating the supporting slope beneath the tennis court, and changing the supporting slope from about 3/1-4/1 to approximately 1.5/1; that lateral support was removed, which caused the tennis court to crack excessively and made the court unplayable; that defendant trespassed on plaintiff"s property during the excavation process; and that the excavation was performed without a permit, which was in violation of a City of Clayton regulation and was negligence per se. Plaintiff acknowledged that some initial minor cracking appeared on the tennis court immediately after it was constructed in 1980, however, plaintiff claimed the initial cracking was insignificant and the court was playable, with no additional cracks until defendant"s excavation; and that the excavation caused immediate and extensive new cracking, requiring repair of the tennis court and the installation of a retaining wall. Plaintiff"s experts testified that during their site visit it appeared that the hillside had been excavated; and that such excavation was the cause of the new cracks that appeared on the tennis court. Defendant admitted using heavy machinery on other areas of his property but claimed that his work on the subject hillside consisted only of "clearing and grubbing"; that he used only weed eaters and garden hoses, resulting in the removal of only a couple of inches of topsoil; that the subject slope had always been at its present slope of approximately 1.5/1, and his work did not significantly alter the steepness of the slope and would not be considered excavation; and that the cracking of plaintiff"s tennis court was inevitable considering the court was built on fill and the properties were located in an area of expansive soils, on sloping ground subject to soil creep deformation. Mr. Joyal testified that the low level of grading performed on defendant"s property was not sufficient to have caused a significant destabilization of the subject slope; and that the new cracks in the tennis court resulted from the ongoing earth movement process. Plaintiff attorney asked the jury to award $58,000 plus loss of use.

Costs of repair and stabilization $58,000.

Result:

Result: Defense Verdict. (Negligence) (Trespass against defendant) (No damages as a result of trespass) Since the verdict was below defendant"s statutory offer, defendant will be submitting a cost bill. SPECIALS: Costs of repair and stabilization $58,000.

Poll: (Negligence) 12-0; (Trespass against defendant) 12-0; (No damages as a result of trespass) 11-1

Settlement: Arbitration award of $58,000 was rejected by defense. Demand $35,000 before litigation, withdrawn, with a later indication that plaintiff would not accept less than $58,000. Offer $2,500

Motion for new trial not made as of publication date.

Trial Information:

Judge: David B. Flinn

Trial Length: 3 days

Trial Deliberations: 4 hours

Writer JV Temp6