



## Plaintiffs: Workers negligent in removing plywood support

**Type:** Settlement

**Amount:** \$7,000,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *head*
- *knee*
- *brain* - traumatic brain injury
- *chest* - fracture, rib
- *shoulder*
- *surgeries/treatment* - arthroscopy
- *mental/psychological* - cognition, impairment

**Case Type:**

- *Slips, Trips & Falls* - Falldown; Fall from Height
- *Worker/Workplace Negligence*

**Case Name:** Guadencio Romero and Alberto Reyes Mena v. Indigo Construction Corporation; BLF Inc. DBA Larrabure Framing; Cal-Coast Construction Specialties Inc.; Calico Constructions Inc.; MLA Construction Inc.; and Aragon Glendale Properties Corporation, No. 21STCV12448

**Date:** November 21, 2023

**Plaintiff(s):**

- Alberto Reyes Mena, (Male, 52 Years)
- Gaudencio Romero , (Male, 47 Years)

**Plaintiff Attorney(s):**

- P. Christopher Ardalan; Ardalan & Associates, PLC; Thousand Oaks CA for Gaudencio Romero ,, Alberto Reyes Mena
- Geoffrey S. Hickey; Ardalan & Associates, PLC; Thousand Oaks CA for Gaudencio Romero ,, Alberto Reyes Mena

**Defendant(s):**

- BLF Inc.
- MLA Construction Inc.
- Calico Constructions Inc.
- Indigo Construction Corporation
- Aragon Glendale Properties Corporation
- Cal-Coast Construction Specialties Inc.

**Defense Attorney(s):**

- Peter K. Pritchard; Sellar Harzard & Lucia; Los Angeles, CA for Indigo Construction Corporation, BLF Inc., Cal-Coast Construction Specialties Inc., Calico Constructions Inc., MLA Construction Inc., Aragon Glendale Properties Corporation
- Elisabeth Herrmann; Sellar Hazard & Lucia; Los Angeles, CA for Indigo Construction Corporation, BLF Inc., Cal-Coast Construction Specialties Inc., Calico Constructions Inc., MLA Construction Inc., Aragon Glendale Properties Corporation

**Insurers:**

- Liberty Mutual Insurance Co.
- The Hartford Insurance Co.

**Facts:**

On April 16, 2019, plaintiffs Gaudencio Romero, 47, and Alberto Mena, 52, were working at a construction site in Glendale as laborers. They were working on the podium deck during the framing process when they were instructed to remove scrap two-by-fours from an area of a trash chute. The trash chute was covered with plywood, which had reportedly been properly supported with shoring. However, when Romero first stepped on the plywood, he began to fall prompting Mena to attempt to save Romero. Both fell approximately 30 feet below onto concrete. Romero and Mena both claimed head injuries following the incident.

Romero and Mena sued Indigo Construction Corporation, Larrabure Framing, Cal-Coast Construction Specialties Inc., Calico Constructions Inc., MLA Construction Inc. and Aragon Glendale Properties Corporation. Romero and Mena alleged negligence of the workers involved in the construction project

Plaintiffs' counsel contended Indigo Construction Corporation, the concrete company, removed the shoring without warning anyone or properly blocking off the plywood.

Defendants denied liability for the accident.

**Injury:** Romero and Mena were both taken to the hospital. Both men suffered traumatic brain injuries, as well as broken ribs, injuries to their shoulders and injuries to their knees. For treatment, Romero and Mena each had shoulder surgeries and Romero had surgery on his knee.

Romero and Mena both claimed to have suffered cognitive deficiencies and were not able to return to work.

The plaintiffs both sought compensation to cover future medical expenses and their future life care plans, totaling between \$5 million and \$6.6 million.

The defense disputed the extent of the plaintiffs' damages.

**Result:** The case was resolved after several depositions established liability against the defendants and plaintiffs issued a policy limit demand. The defendants' insurers agreed to settle for \$7 million, with \$3.5 million each to Romero and Mena.

Alberto Mena

Gaudencio Romero

### **Trial Information:**

**Trial Length:** 0

**Trial Deliberations:** 0

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

**Writer** Priya Idiculla

## Staff neglected elder with mild dementia, causing fall: lawsuit

**Type:** Verdict-Plaintiff

**Amount:** \$5,500,000

**State:** California

**Venue:** Los Angeles County

**Court:** Superior Court of Los Angeles County, Van Nuys, CA

**Injury Type(s):**

- *head*
- *neck* - fracture, neck; fracture, C1; fracture, neck; fracture, C2; fracture, vertebra; fracture, C1; fracture, vertebra; fracture, C2
- *brain* - traumatic brain injury
- *other* - physical therapy; cortisone injections
- *mental/psychological* - cognition, impairment; memory, impairment

**Case Type:**

- *Health Law* - Nursing Home
- *Slips, Trips & Falls* - Falldown
- *Worker/Workplace Negligence* - Negligent Training

**Case Name:** M. Sherrill Phillips, by and through her Guardian Ad Litem, Lydia Phillips v. Avantgarde Senior Living, a California corporation, No. 19STCV11501

**Date:** January 15, 2020

**Plaintiff(s):**

- Lydia Phillips (Female)
- M. Sherril Phillips (Female, 89 Years)

**Plaintiff Attorney(s):**

- Brian L. Poulter; Stalwart Law Group; Los Angeles CA for M. Sherril Phillips, Lydia Phillips
- Dylan Ruga; Stalwart Law Group; Los Angeles CA for M. Sherril Phillips, Lydia Phillips

**Plaintiff Expert(s):**

- Cyndy Minnery R.N.; Elder Abuse; San Marcos, CA called by: Brian L. Poulter, Dylan Ruga
- Andrew Fox M.D.; Neurosurgery; Tarzana, CA called by: Brian L. Poulter, Dylan Ruga
- Thomas Chen M.D.; Neurosurgery; Los Angeles, CA called by: Brian L. Poulter, Dylan Ruga
- Ezekiel Fink M.D.; Neurology; Beverly Hills, CA called by: Brian L. Poulter, Dylan Ruga

**Defendant(s):**

- AvantGarde Senior Living, LLC

**Defense Attorney(s):**

- Rebecca B. Lowell; Schaeffer Cota Rosen LLP; Oxnard, CA for AvantGarde Senior Living, LLC
- Raymond E. Watts, Jr.; Wicker, Smith, O'Hara, McCoy & Ford, P.A.; Orlando, FL for AvantGarde Senior Living, LLC

**Defendant Expert(s):**

- Todd Fearer M.D.; Geriatrics; Santa Barbara, CA called by: for Rebecca B. Lowell, Raymond E. Watts, Jr.
- Edwin C. Amos, III M.D.; Neurology; Santa Monica, CA called by: for Rebecca B. Lowell, Raymond E. Watts, Jr.
- Calvin Groeneweg R.N.; Elder Abuse; Napa, CA called by: for Rebecca B. Lowell, Raymond E. Watts, Jr.

**Insurers:**

- StarStone Specialty Insurance Co.
- HealthCap USA

**Facts:**

On July 25, 2018, plaintiff M. Sherril Phillips, an 89-year old woman who suffered mild dementia, was being escorted to an activity at AvantGarde Senior Living, a residential care facility for the elderly in Tarzana, when she tripped and fell.

Phillips' daughter had previously contracted AvantGarde Senior Living to provide various services, including assistance with her mother's grooming, bathing, toileting and walking. The elder Phillips moved into the residential care facility on June 9, 2018. Fifteen days later, on July 24, 2018, Phillips fell. As a result, she was monitored for concussion protocol, and paramedics were called. However, Phillips was not sent to a hospital, and Phillips' daughter was not told about the incident. The next day, while being escorted to an activity by one of the activities assistants, the front of Phillips' walker became snagged on the floor. Phillips resultantly fell, and she sustained injuries to her head and neck.

Phillips' daughter, Lydia Phillips, acting as her mother's guardian ad litem, sued AvantGarde Senior Living, LLC, alleging that the facility violated the California Health and Safety Code.

Plaintiff's counsel contended that, before moving into the residential care facility, the elder Phillips underwent two separate evaluations to determine her baseline physical and cognitive limitations and that it was well documented that Phillips had macular degeneration in her right eye. Counsel also contended that both Phillips' primary care physician and AvantGarde's wellness director concluded that Phillips had mild cognitive impairment, but that she could follow instructions and communicate her needs. However,

Phillips had vision problems in her right eye.

Plaintiff's counsel noted that the Health and Safety Code defined personal activities of daily living, including mobility, and stated that if staff at residential care facilities for the elderly are assisting residents with activities of daily living, they must have a minimum of 40 hours training specific to dementia, as well as other geriatric issues. Counsel also noted that the code stated that at least 20 hours of that training must be completed before a staff member can act independently with a resident. However, plaintiff's counsel argued that despite the code's definitions, the activities assistant admitted that she did not have the state-mandated 40 hours of training.

Plaintiff's counsel further noted that security camera footage of the fall showed the activities assistant walking Phillips down the hall. Counsel contended that as they were walking, the assistant became distracted by poking her head into another resident's room to ask them to join an activity and that by doing that, the assistant left Phillips' side. Counsel also contended that the activities assistant was escorting Phillips about two inches from the right wall and that the second the assistant left Phillips' side, Phillips started veering toward the wall without knowing how close she was to it because of her vision issue. Plaintiff's counsel further contended that the activities assistant did not know how to escort residents, as evidenced by the assistant's distraction and act of immediately trying to pick up Phillips the second she fell. In addition, plaintiff's counsel noted that the activities assistant's supervisor and multiple other employees testified that what the assistant did was inappropriate and that no one was trained to do what the activities assistant did.

Defense counsel argued that the activities assistant was not providing direct care, such as grooming, bathing and toileting and that the assistant was simply providing assistance with a normal task, such as walking. Counsel argued that, therefore, the activities assistant did not need the state-mandated 40 hours of training. Defense counsel noted that the activities assistant testified that she was trained on how to escort Phillips, and contended that although the activities assistant should not have picked up the resident following the fall, according to the plaintiff's expert neurosurgeon's deposition and Phillips' treating neurosurgeon, Phillips sustained no harm as a result.

## **Injury:**

Phillips sustained head trauma, a mild traumatic brain injury and cervical fractures to her C1 and possibly C2 vertebrae. She was immediately taken to Providence Tarzana Medical Center for treatment. Plaintiff's counsel contended that although Phillips needed neck surgery, Phillips was not a candidate because of her age. As a result, Phillips, instead, had to wear a rigid collar for three months, and undergo physical and occupational therapy, which she continues to undergo. She also still receives Botox injections in her neck, as well as cortisone injections in her neck and shoulder.

Plaintiff's counsel noted that Phillips was diagnosed with dementia in 1998, after suffering a stroke, so Phillips was not an average dementia patient whose life expectancy is 3.5 to 10 years on average. However, counsel argued that Phillips' dementia accelerated after the fall and that Phillips' cognition rapidly declined. Counsel contended that, in five months, Phillips went from doing pretty good to a prisoner in her own body, as Phillips no longer recognized her family and would repeatedly say the same thing. Plaintiff's counsel also contended that pre-injury videos and post-injury videos showed a stark contrast.

Phillips' daughter, acting on her mother's behalf, sought recovery of damages for Phillips' past and future pain and suffering.

Defense counsel argued that Phillips returned to baseline by Oct. 3, 2018. Specifically, counsel noted that Phillips was transferred to Topanga Terrace Rehabilitation and Subacute, a skilled nursing facility in West Hills, and was there for 2.5 months before being discharged. Defense counsel contended that at the end of Phillips' stay, records indicated that Phillips was up walking again, walking distances of 350 feet.

Defense counsel also argued that Phillips's dementia was not accelerated because of the fall. Counsel contended that Providence Tarzana Medical Center never called in a neurologist to evaluate Phillips and that because Phillips was never diagnosed with a concussion, she did not sustain one. Accordingly, defense counsel argued that Phillips' dementia could not have been accelerated due to the subject fall and that, instead, Phillips' condition would have declined regardless of the fall.

The defense's expert neurologist initially disputed that Phillips sustained a mild TBI in the fall. However, plaintiff's counsel countered that Phillips had all the symptoms of a mild TBI documented in her records, and that, on cross-examination, the defense's expert neurologist admitted that Phillips should have been seen by a neurologist in the emergency room and that his opinion was only because the mild TBI was not formally diagnosed in the records. The expert further testified, during cross-examination, that Phillips was an outlier, in that Phillips had outlived the average life expectancy and that not only had Phillips outlived it, but was thriving. As such, the defense's expert neurologist conceded that, in Phillips' case, the norms might not apply and that Phillips' case is unique and needs to be looked at differently. Plaintiff's counsel argued that even though Phillips was "thriving," Phillips suffered a steep drop off in memory and cognitive function and that Phillips' condition was not part of the natural/normal dementia process. As a result, the defense's expert neurologist conceded that some of the activities Phillips liked to do before the fall will never be able to be done by Phillips again.

**Result:** The jury found that AvantGarde was negligent and that its negligence was a substantial factor in causing harm to Phillips. It also found that AvantGarde's actions constituted elder abuse/neglect. The jury determined that Phillips' damages totaled \$5.5 million. However, it did not find punitive damages were warranted.

**M. Sherril Phillips**

\$4,000,000 Personal Injury: Past Pain And Suffering

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

**Trial Information:**

**Judge:** Huey P. Cotton, Jr.

**Demand:** \$3 million

**Offer:** \$400,000

**Trial Length:** 8 days

**Trial Deliberations:** 4 hours

**Jury Vote:** 12-0

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

**Writer** Priya Idiculla



## Plaintiff claimed fall from ladder on scaffold caused injuries

**Type:** Verdict-Plaintiff

**Amount:** \$3,600,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *head*
- *brain* - brain damage; traumatic brain injury
- *wrist* - fracture, wrist

**Case Type:**

- *Worker/Workplace Negligence*
- *Employment* - California Labor Code
- *Slips, Trips & Falls* - Fall from Height

**Case Name:** Jose Trinidad Flores v. M & N Rug Enterprises LLC and Does 1-50, No. BC561949

**Date:** November 08, 2017

**Plaintiff(s):**

- Jose Trinidad Flores (Male, 45 Years)

**Plaintiff Attorney(s):**

- Thomas S. Feher; The Simon Law Group, LLP; Hermosa Beach CA for Jose Trinidad Flores
- Sevy W. Fisher; The Simon Law Group, LLP; Hermosa Beach CA for Jose Trinidad Flores

**Plaintiff Expert(s):**

- Brad P. Avrit P.E.; Safety; Marina del Rey, CA called by: Thomas S. Feher, Sevy W. Fisher
- Brian F. King M.D.; Neuroradiology; Los Angeles, CA called by: Thomas S. Feher, Sevy W. Fisher
- Hyman Gross M.D.; Neurology; Santa Monica, CA called by: Thomas S. Feher, Sevy W. Fisher
- Rajan M. Patel M.D.; Orthopedic Surgery; Los Angeles, CA called by: Thomas S. Feher, Sevy W. Fisher
- Marcel O. Ponton Ph.D.; Neuropsychology; Pasadena, CA called by: Thomas S. Feher, Sevy W. Fisher
- Jennifer "Jenn" Craigmyle R.N.; Life Care Planning; Mira Loma, CA called by: Thomas S. Feher, Sevy W. Fisher

**Defendant(s):**

- M & N Rug Enterprises LLC

**Defense Attorney(s):**

- Robert T. Mackey; Veatch Carlson, LLP; Los Angeles, CA for M & N Rug Enterprises LLC

**Defendant Expert(s):**

- Jay S. Tsuruda M.D.; Diagnostic Radiology; Pasadena, CA called by: for Robert T. Mackey
- Mary E. Jesko Ed. D.; Life Care Planning; San Diego, CA called by: for Robert T. Mackey
- Jeffrey A. Bounds M.D.; Neurology; Loma Linda, CA called by: for Robert T. Mackey
- Kenneth A. Solomon Ph.D., P.E.; Safety; Woodland Hills, CA called by: for Robert T. Mackey
- Richard C. Rosenberg M.D.; Orthopedic Surgery; Tarzana, CA called by: for Robert T. Mackey

**Facts:**

Plaintiff Jose Flores, 45, placed a ladder on a scaffold to paint a storefront, in Pasadena, when he fell about 10 feet and landed face first. He subsequently claimed injuries to his head and both wrists.

Flores sued the operator of the store, M & N Rug Enterprises LLC.

Flores contended that he was a statutory employee under the Labor Code and that the store was negligent.

Defense counsel denied that Flores was hired by M & N Rug Enterprises. Counsel also argued that Flores was liable for the accident by improperly placing the ladder on the scaffold.

**Injury:**

Flores sustained fractures to both wrists. He also claimed he also sustained a mild traumatic brain injury.

Defense counsel disputed that Flores sustained any injury in the fall, noting that there were no findings on the MRI.

**Result:** The jury determined that M & N Rug Enterprises was negligent and that its negligence was the cause of Flores' damages. It also determined that Flores' damages totaled \$3.6 million.

**Trial Information:**

**Judge:** Mark V. Mooney

**Trial Length:** 14 days

**Trial Deliberations:** 3 hours

**Jury Vote:** 10-2

**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 fall from scaffold caused brain injury

**Type:** Settlement

**Amount:** \$2,000,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *head* - fracture, skull
- *brain* - traumatic brain injury
- *face/nose* - fracture, facial bone
- *sensory/speech* - vision, impairment; double vision / diplopia
- *mental/psychological* - cognition, impairment

**Case Type:**

- *Worker/Workplace Negligence* - OSHA
- *Construction* - Scaffolds and Ladders
- *Slips, Trips & Falls* - Fall from Height

**Case Name:** Kelly Higashi and Judy Higashi v. Alhambra Birchwood Townhomes Homeowners Association, Inc.; Ed Medina; and Does 1 through 125, No. BC558031

**Date:** May 15, 2015

**Plaintiff(s):**

- Judy Higashi
- Kelly Higashi (Male, 45 Years)

**Plaintiff Attorney(s):**

- Brian W. Easton; Easton & Easton, LLP; Costa Mesa CA for Kelly Higashi, Judy Higashi
- Matthew D. Easton; Easton & Easton, LLP; Costa Mesa CA for Kelly Higashi, Judy Higashi
- Travis R. Easton; Easton & Easton, LLP; Costa Mesa CA for Kelly Higashi, Judy Higashi

**Defendant(s):**

- Ed Medina
- Alhambra Birchwood Townhomes Homeowners Association, Inc.

**Defense  
Attorney(s):**

- Barry J. Reagan; Slaughter, Reagan & Cole, LLP; Ventura, CA for Alhambra Birchwood Townhomes Homeowners Association, Inc., Ed Medina
- Chandra Beaton; Slaughter, Reagan & Cole, LLP; Ventura, CA for Alhambra Birchwood Townhomes Homeowners Association, Inc., Ed Medina

**Insurers:**

- State Farm Insurance Cos.

**Facts:**

On July 13, 2013, plaintiff Kelly Higashi, 45, a homeowner at Birchwood Townhomes, in Alhambra, and a board member of the Birchwood Homeowners Association, agreed to help Ed Medina, the president of the Birchwood Homeowners Association, remove and replace fascia boards (eaves) at the top of a second story condominium complex. Medina and his grandson had previously erected a scaffold to accomplish the task of removing and replacing the boards, but that when Higashi arrived to assist in the removal of the eaves, he found that he could not quite reach the eaves from the top of the scaffold. As a result, Higashi brought a ladder to the top of the scaffold and elected to stand on the ladder to remove the eaves. However, when he was allegedly attempting to remove the first fascia board, he lost his balance and fell two stories to the concrete below. Higashi sustained injuries to his face, skull, brain, and vision.

Higashi sued Medina and Alhambra Birchwood Townhomes Homeowners Association Inc. Higashi alleged that the defendants were negligent for the erection of the scaffold and that the defendants' actions constituted violations of the Occupational Safety and Health Administration and of the California Labor Code.

Higashi claimed that he was standing on the ladder that was placed on top of the scaffold when he lost his balance and fell.

Plaintiff's counsel contended that the scaffold violated a number of OSHA regulations, in that it was not flanked properly, had insufficient guardrails, and had no top rail at the proper height for the working conditions. Counsel further contended that since Medina was acting as president of the homeowners association board at the time the scaffold was erected, the Birchwood Homeowners Association was also responsible for the violation of OSHA regulations and his injuries.

Plaintiff's counsel contended that erecting and working on a scaffold required a contractor's license, pursuant to Business & Professions Code § 7026, but that Medina did not have a contractor's license, even though he was performing work that required a contractor's license. Thus, counsel contended that, at the time of the accident, Higashi was technically an employee of the homeowners association, rather than an independent contractor, pursuant to California Labor Code § 2750.5. However, after filing the lawsuit, plaintiff's counsel determined that the Birchwood Homeowners Association carried no workers' compensation coverage that would be able to remedy Higashi's injuries. As a result, plaintiff's counsel contended that, pursuant to California Labor Code § 3706, an employee-related injury is presumed to result from employer negligence, where the employer carried no workers' compensation insurance at the time of injury, thereby shifting the burden of proof to the employer to prove lack of negligence. In addition, counsel asserted that Higashi's employer in the subject situation was stripped of any comparative negligence, assumption of risk, or co-employee negligence defenses and that the combination of the statutes essentially held the defendants strictly liable for Higashi's injuries.

Defense counsel contended that Higashi made his own decision to use a ladder on the top level of the scaffold and that Higashi was 100 percent at fault since he choose to use a ladder on top of the scaffolding. However, counsel asserted that Higashi was actually not on the scaffold at all at the time of his fall, but, rather, had climbed onto the roof and became dizzy, which caused him to fall. Thus, defense counsel asserted that any OSHA violations were inconsequential because they would not have prevented Higashi from falling off the roof. Counsel further asserted that any negligence on the part of Medina was not a substantial factor in causing Higashi's injuries and that Higashi was actually 100 percent at fault becoming dizzy and falling off the roof.

**Injury:**

Higashi sustained 13 fractures to his face and skull, and was subsequently taken by ambulance to the emergency room at Huntington Memorial Hospital, in Pasadena. He was then admitted to the Intensive Care Unit, where he spent over 40 days recovering. Higashi ultimately underwent six different surgical procedures to repair the intricate fractures.

Higashi claimed that he suffered a traumatic brain injury, resulting in various cognitive issues, including a loss of his vision and double vision. Thus, he sought recovery of \$430,453.10 in past medical costs, and unspecified amounts for future medical costs and lost earnings. He also sought recovery of damages for his past and future pain and suffering.

Defense counsel did not seriously dispute the severity of Higashi's alleged injuries.

**Result:**

Alhambra Birchwood Townhomes Homeowners Association ultimately agreed to tender its \$2 million policy limits in order to settle the matter on behalf of itself and Medina.

**Trial Information:**

**Judge:**

Elia Weinback

**Editor's  
Comment:**

This report is based on information that was provided by plaintiff's counsel. Defense counsel declined to contribute.

**Writer**

Dan Israeli

## Improper inspection caused fall over displaced wheel stop: suit

**Type:** Verdict-Plaintiff

**Amount:** \$1,000,000

**Actual Award:** \$875,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *neck* - cervical disc injury
- *brain* - traumatic brain injury
- *other* - physical therapy; aggravation of pre-existing condition
- *sensory/speech* - vertigo
- *surgeries/treatment* - laminectomy
- *mental/psychological* - cognition, impairment; post-traumatic stress disorder

**Case Type:**

- *Premises Liability* - Parking Lot; Apartment Building; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Trip and Fall

**Case Name:** Louise Golshan v. Hodes Parking, Casden Glendon LLC dba Palazzo Westwood Village, Casden Properties LLC dba Palazzo Westwood Village, and Does 1 to 99, No. BC515314

**Date:** July 08, 2016

**Plaintiff(s):**

- Louise Golshan (Female, 72 Years)

**Plaintiff Attorney(s):**

- Sean M. Novak; The Novak Law Firm, P.C; Beverly Hills CA for Louise Golshan

**Plaintiff Expert  
(s):**

- Brad P. Avrit P.E.; Safety; Marina del Rey, CA called by: Sean M. Novak
- Judy Ho Ph.D.; Neuropsychology; Santa Monica, CA called by: Sean M. Novak
- Sara Guentz R.N.; Life Care Planning; Long Beach, CA called by: Sean M. Novak
- Jacob E. Tauber M.D.; Orthopedic Surgery; Glendale, CA called by: Sean M. Novak
- Peter R. Francis Ph.D.; Biomechanical; Poway, CA called by: Sean M. Novak
- Stephan B. Poulter Ph.D.; Clinical Psychology; Los Angeles, CA called by: Sean M. Novak
- Lawrence R. Miller M.D.; Pain Management; Los Angeles, CA called by: Sean M. Novak

**Defendant(s):**

- Casden Glendon LLC
- Hodes Parking Inc.
- Casden Properties LLC

**Defense  
Attorney(s):**

- Jade N. Tran; Wood, Smith, Henning & Berman; Newport Beach, CA for Casden Glendon LLC, Casden Properties LLC
- None reported for Hodes Parking Inc.

**Defendant  
Expert(s):**

- A. Jubin Merati Ph.D.; Economics; Los Angeles, CA called by: for Jade N. Tran
- Amy M. Sutton Ph.D.; Life Care Planning; Long Beach, CA called by: for Jade N. Tran
- Ned Wolfe P.E.; Safety; Signal Hill, CA called by: for Jade N. Tran
- Mark A. Gomez Ph.D.; Biomechanical; Encinitas, CA called by: for Jade N. Tran
- Barry I. Ludwig M.D.; Neurology; Los Angeles, CA called by: for Jade N. Tran
- Brian F. King M.D.; Neuroradiology; Los Angeles, CA called by: for Jade N. Tran
- Jeffrey Schaeffer Ph.D.; Neuropsychology; Los Angeles, CA called by: for Jade N. Tran

**Insurers:**

- RLI Corp.



**Facts:**

On Dec. 3, 2012, plaintiff Louise Golshan, an unemployed 72 year old, was attempting to move a shopping cart that was located in front of her parked vehicle in the parking garage of the Palazzo Westwood Village, a mixed-use property in Los Angeles. As she attempted to maneuver the shopping cart down the passenger side of her vehicle, she tripped and fell backward over a displaced parking wheel stop. Golshan claimed that she injured her head and aggravated her prior neck and back condition.

Golshan sued the believed maintainers of the property, Hodes Parking Inc., Casden Glendon LLC (doing business as Palazzo Westwood Village), and Casden Properties LLC (also doing business as Palazzo Westwood Village). Golshan alleged that the defendants failed to properly maintain the parking garage, creating a dangerous condition.

Hodes Parking settled prior to trial, and Casden Properties LLC was let out of the case. Thus, the matter continued against Casden Glendon LLC only.

Plaintiff's counsel contended that Casden Glendon was negligent for using wheel stops in the parking garage and for the placement of the wheel stops, which straddled two parking stalls and lacked contrasting paint. Counsel also contended that the parking garage was improperly inspected and maintained, thereby creating a dangerous condition.

Casden Glendon's counsel contended that the parking garage was reasonably safe, as the use of wheel stops was an approved method of traffic control in parking garages per the city of Los Angeles' Municipal Code § 12.21A(1)(c). Counsel also contended that the parking plan, which included the use of unpainted wheel stops straddling two parking stalls, was approved by the city of Los Angeles' Building and Safety Department. Counsel further contended that Casden Glendon had reasonable inspection and maintenance procedures in place -- including expected daily inspections by a contracted on-site parking garage manager, Hodes Parking, two to three times weekly inspections by a regional property manager, and at least once weekly inspections by an on-site property manager -- to identify and correct displaced wheel stops.

In addition, Casden Glendon's counsel noted that Golshan admitted to walking backward without looking where she was going, despite knowing that there were wheel stops in the parking garage from prior visits. Thus, counsel argued that Golshan was at least partially liable for the incident.

**Injury:**

Golshan sustained blunt force trauma to her head, resulting in a subdural hematoma, which she claimed caused a traumatic brain injury. She also claimed that she suffered an aggravation of pre-existing cervical and lumbar spine issues. Golshan subsequently underwent conservative treatment, which included physical therapy and injections to her neck and back. However, she ultimately underwent a three-level cervical laminectomy and fusion on Feb. 6, 2016.

Golshan claimed that she continues to suffer from vertigo, post-traumatic stress disorder, and major depressive disorder as a result of her head injury and that she suffers from chronic pain as a result of both her head injury and spinal condition. Thus, she alleged that she will need ongoing 24/7 care due to her cognitive issues, chronic pain, post-traumatic stress, and major depressive disorder for the remainder of her life, which was estimated at 14 years. She also alleged that additional cervical and lumbar surgery will be necessary.

As a result, Golshan sought recovery for her past and future medical costs. She also sought recovery of damages for her past and future pain and suffering.

Counsel for Casden Glendon contended that the diagnostic imaging revealed no trauma to Golshan's cervical and lumbar spine and that Golshan suffered from back and neck complaints for 40 years before her fall. Counsel also contended that lumbar surgery was first recommended in 2008 and that, based upon the testimony from Golshan's treating doctors, the cervical surgery was necessary as a result of the natural progression of Golshan's pre-existing cervical stenosis, and not due to trauma.

As to Golshan's head injury, defense counsel argued that the subdural bleed was minimal, at 2- to 3-millimeters, and did not cause any brain damage. Thus, counsel argued that, per Golshan's treating neurosurgeon, Golshan was expected to make a full recovery within two to three months and that the alleged residual cognitive dysfunction was from pre-existing chronic pain conditions and psychological issues.

During jury deliberations, the parties established a \$900,000/\$175,000 high/low agreement, with the amount to be adjusted based on the finding of liability.

**Result:**

The jury found that the parking garage constituted a dangerous condition and that the inspection schedule was inadequate. It also found that the incident accelerated Golshan's need for cervical surgery. Thus, the jury determined that Golshan's damages totaled \$1 million. The jury also apportioned 87.5 percent liability to Casden Glendon LLC and 12.5 percent liability to Hodes Parking. It also found that Golshan was not comparatively liable. As a result, Golshan should recover \$875,000 from Casden Glendon, based on the jury's liability apportionment.

## **Louise Golshan**

\$48,226 Personal Injury: Past Medical Cost

\$325,000 Personal Injury: Future Medical Cost

\$200,000 Personal Injury: Past Pain And Suffering

\$426,774 Personal Injury: Future Pain And Suffering

### **Trial Information:**

**Judge:** Gerald Rosenberg

**Demand:** \$960,000

**Offer:** \$70,000

**Trial Length:** 11 days

**Trial  
Deliberations:** 2 days

**Jury Vote:** 12-0

**Jury  
Composition:** 6 male, 6 female

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel and counsel for Casden Glendon LLC and Casden Properties LLC. Counsel for Hodes Parking Inc. was not asked to contribute.

**Writer** Priya Idiculla

## Tenant claimed fall in parking lot caused head and neck injuries

**Type:** Settlement

**Amount:** \$800,000

**State:** California

**Venue:** Los Angeles County

**Court:** Superior Court of Los Angeles County, Van Nuys, CA

**Injury Type(s):**

- *head* - headaches; concussion; fracture, skull; closed head injury
- *neck* - cervical disc injury; bulging disc, cervical; disc protrusion, cervical
- *brain* - traumatic brain injury
- *other* - loss of consortium; epidural injections
- *epidermis* - contusion
- *neurological* - radicular pain / radiculitis
- *sensory/speech* - vertigo

**Case Type:**

- *Premises Liability* - Parking Lot; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Trip and Fall

**Case Name:** Andrea Fuller and Alphonse Fuller v. Roy Shellow, Eva Shellow, Beaumont Property Management Co. Inc., Elite Access Systems Inc., and Does 1 to 50, No. BC548816

**Date:** November 30, 2016

**Plaintiff(s):**

- Andrea Fuller (Female, 47 Years)
- Alphonse Fuller (Male)

**Plaintiff Attorney(s):**

- John P. Rosenberg; Law Offices of John P. Rosenberg, PLC; Woodland Hills CA for Andrea Fuller, Alphonse Fuller
- Lauri Brenner; AlderLaw, P.C.; Los Angeles CA for Andrea Fuller, Alphonse Fuller

**Plaintiff Expert  
(s):**

- H. Ronald Fisk M.D.; Neurology; Beverly Hills, CA called by: John P. Rosenberg, Lauri Brenner
- Sam Bakshian M.D.; Orthopedic Surgery; Los Angeles, CA called by: John P. Rosenberg, Lauri Brenner
- Mark J. Burns C.X.L.T., C.P.S.I.; Accident Reconstruction; Marina del Rey, CA called by: John P. Rosenberg, Lauri Brenner
- Brian F. King M.D.; Neurology; Santa Monica, CA called by: John P. Rosenberg, Lauri Brenner
- David M. Lechuga Ph.D.; Neuropsychology; Lake Forest, CA called by: John P. Rosenberg, Lauri Brenner
- Sharon K. Kawai M.D.; Life Care Planning; Fullerton, CA called by: John P. Rosenberg, Lauri Brenner
- Vikram J. Singh M.D.; Pain Management; West Hills, CA called by: John P. Rosenberg, Lauri Brenner
- Enrique N. Vega M.S.; Economics; Los Angeles, CA called by: John P. Rosenberg, Lauri Brenner

**Defendant(s):**

- Eva Shellow
- Roy Shellow
- Elite Access Systems, Inc.
- Beaumont Property Management Co., Inc.

**Defense  
Attorney(s):**

- C. Douglas Fitz-Simmons; Mark R. Weiner & Associates; Glendale, CA for Roy Shellow, Eva Shellow, Beaumont Property Management Co., Inc., Elite Access Systems, Inc.

**Defendant  
Expert(s):**

- A. Nick Shamie M.D.; Orthopedic Surgery; Santa Monica, CA called by: for C. Douglas Fitz-Simmons
- Ari Kalechstein Ph.D.; Neuropsychology; Los Angeles, CA called by: for C. Douglas Fitz-Simmons
- Jeff Bruno M.A., P.V.E.; Vocational Rehabilitation; San Luis Obispo, CA called by: for C. Douglas Fitz-Simmons
- Neil I. Chafetz M.D.; Neuroradiology; Palos Verdes, CA called by: for C. Douglas Fitz-Simmons
- Barry I. Ludwig M.D.; Neurology; Los Angeles, CA called by: for C. Douglas Fitz-Simmons

**Insurers:**

- State Farm Insurance Cos.

**Facts:**

On July 26, 2012, plaintiff Andrea Fuller, 47, a swing manager at McDonald's, was in the tenant parking lot of an apartment building, where she lived in Van Nuys, attempting to dislodge her car door from an electric gate. The opening gate had struck her vehicle and became lodged on the car's door. As Fuller was attempting to dislodge her door, she fell backward onto the pavement. Fuller claimed injuries to her head and neck.

Fuller sued the owners of the apartment building, Roy Shellow and Eva Shellow, the manager of the apartment building, Beaumont Property Management Co. Inc.; and the manufacturer and designer of the electric gate, Elite Access Systems Inc. Fuller alleged that the defendants failed to properly maintain the gate, creating a dangerous condition.

Elite Access Systems was dismissed from the case.

The Shellows and Beaumont Property Management admitted to their negligent ownership and/or maintenance of the property, in that the gate was defective and that the parking space assigned to Fuller was too close to the defective gate. However, they claimed that Fuller was comparatively negligent for attempting to dislodge her car door from the gate.

**Injury:**

Fuller sustained a closed skull fracture, a concussion, a head contusion, and several cervical spine injuries, including multilevel cervical disc protrusions at the C3-4, C4-5, C5-6, and C6-7 levels. She was subsequently taken to Kaiser Permanente Panorama City Medical Center, in Panorama City, following the fall. She ultimately underwent a series of epidural injections to her cervical spine.

Fuller claimed that she suffered a "complicated" mild traumatic brain injury, chronic post-concussive headaches, and vertigo as a result of her head injuries. She also claimed that despite undergoing epidural injections to her cervical spine, she continues to suffer neck pain, resulting in pain radiating into her left, upper extremity. Fuller alleged that as a result, she suffers physical limitations related to her chronic and cervicogenic headaches, vertigo/balance disturbance, and her spinal injuries. She has also remained off of work since 2014. Thus, her treating orthopedic surgery expert recommended that Fuller undergo surgery on the C3-4 and C4-5 levels, consisting of a left-sided, posterior laminoforaminotomy, a minimally invasive spinal surgery performed to alleviate pressure on a nerve root in the neck that is being compressed or otherwise irritated.

Fuller sought recovery of past and future medical costs, lost wages, and damages for her past and future pain and suffering. Her husband, plaintiff Alphonse Fuller, initially presented a loss-of-consortium claim, but he later withdrew the claim.

Defense counsel contested causation and the extent of Fuller's injuries. Counsel asserted that Fuller's cervical disc bulges were degenerative and pre-existed the subject incident. Counsel also asserted that Fuller's alleged mild traumatic brain injury resolved after a few months.

**Result:**

This parties ultimately agreed to an \$800,000 settlement just before jury selection.

**Trial Information:**

**Judge:** James A. Kaddo

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

**Writer** Priya Idiculla

## Trip and fall aggravated prior brain injury, plaintiff alleged

**Type:** Settlement

**Amount:** \$320,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *leg*
- *head* - headaches
- *knee* - knee contusion
- *brain* - traumatic brain injury
- *other* - abrasions; physical therapy; sacroiliac joint; aggravation of pre-existing condition
- *epidermis* - contusion
- *face/nose* - face; scar and/or disfigurement, face
- *hand/finger* - hand
- *neurological* - radicular pain / radiculitis
- *sensory/speech* - vision, impairment
- *mental/psychological* - cognition, impairment; memory, impairment

**Case Type:**

- *Government* - Municipalities
- *Premises Liability* - Sidewalk; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Trip and Fall
- *Dangerous Condition of Public Property*

**Case Name:** Barbara Williams v. City of Santa Monica, No. BC701903

**Date:** January 19, 2022

**Plaintiff(s):**

- Barbara Williams, (Female, 51 Years)

**Plaintiff Attorney(s):**

- G. Amy Vahdat; Vahdat & Aboudi, APLC; Encino CA for Barbara Williams



**Defendant(s):** • City of Santa Monica

**Defense Attorney(s):** • Samantha S. Brown; Office of the City Attorney; Santa Monica, CA for City of Santa Monica

**Facts:** On Nov. 10, 2017, plaintiff Barbara Williams, 51, a paralegal, exited the vehicle her husband parked near the south curb, facing east, near 212 San Vicente Blvd., Santa Monica. As she was walking to the back of the vehicle, she tripped and fell. Williams fell between the curb and the sidewalk, landing on her face. She claimed she sustained injuries to her head, face, back, right knee and left hand.

Williams sued the owner and maintainer of the area, the city of Santa Monica. Williams claimed that the subject area constituted a dangerous condition of public property and that the city failed to repair and/or maintain the area.

Williams claimed that she tripped on an exposed, 2- to 3-inch tree root that was located between the curb and sidewalk and that the city's failure to repair the dangerous condition caused her fall. Counsel also noted that after Williams' reported the incident to the police, the area was taped off with yellow tape, and the city's employees came to the area and sawed off the exposed roots.

Defense counsel asserted that Williams was aware of the parkway tree roots, as they were open and obvious.

**Injury:**

Paramedics transported Williams to the emergency room at Providence Saint John's Health Center, in Santa Monica, where Williams was diagnosed with blunt force trauma to her head, resulting in a headache. She was also diagnosed with contusions to her face, right knee and the thumb on her left hand; as well as multiple abrasions, including abrasions to her face. Williams was evaluated and ultimately released from the hospital.

Williams claimed the subject accident caused an injury to her lumbar spine at the L5 level, which caused radicular pain into a leg. She underwent physical therapy and ultimately received a sacroiliac (SI) joint injection. Williams also claimed her head injury caused memory issues, recurring headaches, mood changes and vision changes, as well as aggravated a prior traumatic brain injury.

Williams previously sustained a traumatic brain injury in a motor vehicle accident in 1986, when she was 20 years old. She claimed that she recovered quite well from the incident and that she was eventually able to successfully complete college and continue working. However, Williams claimed that the trip-and-fall incident on Nov. 10, 2017, aggravated her prior TBI, resulting in new symptoms, such as memory problems, headaches and vision loss. She alleged that by Nov. 30, 2017, her headaches and other symptoms had become so frequent and painful that she presented herself to a board-certified neurologist at a Cedars Sinai medical facility. In addition, based on a referral from her primary care physician, Williams presented to an optometrist at a Cedars Sinai medical facility on Dec. 13, 2017. During that doctor's visit, Williams complained of blurred vision in the left eye, which she claimed she had since the subject fall.

Williams had to take time off from work because of her injuries, but she was eventually able to go back to work and did not seek a loss of income. However, she claimed that she will continue to need physical therapy to treat her lower back pain. In addition, she is left with a facial scar with pigment loss that extends from her left nostril to her left cheek, which she claims is permanent.

Williams only sought recovery of damages for her past and future pain and suffering.

Defense counsel questioned whether Williams' memory impairment, cognition and mood changes were related to the subject accident or were the result of Williams' prior TBI.

**Result:**

The parties agreed to a \$320,000 settlement prior to trial.

Barbara Williams

**Trial Information:**

**Judge:** Michael E. Whitaker

**Trial Length:** 0

**Trial  
Deliberations:** 0

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

**Writer** Priya Idiculla

## Patron claimed inadequate lighting caused trip on stairs

**Type:** Settlement

**Amount:** \$100,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *head* - headaches; concussion; blunt force trauma to the head
- *brain* - traumatic brain injury
- *chest* - rib, pain
- *other* - sutures; abrasions; laceration
- *sensory/speech* - tinnitus
- *mental/psychological* - anxiety; depression; cognition, impairment; memory, impairment

**Case Type:**

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

**Case Name:** William Royce v. Laemmle Theatres LLC and Does 1 to 10, No. BC624361

**Date:** December 14, 2017

**Plaintiff(s):**

- William Royce (Male, 65 Years)

**Plaintiff Attorney(s):**

- Brandon C. Murphy; Bice Murphy Law; Santa Monica CA for William Royce

**Defendant(s):**

- Laemmle Theatres LLC

**Defense Attorney(s):**

- Brad M. Elder; Diederich & Associates; Diamond Bar, CA for Laemmle Theatres LLC

**Insurers:**                   • Travelers Property Casualty Corp.

**Facts:**                    On March 10, 2014, plaintiff William Royce, 65, a retiree, was walking down the stairs of an aisle inside Laemmle Theatres' Playhouse 7 movie theater, in Pasadena, when he tripped and fell. Royce claimed he injured his head and suffered brain damage.

Royce sued the operator of the movie theater, Laemmle Theatres LLC. Royce alleged Laemmle Theatres failed to properly maintain the Playhouse 7 premises in a reasonably safe condition.

Royce claimed that the theater's lights were not bright enough for him to see where he was placing his feet as he walked down the stairs. Thus, he claimed that inadequate lighting caused him to trip and fall on the stairs, and caused him to strike his head on the arm rest of a chair.

Plaintiff's counsel asserted that inadequate lighting created a dangerous condition for patrons walking down the stairs in the dark theater.

Defense counsel asserted that the subject lights were adequate and proper. Counsel also asserted that Royce was not being careful as he walked down the stairs and that Royce tripped because he was not paying attention to where he was stepping.

**Injury:**                   Royce sustained blunt force trauma to his head as a result of the fall. As a result, he sustained a laceration to right side of his head and was rendered unconscious. He also sustained deep bruising to his chest and ribs, and abrasions to his upper and lower back. Royce was subsequently taken by ambulance to a local emergency room, where he was diagnosed with a concussion and received 13 sutures to close his head laceration.

Royce claimed that he suffered a traumatic brain injury as a result of the fall. He alleged that as a result, he suffers from residual humming in both of his ears with balance problems (tinnitus). He also alleged that he suffers from constant headaches, anxiety, depression, insomnia, memory loss, and irritability.

**Result:**                   Prior to trial, the parties agreed to a \$100,000 settlement.

### **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**                    Gary Raynaldo

**Defense: House's pathway did not violate any residential codes**

**Type:** Verdict-Plaintiff

**Amount:** \$100,000

**Actual Award:** \$10,000

**State:** California

**Venue:** Los Angeles County

**Court:** Superior Court of Los Angeles County, Long Beach, CA

**Injury Type(s):**

- *head* - concussion
- *knee* - knee contusion
- *brain* - traumatic brain injury
- *other* - nondisplaced fracture; aggravation of pre-existing condition
- *face/nose* - fracture, nose; facial laceration; scar and/or disfigurement, face
- *mental/psychological* - anxiety; depression; cognition, impairment; memory, impairment; post-concussion syndrome; concentration, impairment

**Case Type:**

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

**Case Name:** Marie Underhill v. Estate of Testa and Does 1 to 100, No. BC638507

**Date:** May 23, 2018

**Plaintiff(s):**

- Marie Underhill (Female, 69 Years)

**Plaintiff Attorney(s):**

- Aaron M. Brown; Brown, Brown & Brown; Long Beach CA for Marie Underhill

**Plaintiff Expert  
(s):**

- David L. Edelman M.D.; Neurology; Torrance, CA called by: Aaron M. Brown
- Donald Striplin M.D.; Orthopedic Surgery; Torrance, CA called by: Aaron M. Brown
- Johnny H. Wen Ph.D.; Neuropsychology; Torrance, CA called by: Aaron M. Brown
- Richard D. Grossman P.E.; Safety; Woodland Hills, CA called by: Aaron M. Brown

**Defendant(s):**

- Estate of Testa

**Defense  
Attorney(s):**

- Hetal J. Kommes; Mark R. Weiner & Associates; Glendale, CA for Estate of Testa
- Courtney D. Flannery; Mark R. Weiner & Associates; Glendale, CA for Estate of Testa

**Defendant  
Expert(s):**

- Tim K. Cha M.D.; Neurology; Torrance, CA called by: for Hetal J. Kommes, Courtney D. Flannery
- Thomas L. Parco; Building Codes; Rancho Santa Margarita, CA called by: for Hetal J. Kommes, Courtney D. Flannery
- Charles H. Hinkin Ph.D.; Neuropsychology; Los Angeles, CA called by: for Hetal J. Kommes, Courtney D. Flannery
- Jeffrey A. Bounds M.D.; Neurology; Loma Linda, CA called by: for Hetal J. Kommes, Courtney D. Flannery
- Schenley Co M.D.; Neurology; Los Angeles, CA called by: for

**Insurers:**

- State Farm Insurance Cos.

**Facts:**

On Dec. 8, 2015, plaintiff Marie Underhill, 69, tripped and fell on an unfinished flagstone pathway to the entrance of a house in Palos Verdes that was being remodeled by her friend, Lynne Testa.

Underhill was friends with Testa for 36 years, but Testa passed away in October 2015. At the time of her death, Testa was in the process of remodeling the Palos Verdes home that she had bought for the sole purpose of flipping it once upgrades were completed. Part of the remodeling included a flagstone pathway to the entrance of the house.

After Testa passed away, the executor of Testa's estate asked Underhill to help him get the house ready for sale. Specifically, he wanted Underhill to let him know what work needed to be done, work with contractors to oversee the work, and complete an estate sale on the property. He subsequently paid Underhill approximately \$10,500 out of the fee he was entitled to receive.

Thus, on Dec. 8, 2015, the home's pathway appeared to be unfinished. While the flagstones were anchored, there were still gaps between the stones that measured approximately 2.5 inches deep and 3 inches wide. Underhill claimed that while she was walking on the pathway, her shoe got caught in a gap between the stones, causing her fall forward and strike her face and left knee on the concrete.

The only witness to Underhill's fall was her ex-husband.

Underhill sued the estate of Testa, alleging that the unfinished flagstone walkway constituted a dangerous condition.

The plaintiff's safety expert opined that the walkway violated a number of California Commercial building codes and sections, constituting general negligence and premises liability. Thus, plaintiff's counsel argued that Testa, while she was alive, and her estate, after her death, were negligent in the use or maintenance of the subject walkway based on the building code.

Defense counsel argued that the house was a single family residence and, as such, the California residential codes would apply. Counsel further argued that the walkway did not violate any of those codes. (Defense counsel was precluded from discussing the fact that Underhill was a beneficiary in Testa's will, based on a motion in limine brought by plaintiff's counsel.)



**Injury:**

Underhill sustained a non-displaced nasal fracture, a left knee contusion, a large laceration on the forehead and a mild concussion. She also claimed that her knee injury aggravated a pre-existing condition in her left knee and that her head injuries caused a mild traumatic brain injury. Underhill was subsequently treated by paramedics at the scene and taken to Torrance Memorial Medical Center's emergency room, where she received 21 stitches in the shape of an "X" to treat the large forehead laceration.

Underhill was seen by her primary care physician a number of times for her ongoing complaints, and the physician referred her to several neurologists because of her cognitive complaints. The first two treating neurologists, Dr. Schenley Co and Dr. Tim Cha, saw Underhill within 30 and 60 days of the fall, respectively. At that time, the neurologists diagnosed Underhill with a mild concussion, but gave her neurological clearance. Underhill then saw a third treating neurologist, Dr. David Edelman, who sent her to Dr. Johnny Wen, a treating neuropsychologist who performed tests and concluded that Underhill suffered from post-concussion syndrome and validated Underhill's subjective complaints. Wen testified that he believed Underhill's cognitive complaints were a result of the subject fall. Edelman also came to the same conclusion based on Wen's test results.

Underhill claimed that she was left with a small scar on her forehead. She also claimed that as a result of her mild traumatic brain injury, she suffers from short term memory loss, concentration problems and confusion. Specifically, Underhill claimed she would forget things such as conversations, whether she ate dinner, where she was going when driving, why she was writing a check, and even whether she gave her dog medication. She further claimed that she would lose her train of thought and that her condition caused a worsening of her depression and anxiety.

Underhill waived her past medical specials, and only sought recovery of damages for her past and future pain and suffering. Specifically, plaintiff's counsel asked the jury to award \$1,020,500 in damages, including \$400,000 for Underhill's past pain and suffering and \$620,500 (\$100 per day for the next 17 years of her life) for Underhill's future pain and suffering.

Defense counsel disputed Underhill's mild traumatic brain injury claims, and had the depositions of Underhill's first two treating neurologists read at trial, noting that Co and Cha gave Underhill neurological clearance. Defense counsel also noted that Underhill had been diagnosed with breast cancer in December 2017 and argued that any findings from the plaintiff's third treating neurologist, Edelman, and treating neuropsychologist, Wen, would be skewed by Underhill's recent diagnosis and treatment.

**Result:**

The jury found that Testa's estate was negligent and that the estate's negligence was a substantial factor in causing Underhill harm. It also found that Underhill was comparatively negligent. The jury apportioned 90 percent fault to Underhill and 10 percent fault to the estate of Testa. The jury also determined that Underhill's damages totaled \$100,000.

After apportionment, Underhill should recover \$10,000.

**Marie Underhill**

\$50,000 Personal Injury: Past Pain And Suffering

\$50,000 Personal Injury: Future Pain And Suffering

**Trial Information:**

**Judge:** Michele E. Flurer

**Demand:** \$100,000

**Offer:** \$15,000 (C.C.P. § 998)

**Trial Length:** 5 days

**Post Trial:** Defense counsel filed a memo of cost.

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

**Writer** Priya Idiculla