

# TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

DECEMBER 27, 2010

Vol. 13, No. 50

SETTLEMENT RESULT: \$245,000

## PREMISES LIABILITY

50 TD 13TH 13

### Jogger trips, falls on city sidewalk in disrepair

#### PREMISES LIABILITY

Slip/Trip & Fall/Public Property/Paved Surface/Curb

#### LOS ANGELES COUNTY SUPERIOR COURT

*Martinez v. City of Montebello*, Docket number: BC383168, Downtown. Judge: Irving S. Feffer. Trial type: Settlement. Settlement date: 4/27/2009.

#### SETTLEMENT: \$245,000

After more than one year of discovery and shortly before trial, the case was mediated before mediator Jeffrey Krivis, Esq., who facilitated the \$245,000 settlement.

#### COUNSEL

**Plaintiff:** Scott J. Corwin, A Professional Law Corporation, Los Angeles.

**Defendant:** Roger A. Colvin, Alvarez-Glasman & Colvin, City of Industry.

#### FACTS/CONTENTIONS

According to plaintiff: On September 6, 2006, plaintiff Sally Martinez, a 63-year-old makeup artist, was jogging in the 2400 block of west Lincoln Avenue in the City of Montebello, just a few blocks from her home. Plaintiff tripped and fell on a raised slab of sidewalk. The sidewalk rise was approximately 1.5 inches in height. A neighbor had previously notified defendant City of Montebello of damaged sidewalk on his street prior to plaintiff's fall. However, the notification by the neighbor was for sidewalk on the opposite side of the street from where plaintiff was injured.

Plaintiff alleged defendant was negligent and careless in its failure to inspect, maintain, and repair the damaged side-

walk, especially after receiving notification from the neighbor. Plaintiff contended defendant's sidewalk constituted a dangerous condition of public property and that defendant was responsible for all of plaintiff's claimed injuries.

Defendant City of Montebello disputed liability and claimed the sidewalk condition did not constitute a hazard. Defendant City of Montebello also claimed the condition was open and obvious and plaintiff should have been aware of it, as she testified in deposition that she jogged past the very sidewalk that caused her fall almost daily for years. Defendant City of Montebello also disputed the nature and extent of plaintiff's claimed injuries. Defendant contended plaintiff had a previous trip and fall incident and had injured her knees in that previous fall. Defendant claimed plaintiff's surgeries were unnecessary and unrelated to the subject incident.

#### CLAIMED INJURIES

According to plaintiff: Plaintiff sustained cervical, thoracic, and lumbar strain and sprain injuries that were treated conservatively by physical therapy. Plaintiff consulted an orthopedist, who prescribed a left knee and right shoulder MRI. The left knee MRI revealed a posterior horn medial meniscal tear. The right shoulder MRI revealed a right shoulder rotator cuff tendon tear. Plaintiff underwent a left knee arthroscopic partial medial meniscectomy surgery. Plaintiff also underwent a right shoulder arthroscopic debridement and decompression surgery. The orthopedist advised plaintiff that she may need a right shoulder hemioarthroplasty surgery in the future.

#### CLAIMED DAMAGES

According to plaintiff: \$116,927 past medical expenses; \$54,000 future medical expenses.

#### SETTLEMENT DISCUSSIONS

According to plaintiff: Plaintiff initially demanded \$500,000 on March 2, 2007. Defendant initially offered \$70,000 on November 13, 2007. Plaintiff countered at \$350,000 on December 29, 2007. A lawsuit was filed.

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**EXPERTS**

Plaintiff: None.

Defendant: S. Andrew Schwartz, M.D., orthopedic surgeon, Beverly Hills (310) 276-0900.

**COMMENTS**

According to plaintiff: The complaint was filed on January 2, 2008.