

TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

AUGUST 28, 2006

Vol. 9, No. 35

SETTLEMENT RESULT: \$550,000

PREMISES LIABILITY

35 TD 9th 14

SETTLEMENT—Adult student attending night classes at church trips and falls down flight of stairs

PREMISES LIABILITY

Slip/Trip & Fall : Stairs/Handrail/Guardrail

LOS ANGELES COUNTY SUPERIOR COURT

Delgado v. United Methodist Church, No. SC076988, Santa Monica. Settlement date: 2/25/2004.

SETTLEMENT RESULT: \$550,000

Approximately three weeks before trial, United Methodist Church settled for \$300,000. Three days before trial, LAUSD settled for \$250,000, making plaintiff's total settlement \$550,000.

COUNSEL

Plaintiff: Scott J. Corwin, Law Offices of Scott J. Corwin, Los Angeles.

Defendant: David J. O'Keefe, Bonne, Bridges, Mueller, O'Keefe & Nichols, Los Angeles. Dennis K. Wheeler, Haight, Brown & Bonesteel, Los Angeles. Robert L. Toolen, Cooksey, Howard, Martin & Toolen, Costa Mesa.

FACTS/CONTENTIONS

According to plaintiff: On May 9, 2002, plaintiff Delgado, a 58-year-old hotel worker, was walking down a flight of stairs at defendant United Methodist Church's premises while attending a night computer class put on by defendant Los Angeles Unified School District, when she tripped and fell on the second-to-last step before the landing. The classes were attended mostly by elderly and retired persons.

Plaintiff discovered that another student had tripped and fallen on the same staircase and on the very same step at the same time of night approximately two and a half months earlier. That prior victim had made an incident report at that time; however, neither United Methodist Church nor LAUSD had taken any precautionary or remedial measures between the time that the first victim and plaintiff were injured.

During discovery, plaintiff learned that an employee of LAUSD had also fallen several months prior to her fall. Plaintiff had been on disability previously for a prior slip and fall at work about two years earlier in which she injured her knee. Plaintiff had just gotten off disability and was attending the night computer class in order to enhance her skills so she could return to the job market, having been laid off her job about three months prior to the subject fall.

Plaintiff alleged that both defendants were negligent. Plaintiff also alleged that the staircase had inadequate lighting and the handrail failed to extend past the bottom step; that there was no white striping on the last step; and that the combination of these hazards created a trap and constituted a dangerous condition. Plaintiff further alleged that both defendants had notice due to the prior falls. Plaintiff claimed that all of her injuries and the need for a possible fusion were a direct result of defendants' negligence.

Defendants disputed whether the conditions constituted a hazard. They contended plaintiff did not use due care when walking down the steps; that her prior left knee injury may have contributed to the fall; and that there was adequate lighting. Both defendants argued that plaintiff bore as much as 40 percent comparative negligence. Both defendants also disputed the nature and extent of plaintiff's claimed injuries.

Trials Digest, a Thomson West business, 425 Market Street, 4th Floor, San Francisco, CA 94105
415-344-6000 (ph) 415-344-4950 (fax) trialsdigest@thomson.com west.thomson.com/trialsdigest/

TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

AUGUST 28, 2006

Vol. 9, No. 35

35 TD 9th 14 (continued)

CLAIMED INJURIES

According to plaintiff: Plaintiff sustained a left trimalleolar ankle fracture for which she underwent open reduction and internal fixation surgery. Plaintiff also sustained a right bimalleolar ankle fracture for which she underwent closed reduction and casting. She may also require a left ankle arthrodesis in the future.

CLAIMED DAMAGES

According to plaintiff: \$46,514 past medical; \$43,000 future medical; \$30,330 lost income.

SETTLEMENT DISCUSSIONS

According to plaintiff: Plaintiff initially demanded \$850,000. Defendants argued between themselves as to their proportionate share of responsibility.

At mediation before retired Judge Russell Bostrom, plaintiff reduced her demand to \$650,000, with an indication that she would accept \$500,000. Defendants made a combined offer of \$100,000 at mediation, which was increased a few months later to \$235,000. Discovery proceeded with the deposition of approximately 15 witnesses who were employees of both the school and church.

During discovery, the third fall was discovered (although not previously disclosed in written discovery) and there was substantial inconsistent testimony between all of the witnesses.

EXPERTS

Plaintiff: None.

Defendant: Robert M. Wilson, M.D., orthopedic surgeon, Cedars-Sinai Medical Tower, Los Angeles (310) 289-0249.

EXPERT TESTIMONY

According to plaintiff: Defendants' expert orthopedic surgeon, Robert M. Wilson, M.D., contended that plaintiff would not require a future ankle fusion.

COMMENTS

According to plaintiff: David J. O'Keefe and Robert L. Toolen represented defendant United Methodist Church. Dennis K. Wheeler represented defendant Los Angeles Unified School District.

Trials Digest, a Thomson West business, 425 Market Street, 4th Floor, San Francisco, CA 94105
415-344-6000 (ph) 415-344-4950 (fax) trialsdigest@thomson.com west.thomson.com/trialsdigest/