

# TRIALS DIGEST®

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**SETTLEMENT RESULT: \$850,000**

## PREMISES LIABILITY

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### SETTLEMENT—Parent slips on unsecured rug at child's pre-school

#### PREMISES LIABILITY

Slip/Trip & Fall : Floor/Carpet

#### NO COURT/UNFILED SETTLEMENT

*Zhuk v. Academy Just For Kids*, Settlement date: 12/5/2004.

**SETTLEMENT RESULT: \$850,000**

#### COUNSEL

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

Defendant: James Siepler, Forge & Rifat, Glendale.

#### FACTS/CONTENTIONS

According to plaintiff: On May 29, 2003, plaintiff Zhuk, a 35-year-old housewife, was attending picture day at her daughter's pre-school, defendant Academy Just For Kids. Plaintiff was walking across the classroom on a large 8 x 10 rug on the hardwood floor. As plaintiff reached the edge of the rug, it slid out from underneath her as there was no anti-skid tape and it was not anchored to the floor. Plaintiff lost her balance, was pitched forward, and her shoulder struck the frame of the door to the classroom about six feet away. Defendant disposed of the rug after the incident, notwithstanding a written request from plaintiff's counsel to preserve it.

Plaintiff alleged that defendant was negligent in that it had a hazard upon its premises and failed to take precautionary measures. Plaintiff alleged that defendant should have placed anti-skid tape or otherwise securely fastened the rug to the hardwood floor, and that failure to do so created a dangerous condition. Plaintiff further alleged that

defendant's spoliation of evidence shifted the burden of proof to defendant to prove that it was not negligent.

Defendant disputed liability, disputed that the rug posed a hazard, and claimed that plaintiff was running across the rug and not looking where she was going. Defendant further disputed the nature and extent of plaintiff's claimed injuries and disputed the need for the future surgery. Defendant also claimed that plaintiff was on total disability from a prior low back injury and automobile accident.

#### CLAIMED INJURIES

According to plaintiff: Plaintiff sustained a right shoulder comminuted fracture with avulsion of the greater tuberosity, transverse fracture of the surgical neck of the humerus, and an inferior, possibly anteroinferior, dislocation. Plaintiff underwent a total of three right shoulder surgeries, including open reduction and internal fixation of the right proximal humerus fracture and rotator cuff repairs and removal of hardware. Plaintiff will ultimately require a total right shoulder replacement in three to five years. Plaintiff also claimed exacerbation of pre-existing low back injuries.

#### CLAIMED DAMAGES

According to plaintiff: \$312,022 past medical; \$55,000 future medical.

#### SETTLEMENT DISCUSSIONS

According to plaintiff: Plaintiff initially demanded \$1 million. Defendant made no offers until the mediation that was held before Jeffrey Krivis, Esq. The case was settled without the filing of a lawsuit.

#### EXPERTS

None.

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/