

TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

AUGUST 7, 2006

Vol. 9, No. 32

SETTLEMENT RESULT: \$3,407,752

PREMISES LIABILITY

32 TD 9th 18

SETTLEMENT—Boy sustains brain damage from trip and fall in pothole

PREMISES LIABILITY

Slip/Trip & Fall : Other

NO COURT/UNFILED SETTLEMENT

Bulosan v. Kaufman, No. BC262275, Los Angeles.
Settlement date: 11/5/2001.

SETTLEMENT RESULT: \$3,407,752

COUNSEL

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

Defendant: Michael Schonbuch, Daniels, Fine, Israel & Schonbuch, Los Angeles.

FACTS/CONTENTIONS

According to plaintiff: On January 7, 2000, plaintiff, age 11, was playing in the backyard of the apartment complex in which his family lived. He was playing with his Gameboy and was walking backwards. He tripped and fell when he inadvertently stepped into a pothole in the ground. His father rushed him to the California Hospital Medical Center. He was transported to a Kaiser facility, where he was diagnosed with a subdural hematoma and underwent an emergency craniotomy.

Plaintiff alleged that defendant landlord was negligent in that a hazard existed on her premises. Plaintiff had evidence that the City of Los Angeles Department of Building and Safety had inspected the premises on December 21, 1999, 17 days before the accident, and had issued a total of

five Notice to Comply citations for 38 different substandard and building code violations, including a citation for the pothole that plaintiff claimed was the source of his injury.

Plaintiff alleged that defendant had actual notice of the dangerous condition 17 days prior to the accident and that during defendant's one-year ownership of the property, she had every opportunity to make a reasonable inspection and discover the pothole.

Plaintiff further alleged that, as a result of the accident, he would be unlikely to graduate from high school and would only be able to work as a part-time minimum wage earner.

Defendant, after conducting extensive independent expert medical examinations, agreed that plaintiff's injuries were substantial and probably permanent. The defense medical experts' findings essentially agreed with plaintiff's experts.

Defendant strongly disputed liability, contending that the evidence presented failed to establish that plaintiff fell in the subject hole, as there were no eyewitnesses to the fall, and defendant's experts concluded from the evidence that the biomechanics of the fall were physically impossible to have occurred as plaintiff alleged. Defendant contended that plaintiff would be unable to establish the causation element of the case.

CLAIMED INJURIES

According to plaintiff: Closed head injury; left frontal temporal linear skull fracture; left occipital linear skull fracture; left temporal lobe subdural hematoma, requiring craniotomy for evacuation of hematoma; uncus herniation with cranial nerve III paresis; shear and contra-coup brain injury in the frontal lobe and brain tissue loss in the mid-temporal lobe; permanent traumatic brain injury; cognitive and neurological impairment; decreased visual acuity; double vision and diplopia; post-traumatic stress disorder; memory problems; specific language and learning disabilities; depression; anxiety; post-accident IQ of 71.

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32 TD 9th 18 (continued)

CLAIMED DAMAGES

According to plaintiff: \$65,649 past medical; \$729,000 future medical (pv); \$2.1 million future loss of earnings (pv).

SETTLEMENT DISCUSSIONS

According to plaintiff: Demand: \$1 million policy limits. After 15 months, defendant extended a structured settlement offer of \$250,000, which plaintiff rejected. The case was mediated and plaintiff reaffirmed his demand of \$1 million. Defendant offered \$350,000, which was rejected. A second mediation was held on November 5, 2001, at which the settlement of \$725,000 (pv), with payments totaling \$3,407,752 expected to be paid to plaintiff.

EXPERTS

Plaintiff: Thomas Gunzler, P.E., safety engineer, Gunzler & Associates, Pacific Palisades (310) 454-9614. Robert W. Johnson, economist, Robert W. Johnson & Associates, Los Altos (800) 541-7435. Jan Roughan, life care planner, Liaisons In Negotiating Care (LINC), Arcadia (625) 462-9675. Edwin C. Amos, III, M.D., neurologist, Neurological Associates of West Los Angeles, Santa Monica (310) 829-5968. Melanie Lenington, Ph.D., neuropsychologist, Los Angeles (310) 446-5399.

Defendant: Andrea Nash Morrison, M.D., neurologist, Tarzana (818) 887-0412. Leah Ellenberg, Ph.D., neuropsychologist, USC, Beverly Hills (310) 273-2701.

COMMENTS

According to plaintiff: This case was filed November 21, 2001.

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