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PENNSYLVANIA

PREMISES LIABILITY



Daniel J. Rucket

On January 5, 2007, plaintiff was walking home from making a purchase at a local convenience store. As she walked on the sidewalk, less than one block from her home, she saw a puddle covering a portion of the sidewalk. Plaintiff attempted to avoid the puddle by stepping around it. However, when she stepped down, she did not step far enough and her foot “caught the high edge of something” and she “rolled” her ankle. There were no witnesses to plaintiff’s alleged fall.

At the time of plaintiff’s accident, several individuals of the same family jointly owned the property, either individually or in their capacity as the personal representatives of certain estates. The property was vacant at the time of the accident. Plaintiff’s Complaint alleged that the sidewalk was “deteriorated, worn out, depressed, broken and/or otherwise defective”. The Complaint alleged that the property owners were negligent in their duty to maintain the sidewalk in a reasonably safe condition. Similarly, Plaintiff’s Complaint alleged that the City of Philadelphia was negligent in its duty to ensure that the property owners kept the sidewalk in a reasonably safe condition.

After plaintiff filed the initial Complaint, she and her husband filed an Amended Complaint against our client, A&E Construction. A Second Amended Complaint was subsequently filed to name our client, Boilerhouse Development, as a defendant. Boilerhouse was the developer. A&E was the builder of townhouses on the land

adjacent to the property and it completed excavation work for the project approximately two years before plaintiff's accident. In the various Complaints, plaintiff alleged that construction vehicles, including concrete trucks, excavators, and payloaders, were driven on the sidewalk and caused the alleged defective condition. She claimed that A&E and Boilerhouse had a duty to refrain from damaging the sidewalk in front of the property and were negligent by creating or contributing to the alleged defective sidewalk condition.

Plaintiff made several claims of injury, including a right ankle fracture and ligament tear requiring surgery. She claimed that she developed a hip problem as a result of wearing a walking boot, which was later diagnosed as a labral tear. She had hip surgery in May 2010. Plaintiff's counsel produced an operative report for the surgery which indicated that no labral tear was found during surgery, although plaintiff had synovitis. Plaintiff alleged permanent injuries, which included being unable to walk long distances, get dressed without help, work out at the gym, or do dishes and laundry. There was no wage loss claim. Plaintiff was in graduate school and not employed at the time of the accident. She remained unemployed at the time of trial. Plaintiff claimed more than \$19,000 in medical expenses.

The case was called to trial before the Honorable Leon Tucker of the Philadelphia County Court of Common

Pleas. The settlement demand before trial was \$975,000. The demand was reduced to \$750,000 on the first day of trial.

At trial, the plaintiffs presented several neighbors who testified about construction vehicles driving on the sidewalk during the project and that the sidewalk was in good condition before the construction began. Plaintiff's counsel presented Dr. Joseph Guagliardo as their medical expert. Dr. Guagliardo testified that the plaintiff sustained a right ankle fracture and torn ligaments in the accident and also sustained a torn labrum that was causally related to the accident. Dr. Guagliardo testified that he had reviewed the operative note from the hip surgery before he testified. Plaintiff's counsel also presented Nicolas Colanzi, P.E. as their liability expert. Mr. Colanzi testified that the sidewalk depression was caused by years and years of lack of maintenance. He also testified that there were utility boxes in the cement slab with the depression. He testified that very heavy loads, such as those of various construction vehicles, could contribute to settlement of the sidewalk slab. He also testified that water would infiltrate around the boxes and could also contribute to settlement of the sidewalk.

In our case, we presented Dan Honig, P.E., who testified that there was no evidence of heavy truck damage on the sidewalk. In particular, the utility boxes in the cement slab were not crushed or depressed. If

heavy construction vehicles drove on the sidewalk with sufficient size and force to crush the cement sidewalk slab, the utility boxes also would have been crushed. Mr. Honig testified that the sidewalk depression was the result of years of lack of maintenance.

In our closing argument to the jury, we argued that there was no evidence that heavy construction vehicles caused the depression in the sidewalk slab. We relied on photographs showing the utility boxes raised above the level of the depression. Additionally, we argued that the depression was trivial as it was less than two inches in height.

We also argued that plaintiff was comparatively negligent because she saw the puddle and had plenty of time to step around it. Furthermore, the accident occurred in daylight and plaintiff obviously perceived a “problem” with the sidewalk and failed to competently avoid the depression forming the puddle. In fact, plaintiff admitted that when she attempted to avoid the puddle, she “obviously didn’t step over far enough.”

As to damages, we were able to argue that plaintiffs’ counsel and their doctor were misrepresenting her injuries when Dr. Guagliardo testified that plaintiff sustained a right hip labrum tear, although they were aware from the surgery and operative note that there was, in fact, no torn labrum.

After deliberating for over four hours, the twelve-person jury returned a verdict of negligence against the homeowners and no negligence against our clients and the City of Philadelphia. They found plaintiff 40% comparatively negligent. The jury awarded plaintiff only \$27,279 which included \$10,863 for pain and suffering, \$2,750 for loss of life’s pleasures, \$8,500 in medical bills and \$5,166 for loss of consortium. The verdict was reduced to \$16,347.40 for the plaintiff’s comparative negligence.

Daniel J. Rucket concentrates his practice in general casualty litigation, including premises liability and construction defect and accident cases.

He is a 1990 graduate of Franklin and Marshall College and earned his law degree from William & Mary Law School in 1993. He is admitted to practice in Pennsylvania and the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania.

Mr. Rucket has been selected as a Pennsylvania SuperLawyer in 2010 and 2011, and a Pennsylvania SuperLawyer Rising Star in 2007, 2008 and 2009.

For more information, contact Dan at:
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PITTSBURGH OFFICE EXPANSION

A three-lawyer group has joined Rawle & Henderson's Pittsburgh, PA office. **Eric K. Falk** and **Julie Nord Friedman** have joined the Pittsburgh office as partners. In addition, **Natalie M. Kreter** has joined the Pittsburgh office as an associate. The attorneys and their support staff come to Rawle & Henderson LLP from the Pittsburgh firm of Davies, McFarland & Carroll, P.C.

Eric K. Falk will concentrate his practice in the area of toxic tort litigation. He received his J.D. in 1984 from the University of Pittsburgh School of Law and his B.S. with Honors in 1981 from The American University in Washington, D.C. He is admitted to practice in Pennsylvania and West Virginia as well as the U.S. District Court for the Western District of Pennsylvania, the U.S. District Courts for the Western, Southern and Northern Districts of West Virginia, and the U.S. Court of Appeals for the Fourth Circuit.

Julie Nord Friedman will concentrate her practice in the defense of manufacturers, suppliers, and contractors in toxic tort litigation, with an emphasis on asbestos litigation. She received her J.D. in 1995 from the University of Pittsburgh School of Law and her B.A. in 1992 from The American University in Washington, D.C. She is admitted to practice in Pennsylvania and West Virginia, as well as the U.S. District Court for the Western District of Pennsylvania and the U.S. District Court of the Southern District of West Virginia.

Natalie M. Kreter will focus her practice on the defense of corporations in the areas of products liability, toxic torts, environmental law and insurance defense. She received her J.D. in 2004 from the University of Pittsburgh School of Law and her B.S. in 2000 from the University of North Carolina at Greensboro, majoring in biology and chemistry. She received a full NCAA Athletic Scholarship in Women's Basketball. She is admitted to practice in Pennsylvania and West Virginia, as well as the U.S. District Court for the Eastern District of Pennsylvania and the U.S. District Court for the Southern District of West Virginia.

TIDA CARGO SEMINAR



James A. Wescoe

James A. Wescoe organized the Trucking Industry Defense Association (TIDA) Cargo Seminar in Tempe, AZ, on March 28, 2011. He presented a program on *"Dealing with 'Hostage' Shipments and Loads: Legal Rights and Available Remedies."*

The program addressed strategies for responding to the improper detention of cargo, freight charge collection strategies and methods for seeking injunctive relief in state and federal courts. Jim is the Chair of the TIDA Cargo Claims Committee and organized the speakers and topics for the seminar.

For more information please contact James at jwescoe@rawle.com.