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PENNSYLVANIA PREMISES LIABILITY DEFENSE VERDICT



Daniel J. Rucket

Plaintiff was a 59-year-old wheelchair-bound paraplegic. His legs were not functional, but he claimed to have full feeling in his buttocks and legs. He entered Bowling Green Brandywine, a drug and alcohol rehabilitation facility, on February 6, 2006 for alcohol withdrawal and rehabilitation. Plaintiff alleged in his Complaint that he was placed in a shower on a shower chair by a Bowling Green nurse, and the water was turned on and left running. The water allegedly was scalding hot. The chair leg broke allegedly causing plaintiff to fall into a puddle of scalding hot water for an undetermined period of time, resulting in a large, crescent-shaped second-degree burn on his right buttock.

At his deposition, plaintiff testified that he had wheeled himself into the bathroom and locked the door behind him. While starting to take a shower, the chair leg broke, causing him to fall mostly out of the shower, at which time the water from the hand-held shower head sprayed his buttocks for approximately two to three seconds, before he moved the shower head away. Another patient knocked on the door and plaintiff told him, "I'm coming." Plaintiff put his clothes on, got into his wheelchair, and opened the door without screaming in pain, crying out, or asking for help.

Bowling Green's records indicated that plaintiff was found on the bathroom floor and the fall was reported to Bowling Green. A nurse immediately responded and examined plaintiff who denied any discomfort. Plaintiff was monitored and slept through the night without complaint. The next day, a nurse took his vital signs at 6 a.m. He ate breakfast and he was examined by a nurse practitioner, all without any complaints about his buttocks. Plaintiff ate lunch, attended a group therapy session, and had a private meeting with a therapist, with no complaints of pain or discomfort in his buttocks. That afternoon, plaintiff's roommate reported that he had fallen out of his bed. He was examined by a nurse practitioner who thought the plaintiff seemed lethargic and became concerned that plaintiff had hit his head in the fall in the shower. Plaintiff was transported to the Jennersville Regional Hospital Emergency Room. At the hospital, plaintiff was examined and a large wound was found on his right buttock which was diagnosed as a second-degree burn, although it was referred to in Jennersville's records variously as a decubitus ulcer (pressure sore) and even an abrasion.

Plaintiff filed his lawsuit as a medical malpractice action. Plaintiff claimed

that Bowling Green failed to consider his existing paraplegia, which limited him in adapting to his environment, without appropriate equipment for activities of daily living. Plaintiff also claimed that Bowling Green failed to ensure a safe environment conducive to rehabilitation and instead, caused him to endure an extended period of treatment as a result of the injuries sustained in the fall.

Plaintiff claimed that the large, crescent-shaped second-degree burn on his right buttock caused him chronic pain and discomfort. He started leaning on his left side which allegedly resulted in left-sided pressure sores, including a severe, chronic left hip ulcer that ultimately required a skin flap in May 2010. The burn and repeated ulcers allegedly caused plaintiff to be unable to sit for long periods of time and resulted in his inability to work. Since the skin flap procedure, he had been able to return to work part time. Plaintiff denied having any pressure sores since the accident, despite medical records indicating multiple right- and left-sided pressure sores. Bowling Green contended that plaintiff's alleged inability to work was related to numerous other medical conditions, as well as his continued alcoholism, and other decubitus

ulcers caused by his paraplegia, and not the alleged burn on his right buttock which would have healed in several weeks.

Throughout the litigation, Bowling Green contended that they provided proper care to plaintiff, and the alleged burn on his buttocks was not sustained as a result of the chair breaking and his fall in the shower. Rather, they argued that the mark on his buttocks was likely a pressure sore as plaintiff had a history of pressure sores. In fact, he was treated several times in 2003 and 2004 for pressure sores, and went to Lancaster General Hospital on February 5th, the day before entering Bowling Green, complaining of increased pressure sores on his buttocks. Notwithstanding the records from Lancaster General Hospital, plaintiff denied ever having pressure sores.

The case was tried before Judge Thomas G. Gavin of the Chester County Court of Common Pleas. Plaintiff's pretrial demand was \$600,000. Before testimony, plaintiff's counsel agreed that the case was not a medical malpractice case, but rather a premises liability case. Plaintiff's counsel called plaintiff's two sisters and one brother as witnesses. Plaintiff's counsel also called numerous employees and former employees

of Bowling Green as witnesses. Plaintiff presented a wage loss claim of \$92,000 and a large medical bill claim. Plaintiff's counsel did not call the doctor who treated plaintiff for the alleged burn. Instead, he relied on medical testimony from the plastic surgeon who had treated the plaintiff the last several years for the left-sided ulcers. The surgeon admitted that she was not a specialist in burns or the mechanism of burns. She still testified that the wound was a burn although she could not say with certainty that it was caused in the shower. Plaintiff also presented one of the doctors who examined him in the emergency room, and did not remember plaintiff, but testified based on his examination records that diagnosed the wound as a second-degree burn.

We presented a burn specialist from Lehigh Valley Hospital. He testified in detail why this wound could not be a scald burn, both from its presentation in photographs and plaintiff's own testimony. Most importantly, he testified that a spray from a shower head for only a few seconds could not have caused the very defined, large, crescent-shaped mark on plaintiff's right buttock. Rather, it likely was a pressure sore, caused by paraplegia. His testimony, combined with the testimony by Bowling Green's employees and former

employees that plaintiff had no complaints of a burn on his buttocks, was not in any visible distress, and was able to engage in activities, including a subsequent therapy session, without any complaints, presented a compelling defense to plaintiff's claims.

The jury was charged on two theories of negligence, one for the chair breaking and the other for hot water in the shower. The jury returned a verdict of no negligence for the shower, negligence for the chair breaking, but no factual cause for the claimed injuries, resulting in a defense verdict. Considering that defending the case on liability for the chair breaking was never really pressed (since Bowling Green lost the chair after an employee inadvertently threw it away months after the accident), and the case was defended primarily on causation, the jury's verdict was not unexpected. Plaintiff did not appeal the verdict.

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 in 1993. He is admitted to practice in Pennsylvania and the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania. Dan was named a 2010 and 2011 Pennsylvania SuperLawyer, after three consecutive years of being selected a Pennsylvania SuperLawyer Rising Star.

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GRIFFITH TO CO-CHAIR ASBESTOS FORUM



Scott F. Griffith

Scott F. Griffith, a partner in our Philadelphia office, will Co-Chair the American Conference Institute's 12th Annual Advanced Forum on *Asbestos: Claims & Litigation*. The conference will be held January 26-27, 2012 at the Union League in Philadelphia, Pennsylvania. In addition, Scott will speak in a session on January 26, 2012 on "Bankruptcy Filings, Confirmations & Estimations and the Transparency Between Bankruptcy Trusts and Tort Litigation." Scott concentrates his practice in the areas of environmental, toxic and mass torts, products liability, professional liability, and white collar criminal defense.

For more information, please contact Scott at sgriffith@rawle.com.