

## Woman injured knee in slip and fall at store – \$2,060,000 Verdict

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Plaintiff, a 34-year-old woman, entered a national retailer at approximately 9:45 PM on the evening of Sept. 17, 2013. Unbeknownst to the plaintiff, floor cleaning activity by a subcontractor for the retailer had started after 9:30 and prior to the contractually mandated time of 10 PM. An employee of the subcontractor was seen on surveillance video operating a floor scrubber in the area of the plaintiff's subsequent fall.

As the plaintiff entered the front aisle of the store her left foot slipped in a liquid on the floor and she fell to the floor, striking her right knee on the tile floor. The fall was also seen on surveillance video. A manager of the store approached the plaintiff and indicated that she has just stopped the subcontractor from cleaning the floor early. An incident report was prepared by the manager which confirmed the floor was wet and the equipment involved was a "floor scrubber."

The plaintiff reported immediate pain in her right knee and was transported by ambulance to a nearby emergency room. The plaintiff was seen in a follow-up by a local orthopedic practice. An MRI was eventually performed which demonstrated a traumatic osteochondral lesion in the trochlear groove of the right knee. The plaintiff worked as a caregiver at a group home for adults with intellectual disabilities. She was placed on permanent light duty by her orthopedic surgeon and moved to light duty position at the same facility. A lost wage claim was not presented at trial.

Suit was initially filed against the national retailer and following initial discovery, the complaint was amended to add the floor cleaning contractor and a sub-contractor. It was eventually determined that the person operating the floor scrubber was the employee of a sub-sub-contractor. The national retailer was unable to determine the identity of the person operating the floor scrubber, despite the fact that he was required to sign into their computer time keeping system each time he entered the store.

Depositions were taken of the store manager as the corporate designee for the national retailer. She confirmed that she had authored the incident report and repeated her claim that she had stopped the person operating the floor scrubber because it was dangerous. She admitted that one of her concerns was that the machine left behind streaks of water on the floor. She also confirmed that after the plaintiff's fall she saw a streak of water consistent with water left behind by the floor scrubber.

The defense requested a Rule 4:10 medical examination and the orthopedic surgeon agreed that the plaintiff had suffered the injury as a result of her fall and that the plaintiff should be placed on permanent light duty. The Rule 4:10 report was read into evidence by plaintiff's counsel at trial. Neither the plaintiff's treating physicians or the Rule 4:10 examining physician offered the plaintiff any hope for a resolution of her continuing knee pain.

Plaintiff sought treatment with a new orthopedic surgeon who recommended that she receive a trochlear implant. The implant would markedly improve function of the knee, but when the implant ultimately failed, the plaintiff required two knee replacements in the future. The surgery occurred prior to trial and plaintiff testified at trial that the implant had greatly improved her knee function.

Mediation was held which did not result in settlement of the matter despite continued efforts by the mediator. Plaintiff's counsel made a final settlement demand just prior to trial of \$1,000,000.00 and the defense responded with a final settlement offer of \$625,000.00, which was rejected.

As part of trial preparation, counsel for the plaintiff conducted a focus group in the jurisdiction. The focus group, which was conducted by Jury Impressions of Richmond, provided invaluable information to plaintiff's counsel with regard to issue framing and use of the surveillance video of the evening of the fall. The quality of the surveillance video provided by the defendant in discovery was poor and plaintiff's counsel also employed Allied Video Services of Chesapeake to enhance the video.

Trial was commenced on Aug. 30, 2017. The store manager of the national retailer was called as an adverse witness because the surveillance video confirmed that contrary to her statement on the night of the fall and at her deposition, that she had not stopped the operation of the floor scrubber. The video was also used to show the floor scrubber in the area of the fall and the plaintiff's fall.

The plaintiff testified that the recent knee surgery had improved the function of her knee, but she continued in a light duty position and was concerned that she might lose her job to computerization. The plaintiff testified about her concern about the future knee replacement surgeries because as a single female she did not know who would be available to help her in the recovery from those surgeries. The plaintiff's mother was also called as a witness to testify about the impact of the fall and injury on her daughter. The orthopedic surgeon was also called to testify concerning the injury, recent surgery and future surgeries.

The defense called the store manager in their case in chief in an attempt to prove that the plaintiff did not fall on water left by the floor scrubber. On cross-examination, counsel for the plaintiff allowed the store manager to again explain the discrepancies between her testimony and the video. Defense counsel did not show the surveillance video during their case in chief.

The defense also called an orthopedic surgeon who had performed a record review to testify that the recent surgery was not necessary and the plaintiff could have had a less invasive surgical procedure. Interestingly, the defense also decided to have the doctor testify that the injury had not occurred in the fall, despite the fact that the Rule 4:10 examining physician (who actually examined the plaintiff) had agreed that the injury occurred in the fall.

The case was submitted to the jury on the afternoon of the second day of trial. After approximately two hours. The jury returned its verdict for the plaintiff in the amount of \$2,060,000.00. Counsel for the defendant made a Motion for Judgment Notwithstanding the Verdict which was denied by the court. After entry of the judgement, the court stayed the judgement in order to allow the defendant to file post-trial motions. Prior to the hearing on post-trial motions, the matter was resolved to the satisfaction of the parties.

[17-T-187]

**Type of action:** Personal Injury/Knee injury

**Injuries alleged:** Osteo-chondral lesion of the trochlear groove

**Tried before:** Jury

**Date resolved:** Oct. 16, 2017

**Special damages:** Past and Future Medical Damages of \$220,000.00; No lost wage claim was submitted

**Demand:** \$1,000,000

**Offer:** \$625,000

**Verdict or settlement:** Verdict

**Amount:** \$2,060,000

**Attorneys for plaintiff:** Thomas A. Fitzgerald II, Norfolk

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