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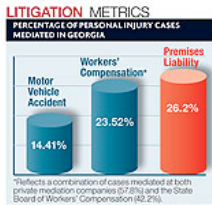
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Monday, October 11, 2010
Jury awards woman \$4.3M in slip-and-fall case
Verdict was 'clearly excessive,' defense lawyer says
 By Greg Land, Staff Reporter



(Zachary D. Porter/Daily Report)
 Plaintiff's lawyer Michael Braun: The store's failure to fix the concrete ramp before his client's accident was key to the verdict.



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In what the defense attorney called a "clearly excessive verdict," a Fulton County State Court jury last month awarded \$4.3 million to a woman injured when she slipped on a concrete ramp leading to the entrance of a Sports Authority store that had already been blamed for two prior accidents, one of which had resulted in legal action.

Plaintiff's attorney Michael R. Braun of Marietta's Brown & Ree said the store's failure to remedy the situation before his client's accident was key to the verdict.

"That was a huge issue for the jury," he said. "When somebody's already sued, you're on notice."

The case began on Dec. 8, 2005, when Donna C. Williams, then 44, was going into the Sports Authority Lilburn store. According to the pretrial order in the case, a sloping concrete ramp leads from the parking lot pavement up to the door; on either side of the slope, the ramp rises up to meet the sidewalk.

The difference in elevation between the slope and the sidewalk was not demarked until the day after Williams fell, according to the order, when the store manager painted the ramp yellow to make it more visible.

The defense portion of the order says that on the day of the accident, it was overcast and had begun to sleet. Williams was hurrying to assist an acquaintance, who was on crutches, enter the store when she tripped and fell.

"Defendant believes that the plaintiff was contributorily negligent, that she was not exercising due care for her safety," it says. "Defendant contends that the ramp upon which the plaintiff tripped was an open, obvious and static condition of which the plaintiff was fully aware without distraction."

The defense also argued that the property owner, Lilburn G&I, was responsible for any "hazardous condition" on the property that was leased by Sports Authority's parent company, TSA Stores Inc., and disputed "the causation, nature and extent" of Williams' injuries.

"She was pretty badly injured," said Braun. "She was brought to Emory Eastside [Medical Center] and immediately diagnosed with a fractured hip."

Williams underwent surgery and was subsequently found to have an injured spinal disc and damaged sacroiliac joint, and had back surgery more than four years after the fall, he said.

In 2002, a woman fell on the same ramp, said Braun, and another person fell in 2004. The 2002 accident victim filed suit in Magistrate Court, he said, and ended up settling for \$1,750; the other did not sue.

Williams initially filed suit in Fulton County State Court in 2007 but voluntarily dismissed that suit, said Braun.

"I was the third attorney on this case," he said. "The first one withdrew in 2005, and the new one actually filed the suit, then dismissed it when the defendant filed for summary judgment."

Braun said he did not know why Williams' previous lawyer dismissed the case.

"He either didn't feel like fighting it or didn't feel like he could win," he said. He said that the earlier suit did not include the property owner as a defendant, so the statute of limitations had long since run by the time he re-filed, and TSA was the only named defendant.

There were two settlement demands prior to trial, he said. The original lawyer had asked for \$150,000 and was offered \$5,000.

"I made a \$375,000 demand and never got an answer," he said.

During a two-day trial that began Monday, Sept. 27, before Fulton County State Court Judge Diane E. Bessen, Braun presented testimony from the two prior accident victims; a premises liability expert, who testified that the failure to paint the ramp was in violation of the Georgia Accessibility Code; and Williams' doctors.

Williams, although quite healthy, was between jobs at the time of the accident, said Braun.

"So we did not make a wage claim," he said. "Basically, we asked for about \$138,000 in medical expenses, and pain and suffering on top of that."

The defense, he said, didn't put up any experts.

"They relied on the idea that this was an open and obvious case, that she should have seen it," said Braun. "Their only witness was the store manager, who testified that 100,000 people a year came through that door, and only these three fell."

He also testified that the store's lease agreement shifted liability to the property owner, who was listed on the jury form as potentially liable for apportioned damages.

The trial wrapped up Tuesday afternoon, and at about 10:30 Wednesday morning the jury came back with a \$5 million plaintiff's judgment. Because Williams was deemed 14 percent responsible, the award was reduced to \$4.3 million; the jury did not apportion any liability to the property owner.

Defense attorney Alfred L. Evans III, who represents TSA with firm partner John B. Austin of Austin & Sparks, said there will likely be an appeal.

"We are currently reviewing all post-judgment options in relation to this clearly excessive jury verdict," said Evans via e-mail, "and anticipate that several post-judgment motions will in fact be filed."

The case is *Williams v. TSA Stores*, No. 2009EV006917.

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