

Superior Court, San Bernardino County, California.

L.A. Fredeen vs. Residence Inn by Marriott

TOPIC:

Synopsis: SETTLEMENT -- Hotel guest severely injured when staircase tread fails

Case Type: Premises Liability; Slip/Trip & Fall; Premises Liability; Stairs; Premises Liability; Negligent Repair/Maintenance; Premises Liability; Hotel

DOCKET NUMBER: RCV087327

STATE: California

COUNTY: San Bernardino

Verdict/Judgment Date: February 8, 2008.

JUDGE: Not Applicable

ATTORNEYS:

Plaintiff: [R. Edward Pfister Jr.](#), Pfister & Russo, Los Angeles.

Defendant: Susan Andersen, Marshall, French & DeGrave, Irvine; [Bret Eubank](#), Stutz, Artiano, Shinoff & Holtz, Temecula; [Brian O'Grady](#), Gazzera, O'Grady & Stevens, Mountain View; [David Plancarte](#), Stutz, Artiano, Shinoff & Holtz, Temecula.

SUMMARY:

Verdict/Judgment: Settlement

Verdict/Judgment Amount: \$1,500,000

Range: \$1,000,000-1,999,999

Defendants Innkeepers USA paid 75 percent of the settlement, and defendant DJ's Construction paid 25 percent of the settlement.

Trial Type: Settlement

EXPERTS:

Plaintiff: [Lewis C. Barbe](#), P.E., safety engineer/accident reconstructionist, TVA Fire & Life Safety, Inc., Bloomington, MN, (949) 689-3111.; [John Buxton](#), M.D., general surgeon, River Walk Surgical Associates, Bakersfield, (661) 665-0505.; [Kevin A. Flynn](#), forest products consultant, UC Forest Products Laboratory, El Cerrito.; John W. Gainor, M.D., orthopedic surgeon, Santa Barbara, (805) 681-7500.; [James B. Grimes](#), M.D., orthopedic surgeon, Kern Bone & Joint Specialists, Bakersfield, (661) 324-2491.; [Janice Wexler](#), vocational rehabilitation consultant, Vocational Identification Through Assessment Inc., Los Angeles, (818) 766-0058.; [Jerry Zerg](#), interior design/general contractor, Los Angeles, (323) 938-2441.

Defendant: [Roman R. Beyer](#), accident reconstructionist, Steinke Beyer, Los Altos Hills, (650) 948-2771.; [Thomas J. Grogan](#), M.D., orthopedic surgeon, Santa Monica, (310) 828-5441.; [Amy Koellner](#), vocational rehabilitation, Long Beach, (562) 490-9523.; [Russell Pond](#), architect, Russell Pond Architect & Associates, San Diego, (619) 297-2002.; [Stephen L.G. Rothman](#), M.D., neuroradiologist, Torrance, (310) 326-8744.; [Edward L. Workman](#), Ed.D., vocational rehabilitation consultant, Workman Molina, San Clemente, (949) 492-6260.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to Plaintiff: Plaintiff L.A. Fredeen was a guest at the Residence Inn by Marriott Ontario, California Convention Center, and was staying in an upstairs room. At 4:45 a.m., as he descended the outside stairway in the rain and dark for the seventh time that stay, the tread on the fourth stair from the bottom came loose and detached, causing him to fall.

At the time of the fall, plaintiff weighed 280 pounds and was carrying two suitcases, each weighing at least 30 pounds.

Plaintiff alleged the Residence Inn by Marriott Hotel owners, the Innkeepers USA defendants, created an unreasonable risk of injury to their patrons by fastening the subject tread into the redwood stringers on the stairway with screws that were too short, two inches, instead of minimally accepted 2.5-inch, or preferably 3-inch, screws. Additionally, the

Innkeepers USA defendants had sprayed the portion of the stairways daily for five years with an improperly adjusted sprinkler head, thereby weakening the tread/fastener.

Plaintiff said he was injured and unable to return to work as a railroad conductor.

Defendants contended that the tread came loose with plaintiff's weight when he slipped and fell on the rain-slick stairway. Defendants next claimed that plaintiff was contributorily negligent in not using the handrail as he should have. Third, defendants argued that plaintiff had advanced pre-existing osteoarthritis in his hip, knee, and shoulders, which accounted for most of his medical treatment and that his physician opined he would have needed a total hip replacement within 10 years, assuming no fall. Next, defendants contended that plaintiff should have mitigated his damages starting within one year of the fall, when his employer's vocational rehabilitation counselor, Amy Koellner, offered vocational rehabilitation on what it calls its "dual track" program of returning its employees to their jobs or to alternative work. Instead, plaintiff had not begun vocational rehabilitation. Defendants claimed plaintiff should have been making over \$45,000 per year if he had started mitigating damages within a year of the incident. Defendants said plaintiff's medical expenses were paid by his **insurance** and that plaintiff could recover only what was paid, which was less than \$50,000, not what was billed.

The Innkeepers USA defendants cross-claimed against defendant DJ's Construction, the general contractor, and defendant Lendo Construction, the subcontractor, who built the stairways in 1998-1999, asserting that it placed the 2-inch instead of the 2.5-inch screws on the tread (and a number of others on the outside stairways to the 25 buildings at the property) and that they were too short to safely fasten the treads to the wooden stringer/stairway.

Defendants DJ's Construction and Lendo Construction contended that they used an automatic screw gun that only used strips of 2.5-inch screw, so someone with Innkeepers USA defendants' maintenance department replaced them with 2-inch screws sometime in the five years after the stairs were constructed.

CLAIMED INJURIES

According to Plaintiff: Right shoulder; right hip/hip area; left knee; seven surgeries, including hernia repair, torn labrum repair, right shoulder rotator cuff, right quadriceps tenotomy, and total right hip replacement.

CLAIMED DAMAGES

According to Plaintiff: \$265,000 past medical (defendants claimed less than \$50,000 cost per Nishihama); \$30,000 future medical; \$300,000 past lost earnings (disputed); \$1,000,000 future lost earnings (disputed).

SETTLEMENT DISCUSSIONS

According to Plaintiff: The case settled at the Mandatory Settlement Conference in the Rancho Cucamonga Branch of the San Bernardino Superior Court five weeks before trial. The case settled before the Hon. Thomas F. Nuss (Ret.) of IVAMS. There were two unsuccessful private mediations in the six months before the case settled.

COMMENTS

According to Plaintiff: The complaint was filed on May 5, 2005.

Susan Andersen represented defendants Innkeeper USA. Bret Eubank and David Plancarte represented defendant DJ's Construction. Brian O'Grady represented defendant Lendo Construction.

Trials Digest, A Thomson/West business

San Bernardino County Superior Court/Rancho Cucamonga

9 Trials Digest 11th 25 (Cal.Superior), 2008 WL 496492

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