

PREMISES LIABILITY

Joyce Daugherty v. Defendant Retail Store

Defense Verdict



LUKS, SANTANIELLO PETRILLO, COHEN & PETERFRIEND

Todd T. Springer

Jacksonville Managing Partner

(904) 365-5669 | TSpringer@insurancedefense.net

Deana N. Dunham

Jacksonville Junior Partner

(904) 365-5668 | DDunham@insurancedefense.net

Jacksonville Defense Verdict November 2, 2021. During closing arguments, Plaintiff requested a verdict in excess of \$1.3M.

Jacksonville Managing Partner Todd Springer, Esq., and Junior Partner Deana Dunham, Esq., obtained a defense verdict following a three-day jury trial in matter styled *Joyce Daugherty v. Defendant Retail Store* in Baker County, Florida. Mrs. Daugherty, a 70-year-old preschool teacher, alleged that Defendant breached its duty by negligently allowing a “saturated” mat to remain on the floor of the store’s vestibule, which caused Plaintiff to slip and fall. As a result of the incident, the Plaintiff claimed an injury to her right hip, for which she underwent emergency surgery and expressed continued complaints of pain and limitations. Plaintiff presented medical bills totaling approximately \$150,000.00, although the court had previously granted Defendant’s Motion in Limine to limit the medical bills to what was allowed by Medicare. The parties stipulated to past medical expenses in the amount of the liens, which totaled approximately \$43,000.00.

Prior to the trial, the court had granted Plaintiff’s spoliation motion, based on the inadvertent loss of 48 minutes of CCTV video prior to the fall. This resulted in a jury instruction that Defendant had a duty to maintain additional in-store video, which it did not do; and as a result, the jury should find for Plaintiff unless Defendant rebutted the presumption of negligence by a greater weight of the evidence.

Defendant overcame the presumption of negligence using photographs taken by the store manager approximately 13 minutes after Plaintiff’s fall, which showed the condition of the mat to be reasonably dry; and by eliciting testimony from the former store manager about his observations of the area at the time of his inspection. Defendant also used the CCTV video itself, which showed 12 minutes before the fall, and approximately an hour and a half after the fall. Defendant was able to demonstrate that the carpeted mat was not saturated and was reasonably safe.

Plaintiff elicited testimony from the responding paramedic that the floor was wet and the mat was saturated. The paramedic testified that, while she did not specifically recall the incident, review of a report refreshed her recollection, and that she recalled both the floor and mat being extremely saturated. She also testified that she, herself, had slipped as she entered the store. Defendant demonstrated to the jury that her testimony was unreliable as the CCTV video showed the EMT entering the area through a separate door, and never walking over or looking toward the mat in question.

During closing arguments, Plaintiff requested a verdict in excess of \$1.3M. The jury returned a defense verdict within approximately 40 minutes. A proposal for settlement was filed early in this case, which has allowed the client the opportunity to recover most of the defense fees and costs in this matter.