

# FLORIDA PREMISES LIABILITY FAVORABLE VERDICT



**LUKS, SANTANIELLO  
PETRILLO, COHEN & PETERFRIEND**  
— OUR VERDICTS TELL THE STORY —

**M**anaging Partners Anthony Petrillo, Esq., and Anthony Merendino, Esq., obtained a favorable result in a personal injury matter styled *Connie Ader v. Defendant Retail Store* in the Circuit Court of Lake County, Florida. Plaintiff asked the jury for \$1.1 million at trial. The jury returned a verdict for \$20,000 for the Plaintiff however Defendant had a proposal for settlement and is moving for attorney's fees and costs.

Plaintiff alleged that while she was a business invitee of Defendant Retail Store, she sustained a permanent ulnar nerve

injury in her left upper extremity as a result of cutting her left forearm on a display basket while walking past it at a Defendant Retail Store. According to the Plaintiff, her left forearm was impaled by an allegedly defective display basket. Plaintiff's position was that the allegedly defective wire basket either impacted her ulnar nerve or cut through the sensory branches of the ulnar nerve. Plaintiff claimed that as a result of the incident, she experienced pain, numbness, tingling, weakness, and burning in her left upper extremity, specifically, the 4th and 5th digits of her left hand, which caused her an inability to wear her



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wedding ring or grip/hold things including, among other things, a cell phone, golf club, bicycle handle, and her husband's hand. Plaintiff sought damages for past and future pain & suffering, mental anguish, disability, disfigurement, inconvenience, and loss of capacity for the enjoyment of life.

Prior to trial, Defendant Retail Store admitted liability. At trial, an adverse inference instruction was given to the jury regarding Defendant Retail Store's loss of certain evidence (display basket) which allowed the jury to infer that the missing evidence was unfavorable to Defendant Retail Store. Plaintiff asked the jury for \$1.1 million dollars at trial using a per diem argument that Plaintiff should be awarded \$8.00 per hour for the 5 years since the incident and the estimated 20 years she is projected to live under the Mortality Table guidelines (excluding 8 hours per day for sleeping). At trial, Mr. Petrillo and Mr. Merendino were able to demonstrate (1) similar complaints Plaintiff had of left upper extremity symptoms she had experienced prior to the incident at Defendant Retail Store, (2) the cut was superficial based upon Plaintiff's medical records, (3) that basic neuroanatomy made it highly improbable the Plaintiff's ulnar nerve or its sensory branches were impacted, (4) that Plaintiff's delayed complaints of symptoms she was allegedly experiencing were inconsistent with an ulnar nerve injury, and (5) that Plaintiff's minimal medical treatment for the laceration were inconsistent with her alleged pain & suffering.

Prior to trial, Defendant Retail Store served a Proposal for Settlement ("PFS") on the Plaintiff, and depending on the amount of Plaintiff's recoverable costs incurred prior to the date of the PFS, Defendant Retail Store will likely be entitled to recover its attorney's fees and costs from the Plaintiff from the date the PFS was served.

