

PREMISES LIABILITY

Plaintiffs v. South Florida Fair and W.G. Wade Shows

Defense Verdict



LUKS, SANTANIELLO
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Four-day jury trial; Plaintiff requested millions in damages - the Jury returned a complete Defense Verdict

On May 17, 2024, Partners Benjamin Pahl, Esq. and Nora Bailey, Esq. obtained a complete defense verdict after a four-day jury trial in a premises liability matter styled *Plaintiffs v. South Florida Fair and W.G. Wade Shows*. The lawsuit arose out of a claim by the Plaintiff, an older female, wherein it was alleged that Defendants acted negligently in allowing a stair handrail leading to a portable restroom trailer to exist in a dangerous condition – specifically, Plaintiff claimed there was a paint chip on the railing that poked her left hand, causing her to startle and fall backwards down the stairs, resulting in a tibia/fibula fracture and two surgeries as well as extensive rehabilitation and ongoing attendant care. The Defendants denied liability and asserted that Plaintiff had acted negligently by using the stairs instead of an ADA-accessible restroom next to the trailer, given her left-sided deficits after a stroke approximately eight months prior to the fall at the Defendants’ premises, and further asserted that there was no paint chip or dangerous condition.

At trial, testimony from Defendants’ employees was that there were never any complaints or concerns related to the railing, nor were any repairs or inspections ever requested as to same; an Emergency Medical Technician who had worked at the Fair for 20+ years testified that the Plaintiff’s incident was the only fall at that location to which she had ever responded. The defense was also able to elicit testimony and introduce evidence that the Plaintiff had been in ongoing therapy for difficulties related to the left hand and deficits therein as recently as two weeks before the fall, and was receiving 36 hours per week of attendant care related thereto up through the day of the incident. The Plaintiff admitted she had arrived at the Fair on the day of the incident in a wheelchair and had used a cane when ambulating, but did not utilize either when she chose to take the stairs to the restroom. She relied on a photograph she took of her left pinky several days after the incident to suggest that a cut on the finger was caused by a ‘sharp’ paint chip that felt like ‘an ice pick’ in her hand.

Plaintiffs retained no liability expert but utilized Craig Lichtblau, M.D., as their life care planner. Despite preparing a nearly 300-page “Comprehensive Report,” Dr. Lichtblau admitted on cross-examination by Ms. Bailey that he did not consider the pre-existing stroke related deficits to be relevant to his evaluation of the Plaintiff. He further testified that his own evaluation of the Plaintiff indicated that she could not feel pins or pick up small objects with her left-hand due to weakness and numbness therein, undercutting Plaintiff’s contention that she was poked in that hand which caused her to fall. Nonetheless, Dr. Lichtblau recommended nearly \$1.34M in future care for the Plaintiff, which was supported by the testimony of economist Frederick Raffa, Ph.D.

Defendants’ CME physician, Mark Rubenstein, M.D., testified at trial that the Plaintiff was a fall risk with left-sided weakness and numbness and should not have used the stairs that day; he further testified that any need for ongoing care was related to the sequelae from the previous stroke, and not any consequences from the fall. Dr. Rubenstein also walked the jury through multiple notes in the medical records after the fall wherein Plaintiff told her treating physicians she had missed the grab rail and fell, but never made any mention of a dangerous condition.

Over the course of four days, the jury listened to the Plaintiff testify about the devastating impact of the incident and the injuries on her life, as well as to her husband’s testimony in support of his consortium claim, and the testimony of their adult son. Mr. Pahl emphasized in closing that the jury had to use common sense to evaluate the evidence and that the Plaintiffs simply had failed to meet their burden of proof.

Plaintiffs’ counsel asked the jury in closing for an award of \$4.67 – \$4.91M (\$576,854 in past medical expenses; \$1,337,633 in future medical expenses; \$500,000 past pain and suffering; \$2M future pain and suffering; \$250-500K consortium claim). After deliberating for about three hours, the jury rendered a complete defense verdict in favor of South Florida Fair and W.G. Wade Shows.

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