



2014 CLM Annual Conference

April 9, 2014 – April 11, 2014

**Boca Raton Resort
501 E. Camino Real
Boca Raton, FL 33432**

Roundtable 1: Thursday, April 10, 2014 (10:10 am – 11:10 am)

The Jury Speaks: 2013 Jury Verdicts & What We Can Learn from Them

CONTENTS:	Page
Verdict No. 1: <u>60 Year Old Woman vs. Major U.S. Department Store in Indiana</u> <u>SLIP AND FALL ON HANDICAP RAMP IN PARKING LOT</u>	3
Verdict No. 2: <u>68 Year Old Woman vs. Illinois Shopping Mall</u> <u>SLIP AND FALL IN MALL</u>	4
Verdict No. 3: <u>61 Year Old Pedestrian vs. Gas Station</u> <u>PEDESTRIAN SLIPS AND FALLS ON BROKEN SIDEWALK IN NEW YORK</u>	5
Verdict No. 4: <u>53 Year Old Female vs. Florida Sports Bar</u> <u>GUEST TRIPS INSIDE RESTAURANT</u>	6
Verdict No. 5: <u>73 Year Old Female Restaurant Guest vs. Florida Restaurant</u> <u>FALL OFF CHAIR</u>	7
Verdict No. 6: <u>88 Year Old Female vs. Florida Restaurant</u> <u>TRIP AND FALL ON SIDEWALK</u>	8
Verdict No. 7: <u>Male Shopper vs. Major U.S. Retail Store in Florida</u> <u>SHOPPER SLIPS AND FALLS ON DISPLAY SIGN</u>	9

Verdict No. 8: Woman vs. Fast Food Restaurant in South Carolina
WOMAN SWALLOWS A SCREW.....10

Verdict No. 9: Parents vs. Hotel in Alabama
HOTEL POOL DROWNING.....11

Verdict No. 10: 53 Year Old Man vs. Mobile Home Park in California
FALL INTO UNCOVERED DRAIN HOLE.....12

Verdict No. 11: 38 Year Old Man vs. Hotel in Nevada
VALET RUNS OVER FOOT.....13

Verdict No. 12: Woman vs. Restaurant in West Virginia
SLIP AND FALL IN RESTROOM.....14

Some Lessons to be Learned:15, 16

Contact information for Presenters:17, 18

Notes:19, 20

VERDICT NO. 1

60 Year Old Woman vs. Major U.S. Department Store Chain in Indiana

SLIP AND FALL IN INDIANA ON HANDICAP RAMP IN PARKING LOT

Plaintiff Description: 60 year old woman/retail customer.

Incident Description: Plaintiff fell while walking through retailer's parking lot. Claimed she tripped on a handicapped ramp's flared edges.

Factual Synopsis Re Liability: Plaintiff criticized the ramp's design, noting there were no markings or paint to offset the flared edges. Plaintiff also submitted evidence that two other people had fallen at the same location. In an incident report, a Kohl's employee wrote that the edges of the ramp should be painted yellow. Defense argued there was no defect in the ramp design and the Plaintiff fell because of her own inattention.

Alleged Damages: Comminuted shoulder fracture, chronic frozen shoulder. Medical bills \$34,973. Probable future shoulder replacement.

WHAT WAS THE VERDICT??

VERDICT NO. 2

68 Year Old Woman vs. Shopping Mall

SLIP AND FALL IN ILLINOIS MALL

Plaintiff Description: 68 year old retired women/mall guest and her husband (derivative claim).

Incident Description: Plaintiff was walking through a shopping mall and approached a fountain structure surrounded by a planter area. The planter area was covered with cedar chips. Plaintiff tripped over a six-inch tall curb that was painted the same color as the floor tiles.

Factual Synopsis Re Liability: Plaintiff sued the mall owner for creating a dangerous condition and claimed the curb and tile area extended into the walkway, thereby causing a tripping hazard. Plaintiff's expert architect testified the defendant violated fire and building codes by building and placing the fountain in such a location. Defendant's expert structural engineer testified the fountain violated no codes and was actually installed four or five years before the defendant purchased the building. The plaintiff's expert testified the defendant did not maintain the property in a safe condition. Defense counsel argued the curb's condition was open and obvious, and the plaintiff should have seen it.

Alleged Damages: Three fractures to right proximal humerus (dominant side), later malunion in shoulder requiring shoulder replacement. Physical therapy. Medical costs \$56,183.

WHAT WAS THE VERDICT??

VERDICT NO. 3

61 Year Old Pedestrian vs. Gas Station

PEDESTRIAN TRIPS AND FALLS ON BROKEN SIDEWALK IN NEW YORK

Plaintiff Description: 61 year old male scientist.

Incident Description: Plaintiff, a scientist, tripped on a sidewalk and sued the adjoining premises' owners (a gas station).

Factual Synopsis Re Liability: Plaintiff argued defendants were negligent in maintaining the sidewalk, and knew about the defect.

Alleged Damages: Non-displaced fracture of right humerus, finger laceration, dominant arm. Several years of physical therapy, injections, and painkillers. Plaintiff claimed he suffers permanent residual pain and diminution of right shoulder's range of motion. Plaintiff's expert testified plaintiff suffers residual arthritic changes, the pain will worsen, and plaintiff will eventually require a shoulder replacement. Defense's expert orthopedic surgeon testified the plaintiff's most recent MRI scan did not show evidence of arthritis and the plaintiff's right shoulder required no further treatment. Incurred medical specials estimated at \$75,000. Futures estimated at \$70,000.

WHAT WAS THE VERDICT??

VERDICT NO. 4

53 Year Old Female vs. Sports Bar

GUEST TRIPS INSIDE FLORIDA RESTAURANT

Plaintiff Description: 53 year old store clerk

Incident Description: Plaintiff claimed she fell on a foreign object on the restaurant floor.

Factual Synopsis Re Liability: Plaintiff fell and took an ambulance to a local hospital. She alleged the restaurant failed to maintain safe premises. The defendant did not answer the complaint.

Alleged Damages: Fractured femur. Surgery included metal rod and four screws. 17 day hospital stay. Plaintiff missed six months of work and required a walker for six months. Past medical expenses of \$61,000. Future meds of \$100,000 estimated. Lost past and future earnings of \$155,000.

WHAT WAS THE VERDICT??

VERDICT NO. 5

73 Year Old Female Restaurant Guest vs. Florida Restaurant

FALL OFF CHAIR IN FLORIDA

Plaintiff Description: 73 year old retired woman

Incident Description: Plaintiff went to the restaurant with a group of friends, and the host seated the group in the bar area. The bar area had high-top tables and tall chairs. Plaintiff claimed the chair fell over as she attempted to mount and sit on it.

Factual Synopsis Re Liability: Plaintiff claimed the restaurant was negligent for allowing a short elderly person to sit in a tall chair. Plaintiff argued it was unsafe for a short elderly person to climb into a tall chair, and the host should have seated her in a booth. Plaintiff further argued that elderly people should be able to visit restaurants and sit down on chairs, instead of having to climb onto them. Defendant argued in the restaurant's ten years of existence, no one had ever fallen off a high chair. Defendant also contended the plaintiff made the choice to sit in a tall chair and it would be discriminatory to tell customers where to sit.

Alleged Damages: Ambulance ride to emergency room. Concussion and cut on back of head which was stitched. Plaintiff claimed frequent, severe headaches and possible post-concussion syndrome that could cause mental impairment. Defendant argued injury was resolved. Medical bills estimated at \$10,000.

WHAT WAS THE VERDICT??

VERDICT NO. 6

88 Year Old Female vs. Restaurant

TRIP AND FALL ON FLORIDA SIDEWALK

Plaintiff Description: Husband of 88 year old decedent

Incident Description: Decedent tripped and fell on a sidewalk outside the defendant's restaurant. She sustained a fractured hip and died of complications the next day.

Factual Synopsis Re Liability: Plaintiff (decedent's husband) sued for premises liability and wrongful death, claiming that the owner failed to maintain the premises in a safe condition and failed to warn pedestrians of the sidewalk surface's change in elevation.

The estate's expert testified the defendant violated Florida building codes because it failed to mark the change in elevation. Defendant argued the sidewalk was reasonably maintained since the change in elevation was so slight that none of the defendant's employees, tenants or customers noticed it, and there had been no falls on that portion of the sidewalk in at least eight years. Defendant also argued the Plaintiff's wife was comparatively negligent for failing to use a walker, because her medical history showed she had problems with walking, dizziness, and fatigue.

Alleged Damages: Plaintiff was taken by ambulance to a local hospital, where she died the next day as a result of complications from her fractured hip. Plaintiff sought damages for medical bills (\$4300), funeral expenses (13,500), loss of companionship and protection, and mental pain and suffering.

WHAT WAS THE VERDICT??

VERDICT NO. 7

Male Shopper vs. Major U.S. Retail Store

SHOPPER SLIPS AND FALLS ON FLORIDA DISPLAY SIGN

Plaintiff Description: 40 year old male, manager at beverage distribution company.

Factual Synopsis Re Liability: While shopping at a major retail store, plaintiff slipped and fell on a beverage sign that had fallen off a display. He claimed when he stepped on the plastic sign, it moved underneath him and caused him to fall. The store's video surveillance captured the incident. Plaintiff argued the store negligently installed the sign and contended if the store had put the display together properly, it would not have fallen. The defendant argued the advertised product's manufacturer negligently provided the store with faulty screws with which to install the sign. Plaintiff went to the doctor the day after the incident. After taking an MRI, the doctor diagnosed him with a torn bicep tendon.

Alleged Damages: After two unsuccessful repair surgeries, plaintiff had a third surgery to insert an Achilles tendon from cadaver tissue into his arm. Plaintiff claimed he could not return to his job because his dominant arm was unusable, even after physical therapy. Plaintiff's doctor testified he developed a "popeye deformity" that caused abnormal bulges on his arm. Plaintiff claimed he suffers from depression and anxiety as a result of the accident. Defendant claimed plaintiff's injury was unrelated to the fall and plaintiff had torn it in a prior accident. Defendant sought past and future medical costs, lost wages, and pain and suffering. Medical specials of \$200,000.

WHAT WAS THE VERDICT??

VERDICT NO. 8

Woman vs. Fast Food Restaurant

WOMAN SWALLOWS A SCREW IN SOUTH CAROLINA

Plaintiff Description: 22 year old female

Incident Description: Plaintiff ate chili from a drive-through fast food restaurant and later began vomiting blood. An emergency room x-ray revealed a screw in her intestine.

Factual Synopsis Re Liability: Plaintiff sued the fast food company for negligence and products liability, alleging the screw was in the fast food chili she had eaten. The emergency room doctor testified that based on plaintiff's account of the situation, she had unknowingly swallowed the screw that was in the chili. Plaintiff produced the remains of the actual chili she had eaten, having preserved it in a special cooler for four years. Plaintiff argued that the dark brown/black chili could have easily concealed the screw. Defendant argued the plaintiff failed to prove she had purchased the chili from the fast food restaurant since she had not showed a receipt. Defendant also argued plaintiff would have easily discovered the screw in the chili because the chili was thick enough to require chewing. Defendant produced photographs to demonstrate the chili's thick texture. Defendant also argued the screw did not match anything inside the restaurant, since the restaurant's interior was chrome and the screw was not.

Alleged Damages: Plaintiff vomited blood and experienced rectal bleeding and abdominal pain for five days until she passed the screw. The screw caused no obstruction or perforation. Plaintiff sought \$42,000 in pain and suffering damages and mental and physical anguish. Plaintiff also sought past medical bills of \$14,500.

WHAT WAS THE VERDICT??

VERDICT NO. 9

Parents vs. Hotel

ALABAMA HOTEL POOL DROWNING

Plaintiff Description: Parent of decedent, a 12 year old boy.

Incident Description: Plaintiff's 12 year old son attended a pool party at a hotel pool. The decedent entered the pool with two other boys, swam into the deep end, and disappeared. A few minutes later, his friends realized he was not playing a game and called for help. His mother and another hotel guest pulled him from the water, but the decedent died four days later.

Factual Synopsis Re Liability: The boy's estate sued the hotel, arguing the pool was not reasonably safe because the buoy line in the middle of the pool was missing (not disputed), a light in the deep end was out (not disputed), and the water was cloudy (disputed). One of the plaintiff's experts testified the hotel's pool could not be properly filtered, and another criticized the lack of staffing.

The defendant argued the decedent was a trespasser at the pool and the defendant therefore owed him no duty. The defendant also argued the pool was reasonably safe, and the alleged defects were not the proximate cause of the boy's death. The defendant also argued the decedent's mother was to blame for allowing him to attend the party, and three other women were to blame for not offering adequate supervision when they were supposed to be watching him. The hotel called no expert witnesses.

Alleged Damages: Work life expectancy, loss of consortium.

WHAT WAS THE VERDICT??

VERDICT NO. 10

53 Year Old Man vs. Mobile Home Park

FALL INTO UNCOVERED DRAIN HOLE IN CALIFORNIA

Plaintiff Description: 53 year old male, self-employed plumber.

Incident Description: Plaintiff lived in defendant's mobile home park. Plaintiff fell after he stepped into an uncovered drain hole in a huge common area lawn. The drain hole was hidden by grass that had grown over it. Several pieces of the drain fitting had been broken off.

Factual Synopsis Re Liability: Defendant's employees mowed the lawn directly over the drain hole on large riding mowers at least twice a week for many months before the incident. Nobody knew what happened to the drain cover, or how the drain fitting became damaged. Plaintiff claimed defendant negligently maintained its property, and defendant argued it was not negligent because it had no notice. Defendant also contested the extent of plaintiff's injuries, because plaintiff had a long history of back injuries including two back surgeries, neck pain, and prior hearing loss.

Alleged Damages: Fractured right clavicle (collarbone) and right shoulder labral tear resulting in frozen shoulder and need for future arthroscopic surgery. Plaintiff also claimed a vestibular right inner ear injury causing balance problems. Medical specials of \$151,899 past, \$20,000 future. Claim for lost earnings waived. Plaintiff requested jury award \$1.2 Million.

WHAT WAS THE VERDICT?

VERDICT NO. 11

38 Year Old Man vs. Hotel

VALET RUNS OVER FOOT IN NEVADA

Plaintiff Description: 38 year old male, real estate coach.

Incident Description: Plaintiff was leaving the hotel when a hotel valet struck him with a car. The car came to a stop on top of Plaintiff's foot, crushing it and causing permanent injury.

Factual Synopsis Re Liability: Plaintiff sued the hotel owner for negligence. Defendant argued the plaintiff walked in front of the car and was under the influence of alcohol at the time. Plaintiff responded that he had consumed two alcoholic drinks at the casino.

Alleged Damages: Plaintiff suffered a dislocation of metacarpal bones in his foot. He required two surgeries: one to insert wire and pins to set the bones and another to remove the hardware. Medical bills of \$85,440. Past lost earnings of \$650,000.00.

WHAT WAS THE VERDICT??

VERDICT NO. 12

Woman vs. Restaurant

SLIP AND FALL IN RESTROOM IN WEST VIRGINIA

Plaintiff Description: Female of unknown age

Incident Description: Plaintiff and two friends had lunch at Defendant's restaurant. Plaintiff slipped and fell leaving the restroom, suffering a torn meniscus and a lower back injury.

Factual Synopsis Re Liability: Plaintiff sued the restaurant for premises liability. Plaintiff did not seek treatment until eight days later and did not complain of knee pain until eight weeks later. The Defendant admitted liability because the floor was wet from a recent mopping. Defendant disputed the nature and extent of Plaintiff's injuries because she was morbidly obese and had a history of lower back and bilateral knee problems.

Alleged Damages: Torn meniscus, lower back injury. Medical bills not specified.

Some Lessons to be Learned

VERDICT NO. 1:

60 Year Old Woman vs. Major U.S. Department Store in Indiana

SLIP AND FALL ON HANDICAP RAMP IN PARKING LOT

- Standard of industry may have helped defense.
- Plaintiff may have made a poor witness.

VERDICT NO. 2:

68 Year Old Woman vs. Illinois Shopping Mall

SLIP AND FALL IN MALL

- Questionable cost benefit. Not every win is really a win.
- Consider settlement value vs. cost of 5 day trial.

VERDICT NO. 3:

61 Year Old Pedestrian vs. Gas Station

PEDESTRIAN TRIPS AND FALLS ON BROKEN SIDEWALK IN NEW YORK

- Shoulder injuries can be expensive.
- Deep pocket adjoining owner can trigger verdict exposure.
- Admitted liability may have affected outcome.

VERDICT NO. 4:

53 Year Old Female vs. Florida Sports Bar

GUEST TRIPS INSIDE RESTAURANT

- May be difficult to explain a fractured femur without some negligence.
- Default judgments are to be avoided.

VERDICT NO. 5:

73 Year Old Female Restaurant Guest vs. Florida Restaurant

FALL OFF CHAIR

- Lack of prior incidents over extensive period of time was likely critical.
- Comparative fault likely an issue as well.

VERDICT NO. 6:

88 Year Old Female vs. Florida Restaurant

TRIP AND FALL ON SIDEWALK

- Plaintiff's age likely a major factor.
- Jurisdiction likely a factor as well.

VERDICT NO. 7:

Male Shopper vs. Major U.S. Retail Store in Florida

SHOPPER SLIPS AND FALLS ON DISPLAY SIGN

- Surveillance camera footage was likely determinative.
- Repeat surgeries make for a very sympathetic witness.

VERDICT NO. 8:

Woman vs. Fast Food Restaurant in South Carolina

WOMAN SWALLOWS A SCREW

- Chain of custody issues.
- Medical history was likely determinative.
- Causation defenses were important.

VERDICT NO. 9:

Parents vs. Hotel in Alabama

HOTEL POOL DROWNING

- Risky case to try due to death of child and due to admitted negligence.
- Undisclosed causation issues likely determinative.

VERDICT NO. 10:

53 Year Old Man vs. Mobile Home Park in California

FALL INTO UNCOVERED DRAIN HOLE

- Concealed danger supported liability.
- Plaintiff's fondness for opiates may have affected verdict positively for the defense.

VERDICT NO. 11:

38 Year Old Man vs. Hotel in Nevada

VALET RUNS OVER FOOT

- Valet liability can be difficult to contest.
- Arguing Plaintiff was comparatively at fault may have backfired.

VERDICT NO. 12:

Woman vs. Restaurant in West Virginia

SLIP AND FALL IN RESTROOM

- Admitted liability worked for defense.
- Potentially not a good cost/benefit result.