



VerdictSearch

NEW YORK

Vol. XXXII Issue 27 • December 29, 2014

An ALM Publication

NEW YORK COUNTY

PREMISES LIABILITY

Negligent Repair and/or Maintenance — Dangerous Condition

Fall off of landing caused injury of brain, plaintiff claimed

FEATURED VERDICT

Premises Liability

Fall off of landing caused injury of brain, plaintiff claimed

Verdict \$6,837,950

Actual \$5,250,000

Valverde v. FS 41-45 Tiemann Place LLC

New York County Supreme Court

Plaintiff's Attorneys Eric H. Green; The Law Offices of Eric H. Green & Associates; New York; and Ronald W. Ramirez; Law Office of Ronald W. Ramirez, Forest Hills, N.Y., trial counsel; The Law Offices of Eric H. Green & Associates; New York

Defense Attorney Lawton W. Squires; Herzfeld & Rubin, P.C.; New York

VERDICT ACTUAL **\$6,837,950**
\$5,250,000

CASE Patrick Valverde v. FS 41-45 Tiemann Place LLC, No. 113347/08

COURT JUDGE New York Supreme
Anil C. Singh

DATE 12/8/2014

PLAINTIFF

ATTORNEY(S) Eric H. Green, The Law Offices of Eric H. Green & Associates, New York, NY
Ronald W. Ramirez, Law Office of Ronald W. Ramirez, Forest Hills, NY, trial counsel, The Law Offices of Eric H. Green & Associates, New York, NY

DEFENSE

ATTORNEY(S) Lawton W. Squires, Herzfeld & Rubin, P.C., New York, NY

FACTS & ALLEGATIONS On Sept. 29, 2007, plaintiff Patrick Valverde, 19, a student, visited an apartment building that was located at 45 Tiemann Place, in the Morningside Heights section of Manhattan. The building's exterior entryway landing was bounded by a balustrade that was intended to prevent falls onto a metal stairway below. The balustrade collapsed while Valverde was leaning upon it. Valverde fell off of the landing, plummeted about 10 feet, landed on the stairway and rolled down the remainder of the stairway. He claimed that he sustained injuries of his back, his head, a knee and a shoulder.

Valverde sued the premises' owner, FS 41-45 Tiemann Place LLC. Valverde alleged that FS 41-45 Tiemann Place was negligent in its maintenance of the premises. He further alleged that the corporation's negligence created a dangerous condition that caused his accident.

Valverde's counsel claimed that FS 41-45 Tiemann Place's staff had been aware that the balustrade had previously broken. He contended that repairs had been performed prior to the instant accident, but that they did not adequately address the balustrade's defects. During depositions, persons involved in the ownership and maintenance of the premises acknowledged that they had been aware of prior defects and repairs.

Defense counsel initially contended that the accident was a result of a latent defect of the balustrade, but he ultimately conceded liability. The trial addressed damages.

INJURIES/DAMAGES *amnesia; anxiety; arthroscopy; atrophy; brain damage; bursitis; chondromalacia / chondromalacia patella; chondroplasty; cognition, impairment; concussion; decompression surgery; decreased range of motion; depression; fusion, lumbar; glenoid labrum, tear; hardware implanted; head; headaches; herniated disc at L4-5; herniated disc at L5-S1; medial meniscus, tear; rotator cuff, injury (tear); shoulder impingement; supraspinatus muscle/tendon, tear; synovitis; tinnitus; traumatic brain injury*

Valverde was placed in an ambulance, and he was transported to St. Luke's-Roosevelt

Hospital Center, in Manhattan. He underwent minor treatment.

Valverde ultimately claimed that he sustained a concussion, a tear of the posterior horn of his left knee's medial meniscus, a tear of his right, dominant shoulder's glenoid labrum, a partial-thickness tear of the same shoulder's rotator cuff, trauma that produced impingement of the same shoulder, and herniations of his L4-5 and L5-S1 intervertebral discs. He also claimed that his right shoulder developed residual bursitis and that his left knee developed residual chondromalacia, which is a softening of cartilage, and residual synovitis, which is inflammation of tissue that lines a joint. He further claimed that his head's injury caused mild damage of his brain, with residual effects that included amnesia, anxiety, chronic migraines, depression, resultant changes of his personality, impairment of his cognition and tinnitus.

Valverde's brain's injury and sequelae were formally diagnosed during the latter half of 2010, following performance of a diffusion tensor imaging scan, commonly known as a "DTI scan." An MRI scan, performed in October 2007, had not depicted a brain injury, but Valverde's counsel contended that more accurate diagnoses have recently become possible, as a result of the introduction of new equipment and tests. Valverde's forensic psychiatrist opined that anxiety and depression can go undiagnosed for years. One of Valverde's expert neuroradiologists, Dr. Christos Davatzikos, opined that Valverde suffers gross atrophy of his brain's frontal and temporal lobes, and he contended that the condition is indicative of a traumatic injury.

On Jan. 29, 2008, Valverde underwent arthroscopic surgery that addressed his right shoulder. The procedure included a bursectomy, which involved excision of an inflamed bursa.

On May 12, 2008, Valverde underwent arthroscopic surgery that addressed his left knee. The procedure included a chondroplasty, which involved a repair of damaged cartilage.

On Aug. 1, 2008, Valverde underwent decompressive surgery that included fusion of the anterior portions of his spine's L4-5 and L5-S1 levels and the implantation of stabilizing hardware.

Valverde claimed that he suffers extreme pain that stems from his lumbar region, that his anxiety, depression and migraines persist, that he suffers a residual diminution of his back's range of motion, that he suffers a residual diminution of his right shoulder's range of motion, and that his residual effects prevent his resumption of his college education. He also claimed that he cannot work.

Valverde's counsel presented two of Valverde's relatives. The witnesses claimed that Valverde was previously an outgoing person, but that he has become isolated and withdrawn since the accident.

Valverde sought recovery of a total of \$4 million for past and future lost earnings, \$2 million for past pain and suffering, and \$4 million for future pain and suffering.

Defense counsel contended that Valverde's injuries were not related to the accident and that Valverde can work or resume school.

The defense's expert neuroradiologist opined that Valverde's herniations were a degenerative condition that predated the accident. The defense's expert orthopedist examined Valverde, and he opined that Valverde is healthy save for limitations of the movement of his back and right shoulder.

Defense counsel contended that Valverde's brain's injury stemmed from a sports-related concussion that was sustained one year prior to the instant accident. The defense's expert neuroradiologist opined that a DTI scan cannot detect a traumatic injury of the brain. The defense's expert neurologist examined Valverde, and he opined that Valverde does not exhibit neurological abnormalities. The defense's expert neuropsychologist opined that Valverde suffers impairment of his cognition, but that the condition is a learning disability; not the result of trauma. During cross-examination, the defense's expert neurologist and expert neuropsychologist

acknowledged that Valverde suffered a traumatic injury of his brain, though they contended that it was not related to the accident.

The parties negotiated a high/low stipulation: Damages could not exceed \$5.25 million, but they had to equal or exceed \$1.75 million.

RESULT The jury found that Valverde's damages totaled \$6,837,950, but Valverde recovered the stipulated limit: \$5.25 million.

PATRICK VALVERDE

\$102,950 past lost earnings
\$2,200,000 future lost earnings
\$720,000 past pain and suffering
\$3,815,000 future pain and suffering
\$6,837,950

DEMAND OFFER

\$4,500,000
\$3,500,000

INSURER(S)

Global Indemnity plc primary insurer
Zurich North America excess

TRIAL DETAILS

Trial Length: 11 days
Trial Deliberations: 2.5 hours
Jury Vote: 6-0
Jury Composition: 1 male, 5 female

PLAINTIFF EXPERT(S)

Fabian Bitan, M.D., orthopedic surgery, New York, NY (treating doctor)
Christos Davatzikos, Ph.D., neuroradiology, Philadelphia, PA
Leonard R. Freifelder, Ph.D., economics, New York, NY
Mehrdad Golzad, M.D., neurology, Elmhurst, NY (treating doctor)
Michael Lipton, M.D., neuroradiology, Bronx, NY
Roy Lubit, Ph.D., psychiatry, New York, NY
Joseph Pessalano, vocational rehabilitation, Medford, NY
Avraham Schweiger, Ph.D., neuropsychology, Elmhurst, NY
Thomas A. Scilaris, M.D., orthopedic surgery, New York, NY (treating doctor)
Robert Thatcher, Ph.D., brain injury/trauma, St. Petersburg, FL

DEFENSE EXPERT(S)

Daniel J. Feuer, M.D., neurology, Astoria, NY
David Panasci, M.D., neuroradiology, Lindenhurst, NY
Edmond A. Provder, C.R.C., vocational rehabilitation, Lodi, NJ
Charles M. Totero, M.D., orthopedic surgery, Purchase, NY
Wilfred G. Van Gorp, Ph.D., neuropsychiatry, New York, NY

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from court documents.
-Max Robinson