

**FILED**  
Superior Court of California  
County of Los Angeles

**FEB 04 2019**

Sherri R. Carter, Executive Officer/Clerk  
By Darian Salisbury Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, WEST DISTRICT**

LAURA RUBIN,  
Plaintiff,

v.

LEVEL WORLD, INC. dba  
DOCKMASTERS, a California business  
entity, form unknown; HARMAR ACCESS,  
LLC, a Florida corporation; EAGLE  
MATERIAL HANDLING COMPANY, INC.  
dba DOCKMASTERS, a California  
corporation; GREGORY JONESON dba  
LOVE HANDLES, and DOES 3 through 150,  
inclusive,

Defendants.

CASE NO. BC570895 (transferred)

Assigned to the Hon. Gerald  
Rosenberg, Department K

**COURT'S PROPOSED  
STATEMENT OF DECISION**

Complaint Filed: 1-29-15  
Trial Date: 10-22-18

This matter came on for trial on October 22, 2018 in Department K of the Los Angeles Superior Court, West District, Judge Gerald Rosenberg appearing. John Denove, Shane Hapuarachy and John Rowell appeared as counsel for Plaintiff Laura Rubin. Plaintiff appeared. William Kroenberg appeared as counsel for Gregory Joneson dba Love Handles. Defendant appeared.

Both sides waived jury.

1 After the presentation of oral and documentary evidence, the Court issues a  
2 Notice of Ruling.

3 Liability for the injuries sustained by Plaintiff in a fall from a wheel chair lift on  
4 January 21, 2014 is based on claims of Strict Liability in Tort and Negligence.

5 As to the Strict Liability claim, the court makes the following findings:

- 6 1. Plaintiff was the purchaser/user of the wheelchair lift.
- 7 2. Defendant put the product into the stream of commerce. He and his  
8 company were the seller/distributor/installer of the lift.
- 9 3. The lift did not perform as safely as an ordinary consumer would have  
10 expected it to perform in that it abruptly stopped during a descent on the staircase and  
11 moved downward in a fashion that caused Plaintiff to fall from the platform of the lift  
12 onto the front side of her body striking her face, arms, knees, heels and feet onto the  
13 staircase. When she struck the staircase the wheelchair which weigh around 300 pounds  
14 was strapped to her back.
- 15 4. The design of the lift was defective in that the bolt holding the bracket to  
16 the wall was too small to hold the bracket from the forces on the lift. Also, the bracket  
17 was made from an aluminum alloy. When the bolt broke, the bracket broke. The lift  
18 needed a larger bolt (2.5 times larger than the bolt that was used by the manufacturer)  
19 and it needed a bracket made from steel. Both changes would have cost the manufacturer  
20 a minimal sum. Further, the angle of the ramp located at both ends of the platform of the  
21 lift was 45 degrees. The purpose of the angle was to hold the wheelchair from moving  
22 off the platform. However, when Plaintiff accidentally engaged the wheels of the chair as  
23 she was traveling down the lift, the front wheels of the wheelchair rode up onto the  
24 ramp. This put too much force on the cable causing the shoulder bolt to break then the  
25 pulley moved upward, and the ramp dropped, the wheelchair moved outward, the bracket  
26 broke and the chair went down. This is a foreseeable event. If the ramp was at a  
27 90-degree angle, the wheelchair would not have been able to go onto the ramp. This  
28 expert opinion testimony was given by Michael Stapleford and was unrefuted.

1           5.       Plaintiff was harmed by the fall from the platform of the lift.

2           6.       Either or both the failure of the lift to perform as expected or the defective  
3 design of the lift was a substantial factor in causing the harm to the Plaintiff.

4           As to the Negligence claim, the court makes the following findings in addition to  
5 the ones set forth above on the Strict Liability claim:

6           1.       Defendant, as the seller and installer of the lift owed a duty of due care to  
7 the Plaintiff.

8           2.       Defendant breached that duty of care as follows:

- 9           a.       He was not a licensed installer of wheelchair lifts.
- 10          b.       He did not obtain a permit from the building and safety department  
11 for the City of Los Angeles.
- 12          c.       He chose an inappropriate lift for Plaintiffs staircase.
- 13          d.       He did not properly measure the step-risers.
- 14          e.       He used 8 instead of 9 stanchions to hold the lift.
- 15          f.       He failed to secure the stanchions into timbers with proper bolting.
- 16          g.       Though each stanchion required 4 bolts to properly secure them,  
17 many stanchions were only secured by 2 bolts.
- 18          h.       He failed to properly tighten all bolts.
- 19          i.       Shims were used to increase the height of the stanchions, but the  
20 shims were not properly secured with bolts.
- 21          j.       He failed to follow the instruction manual issued by the  
22 manufacturer of the lift.
- 23          k.       He installed most of the lift before seeking help from Dockmasters,  
24 a licensed installer.

25               Evidence of the breach of due care was given by Joseph Stabler. Though the  
26 Defendant testified in defense of these claims, the court accepted the testimony of Mr.  
27 Stabler.

28               There is an issue of comparative fault as between Defendant Gregory Joneson and

1 Dockmasters.

2 As a licensed experienced installer, Dockmasters did not correct the shoddy  
3 installation of Defendant and failed to warn Plaintiff of the existence of obvious  
4 problems with the installation. Though Defendant hired Dockmasters and paid them; he  
5 started the job and did most of the installation alone (except for some work performed by  
6 Mr. Bailey) knowing that he had no experience installing this type of lift.

7 Defendant sold the lift to Plaintiff (he dealt with her brother) and agreed to  
8 properly install the lift. A review of the photos received into evidence clearly show that  
9 the installation was not done properly.

10 The Court finds that Defendant is 67% and Dockmasters is 33% responsible for  
11 the harm caused to Plaintiff.

12 The Court therefore finds liability under both theories of relief.

13 As to the issue of damages, Plaintiff suffered a prior fall on July 25, 2013 which  
14 caused a spinal cord injury. She was recovering from that injury at the time of the fall on  
15 January 21, 2014.

16 The Court received evidence from Dr. H. Ronald Fisk concerning the injuries  
17 sustained by Plaintiff in both falls.

18 He opined that the July 2013 fall caused damage to C6 through T1. He stated that  
19 the primary injury was to C6.

20 Further, he opined that the January 2014 fall caused damage to C6 through T2.  
21 Further, he stated that this fall reinjured her at C6 and caused an additional injury at T1  
22 and T2. He testified that on August 12, 2014, an EMG showed a new injury at C6.

23 Dr. Fisk testified that Plaintiff was healing after the first fall. This is shown from  
24 the records of Rancho Los Amigos and Windsor. Her pain level charts and her  
25 ambulation charts show that she was healing.

26 He examined Plaintiff on October 12, 2018 and noted her symptoms as:

- 27 1. Headaches
- 28 2. Ringing in her ears

- 1 3. Pain in her hands, arms and legs
- 2 4. Numbness
- 3 5. Tingling
- 4 6. PTSD
- 5 7. Difficulty sleeping
- 6 8. Neck Pain
- 7 9. Shoulder Pain
- 8 10. Low Back Pain
- 9 11. Sudden Muscle Contractions
- 10 12. Muscles became rigid - clawed hand
- 11 13. Neuropathic pain syndrome
- 12 14. She could not stand

13 Plaintiff has had a long history of neck and back problems going back to when  
14 she had a fusion surgery at C1-C2 over 50 years ago.

15 Some of her symptoms over the years:

- 16 1. Vertigo
- 17 2. Ringing in her ears
- 18 3. Degenerative disease of the neck
- 19 4. Numbness
- 20 5. Cervical spondylosis
- 21 6. Degenerative joint disease
- 22 7. Pinched nerve in her neck that travels down her arm
- 23 8. Narrowing at C3-C4 and C4-C5
- 24 9. Nerve impingement at C2-C3, C3-C4 and C4-C5
- 25 10. Neck Pain
- 26 11. Low Back Pain
- 27 12. Disc narrowing

28 Dr. David Patterson opined that Plaintiff was "making it back" from her 2013 fall

1 at the time of the January 2014 fall. He went on to testify that because of the first fall,  
2 Plaintiff will need the use of a wheelchair for the rest of her life. In addition, because of  
3 that fall, she required home care for 4-6 hours per day and as she ages, up to 8 hours per  
4 day. She needed someone for house chores, shopping, laundry, bathing and while using  
5 the bathroom.

6 Dr. Brian Gantwerker was the treating doctor. He testified:

7 1. The CT scan and examination after her January 2014 fall showed that the  
8 fusion hardware he installed on her spine did not fail.

9 2. There was no neuro damage from her January 2014 fall.

10 In April 2014, Dr. Gantwerker saw the Plaintiff; she came in on a gurney. He  
11 described her rapid decline in her functions as being caused by the 2014 fall. An MRI  
12 showed spinal stenosis. Further he opined that his theory was that the trauma of the fall  
13 in January 2014 accelerated the degeneration of the ligament below C6. Therefore, he  
14 had to do a new surgery to extend the fusion down to T2.

15 Dr. Joshua Prager testified that the January 2014 fall changed the level of her pain  
16 to severe intractable. Prior to that fall, her pain level was moderate then moved to high  
17 moderate from the fall in 2013. Further, he testified that she had some spasticity prior to  
18 the January 2014 fall which was managed by oral baclofen, the fall of 2014 caused her  
19 severe spasticity which had to be combatted by the installation of an intrathecal pump to  
20 provide a direct injection of baclofen to her spine.

21 In 2013, after her spinal fusion surgery, Plaintiff went to Rancho Los Amigos and  
22 then to Windsor for rehabilitation. When Plaintiff was released from Windsor, she  
23 returned home where she had weekday daytime care from her friend Mercedes Reilly  
24 who had moved into Plaintiff's home. In addition, she had a nighttime caregiver during  
25 the week. On the weekends, Goldie Bas and another caregiver provided her care around  
26 the clock. Plaintiff was able to go on short walks with the help of a walker and with an  
27 aide by her side. Also, she exercised by doing squats by holding a rail in her bathroom.

28 Further, she was applying make-up, could bathe herself once she was in the

1 shower, and could clean herself after she went to the bathroom.

2 Then, in April 2014, there was a big change in her condition when she began to  
3 suffer from:

- 4 1. Severe spasticity
- 5 2. Contractures
- 6 3. Clonus
- 7 4. Atrophy
- 8 5. Unable to grip
- 9 6. Unable to walk
- 10 7. No range of motion

11 The Defendant presented evidence that the MRI studies after her January 2014  
12 fall do not show any spinal cord injury. The most important witnesses on this issue are  
13 Dr. Brian Gantwerker and Dr. Mark Spoonamore.

14 Dr. Mark Spoonamore opined that the MRI studies taken after the fall in 2013  
15 show a spinal cord injury but the MRI studies taken after the fall in 2014 show no such  
16 injury.

17 Dr. Michael Gold opined that Plaintiff did not sustain a spinal cord injury in  
18 January 2014. He relies on the MRI studies done by Dr. Rhee who found no new injury  
19 and that the swelling in the spine from the 2013 fall was resolved.

20 Though the evidence is compelling that Plaintiff did not sustain a new injury from  
21 her fall in January 2014, the evidence is clear that she was making some recovery from  
22 her first fall as her pain levels decreased and her ambulation increased. It is difficult to  
23 explain the severe change in her condition in April 2014. Even without a "new spinal  
24 cord injury" was there an exacerbation of her injuries when she fell from the lift in 2014?  
25 The evidence is too compelling that the fall of January 2014 injured the Plaintiff.

26 The Court finds that there is an apportionment of her injuries as to the fall of 2013  
27 and the fall in 2014 as follows: Plaintiffs injuries were 30% caused by the fall in July  
28 2013 and 70% caused by the fall from the lift in January 2014.

1 Therefore, as to past medical bills, the court asks counsel to meet and confer to  
2 identify the following medical charges:

- 3 1. 70% of the neurologically-related bills.
- 4 2. 100% of the charges related to the injury to her heels, face, arms and knees  
5 caused by the fall.

6 The Court determined that a reasonable sum for past due medical bills incurred as  
7 a result of the subject fall is \$149,139.00.

8 As to the future medical bills:

9 1. Plaintiff required the use of caregivers prior the fall in 2014: Her live-in  
10 friend Mercedes Reilly attended to her during the weekdays. At night, she was attended  
11 to by Jackie Gomez a caregiver she hired, and on the weekend days and nights she hired  
12 caregivers including Goldie Bas. The court declines to award any sum for caregivers in  
13 that Plaintiff required caregivers before her fall in January 2014. Though the scope of  
14 their service is different, their full-time presence was needed by the Plaintiff.

15 2. As to the other life care items set forth in Exhibit 148, the court awards  
16 \$336,893.00 being 70% of those costs.

17 As to past pain and suffering during the period from the fall to the date of this  
18 Notice of Ruling, the Court awards Plaintiff the sum of \$200,000.00.

19 As to future pain and suffering, the Court adopts the unrefuted opinion that  
20 Plaintiff has a life expectancy of 11.4 years and therefore awards Plaintiff the sum of  
21 \$500,000.00.

22 The support for the amount of non-economic damages includes:

23 1. The fact that no new injury was sustained in the fall of January 2014,  
24 specifically Dr. Gantwerker and Dr. Spoonamore testified that the MRI studies "do not  
25 show any spinal cord injury."

26 2. Yet, there was evidence that in April 2014, 3 months after the fall, there  
27 was a big change in her condition.

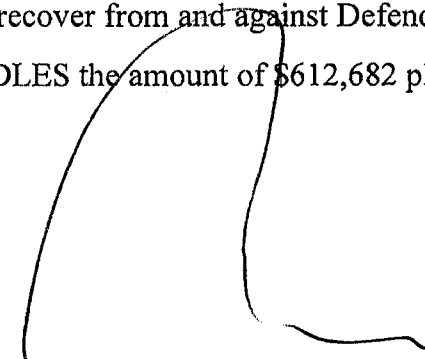
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1 The Court finds that Plaintiff's total damages are subject to an offset based on  
2 prior settling defendants in the amount of \$342,350.

3 The Court finds that Plaintiff shall recover from and against Defendant  
4 GREGORY JONESON dba LOVE HANDLES the amount of \$612,682 plus costs and  
5 disbursements in a sum to be determined.

6  
7 Dated: 2-4-19

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11 Hon. Gerald Rosenberg  
12 Judge of the Superior Court  
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3 **PROOF OF SERVICE**

4 **Case Name: Rubin v. Dockmasters**

5 **Case Number: BC570895**

6 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

7 I am employed in the County of Los Angeles, State of California. I am over the age of  
8 eighteen years and not a party to the within entitled action; my business address is 1925 Century  
9 Park East, Suite 800, Los Angeles, California 90067.

10 On January 18, 2019, I caused the documents described as

11 **COURT'S PROPOSED STATEMENT OF DECISION**

12 to be served on the interested parties in said action as follows:

13 ☒ by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed  
14 as follows:

15 **SEE ATTACHED SERVICE LIST**

16 ☒ **BY MAIL:** I sealed and placed such envelope for collection and mailing to be deposited in  
17 the mail on the same day in the ordinary course of business at Los Angeles, California.  
18 The envelope was mailed with postage thereon fully prepaid. I am readily familiar with  
19 this firm's practice of collecting and processing correspondence for mailing. It is deposited  
20 with the U.S. Postal Service on that same day in the ordinary course of business.

21 ☐ **BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection and  
22 delivery on this date in accordance with standard delivery procedures.

23 ☐ **BY FAX:** In addition to service by mail, I transmitted a copy of the foregoing document(s)  
24 this date via telecopier to the facsimile numbers shown above.

25 ☐ **BY PERSONAL SERVICE:** I personally delivered such envelope by hand to the offices  
26 of the addressee(s).

27 ☒ [State] I declare under penalty of perjury under the laws of the State of California  
28 that the foregoing is true and correct.

[Federal] I declare under penalty of perjury that the foregoing is true and correct. I  
am employed in the office of a member of the bar of this court, at whose  
direction the service was made.

Executed on January 18, 2019, at Los Angeles, California.

25   
26 Anna Feliciano

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**PROOF OF SERVICE**

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**PROOF OF SERVICE**

**Case Name: Rubin v. Dockmasters**

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**SERVICE LIST**

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