

LAWYERS WEEKLY

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Patriot Place patron tears up knee on walkway stairs

Published: November 5, 2013

The plaintiff, 47, was injured on Aug. 28, 2008, at Patriot Place in Foxboro when he missed a step in the common walkway and fell and injured his right quadriceps tendon. At the time of the accident, that area had been open to the public for approximately one month. The plaintiff was visiting Patriot Place with his friend and their children, whom they had just taken to the movies and dinner. The accident occurred at approximately 9 p.m. as they proceeded back to the parking lot.

At that time, the surface of the common walkway through Patriot Place was a dull, gray concrete. The stair on which the plaintiff fell consisted of two steps approximately 20 feet wide. The landing at the top of the steps was the same color as the landing at the bottom, as well as the steps themselves. There was no striping at the edge of the steps, nor was there any intermediate handrail or warning sign.

The plaintiff testified that as he proceeded around the corner towards CBS Scene he never saw the step and walked right off. He came down on his right foot, heard a pop and fell to the ground. He was taken by ambulance to the hospital, where he was admitted with a rupture of the right quadriceps tendon. He underwent surgery the following day. Screws were inserted to anchor the tendon and repair the rupture. He was discharged the following day with a knee immobilizer. His leg remained in a full extended position for six weeks. He subsequently underwent physical therapy and was cleared to return to work on Dec. 1, 2008. The plaintiff was left with a permanent scar on his knee. He had no further treatment and no resulting permanent disability.

The plaintiff was out of work from Aug. 28 to Dec. 1. Upon his return to work, he was laid off from his position as an IT director. He was unable to secure employment in his field thereafter and eventually was forced to change careers.

At trial, the plaintiff argued that the stair in question constituted a dangerous and defective condition. The defendant denied that the stair was dangerous or defective and argued that it was an open and obvious hazard. The plaintiff's expert testified that the state building code required an intermediary handrail on the stair in question. The defendant's expert countered that no such handrail was required, that the rails on either end of the 20-foot stairs were sufficient and that the staircase was up to code. The plaintiff argued at trial that his termination was causally related to his injury. Having been unable to secure employment for another 17 months, he argued an additional loss of earning capacity of \$136,689.

Detailed Information

Type:	Verdict for plaintiff(s)
Total Value:	\$428,589.00
Breakdown and distribution of Total Value:	Jury verdict in the amount of \$428,589.00 was reduced by 25% comparative negligence to \$321,441.75
Allocation of Fault:	Defendant - 75% Plaintiff - 25%
Verdict/Settlement Date:	9/19/2013
Type of Action:	Slip, Trip & Fall
Court:	Norfolk Superior Court (MA)
Case Number:	2010-cv-01922

Caption: *Scott Mallory v. NPP DEVELOPMENT, LLC et al*
Plaintiff(s) v. Defendant(s)
Scott Mallory NPP DEVELOPMENT, LLC et al

Injuries Alleged: Leg, knee, ankle, foot
Injuries Detail: Rupture of the right quad tendon with subsequent surgical repair.
Special Damages: Medical expenses: \$15,589.00
Lost wages: \$20,278.15
Loss of earning capacity:
\$136,689.73

First Demand: \$300,000.00
First Offer: \$0.00
Last Offer: \$10,000.00
Tried Before: Jury
Judge or Mediator or Arbitrator: Other ()

Attorney(s) for Plaintiff(s)

Lead Attorney: James V. Marano Jr.
Firm: Kushner & Marano, P.C. (Newton, Massachusetts)

Other Attorney: Linda Freehill
Firm: Kushner & Marano, P.C. (Newton, Massachusetts)

Attorney(s) for Defendant(s)

Lead Attorney: Douglas Fox
Firm: Shumway, Giguere & Fox, P.C. (Worcester, Massachusetts)

Insurance Carrier(s)

No insurance companies involved

Plaintiff(s) Expert(s)

No plaintiff experts

Defendant(s) Expert(s)

No defendant experts