

CHARYLN BRADSHAW vs. BOYNTON -- JCP ASSOCIATES, LTD. and SIMON PROPERTY
GROUP, LP

Docket No.: 50 07 CA 018879 AJ; FJVR Reference No. 09:7-41

Verdict Date: **June** 10, 2009; Publication Date: **July** 2009

TOPIC: Defense Verdicts - Falldown - Mall

RESULT: For the Defendants. (verdict)

STATE: Florida

COUNTY: Palm Beach

JUDGE: Robin L. Rosenberg

PLAINTIFF PROFILE: Age: 39

Sex: Female

Occupation: Endodontist

PLAINTIFF ATTORNEY: Todd R. Falzone of Kelley Uustal, PLC, Ft. Lauderdale

DEFENDANT ATTORNEY: Jack D. **Luks** and Zeb I. Goldstein of **Luks, Santaniello,**
et al., Ft. Lauderdale

Cause Of Injury: Plaintiff visited the Boynton Beach Mall on November 28, 2003, (Black Friday) in Boynton Beach, with her son, mother, sister-in-law, niece, and nephew. After finding a table, Plaintiff and her son got in the line for food at the A&W location within the mall's food court. There were approximately eight people in line in front of Plaintiff. Plaintiff stood in line for ten to fifteen minutes after which an A&W cashier called her over to a nearby register. Plaintiff took approximately five steps to the left and slipped and fell on what appeared to be water on the floor. Plaintiff testified that she did not see the water before she fell nor did she see anybody spill water on the floor during the ten to fifteen minutes she was standing in line. Plaintiff, her sister-in-law, and mother all testified that the entire time they were present in the food court prior to the fall (approximately thirty minutes), they did not observe any maintenance employees in the food court. Following the incident, Plaintiff was attended to by an A&W employee, who called mall security. A mall security guard arrived at the scene to tend to Plaintiff. The security guard testified that upon his arrival he did not see any maintenance employees in the food court and after requesting maintenance assistance by radio, a maintenance employee arrived between one and three minutes thereafter. Defendants contended through its former general manager that it routinely and regularly has five maintenance employees assigned to zones within the food court on Black Friday. Additionally, there is a maintenance supervisor and other management and security personnel within the mall that occasionally patrol the food court. The former general manager had no specific recollection of the date of the incident. Thus, Plaintiff contended that Defendants negligently maintained the food court by failing to provide any or adequate personnel to reasonably maintain the premises under the circumstances,

causing Plaintiff to slip and fall on water or other clear substance spilled on the floor. Additionally, Plaintiff's sister-in-law testified that she observed footprints in the water, indicating that other people had walked through it prior to Plaintiff's fall.

Defendants contended that Plaintiff's testimony demonstrated that the water spill in question could not have been on the floor for any appreciable amount of time, given the mall traffic on this particular day. Defendant further contended that Plaintiff was negligent in failing to observe the spill and avoid it.

Defendant Boynton -- JCP Associates owned the mall, and Defendant Simon Property Group managed the mall.

Nature Of Injury: Plaintiff sustained anterior cruciate ligament and medial cruciate ligament tears as a result of the fall. Plaintiff managed to avoid surgery from 2003 through 2007 despite complaints of pain, discomfort, and giving way of the knee. Plaintiff was involved in an incident in September 2007 where her knee gave way, causing a torn meniscus. As a result, she underwent reconstructive knee surgery performed by Dr. Stephen Jacobs. Dr. Jacobs testified that the subsequent incident was caused by the original injury, that Plaintiff's condition amounted to a 14% whole body impairment and that she is expected to suffer from arthritis in the knee within ten to twenty years, and may ultimately require a total knee replacement. Plaintiff and Dr. Jacobs claimed that as a result of her injury, she had to limit the time that she devoted to her practice as an endodontist. Plaintiff claimed that she was missing out on a minimum of one patient per week, which amounted to a loss of earning capacity claim between \$ 450,000 and \$ 900,000. Past medical expenses were \$ 67,000.

PLAINTIFF EXPERT WITNESSES: Stephen Jacobs, M.D., Orthopedic Surgery, Ft. Lauderdale
Bernard F. Pettingill, Jr., Ph.D., Economist, Palm Beach
Jacob Elefant, D.D.S., Dentistry, Delray Beach

Editor's Note: This was a three-day trial. The jury was composed of three females and three males. The jury deliberated for fifty minutes.

Defendant's Attorney's Comments: Plaintiff's demand was \$ 500,000. Defendants offered to settle for \$ 350,000 while the jury was out. Additionally, Defendants filed a Proposal of Settlement in the amount of \$ 166,700. The case was originally tried on January 12, 2009, which resulted in a hung jury.