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FLORIDA JURY VERDICT REPORTER (FJVR)

MARY BETH ERB vs. COASTLAND CENTER, L.P., by and through its general partner,
COASTLAND CENTER, INC.

Docket No.: 01-3023-CA; FJVR Reference No. 04:04-18

Verdict Date: **February** 12, 2004; Publication Date: **April** 2004

TOPIC: Falldown - Parking Garage - Curb

RESULT: For the Defendant. (verdict)

STATE: Florida

COUNTY: Collier

JUDGE: Ted H. Brousseau

PLAINTIFF PROFILE: Age: 76
Sex: Female
Occupation: Retired

PLAINTIFF ATTORNEY: David A. Hagen of Hagen & Patterson, Miami; Marvin Weinstein of Grover, Weinstein & Trop, P.A., Miami Beach

DEFENDANT ATTORNEY: Jack D. **Luks** and Paul S. Jones of **Luks, Santaniello**, et al., Orlando

CAUSE OF INJURY: On February 1, 2001, in Naples, at approximately 3:30 p.m., Plaintiff was utilizing an upstairs entrance to Dillard's from the upper deck of the mall's parking garage, when she fell over a curb outside of the Dillard's entrance. Plaintiff alleged that she was accustomed to other department stores' upstairs entrances at that mall, all of which had ramped frontage with no curbs. Plaintiff further alleged that the curb served no purpose based on engineering principles and that the presence of bollards set back thirty feet from the area of the curb created a false visual cue that any step down would be at or near the area of the bollards. Ralph Aronberg testified that the curb was wholly unnecessary, unexpected, and unsafe in the area that it was constructed, particularly in comparing the design of other entrances at that property. Ralph Aronberg also testified that the Manual on Uniform Traffic Control Devices recommended high contrast paint for that curb which was not present. Defendant contended that the curb represented no code violations and that Plaintiff was herself negligent in her approach of the curb.

NATURE OF INJURY: Comminuted fracture of distal left humerus which required internal fixation. Plaintiff underwent a second surgery for removal of part of the fixation due to complications. Plaintiff's medical expenses totaled approximately \$ 42,000.

PLAINTIFF EXPERT WITNESSES: Ralph Aronberg, P.E., Engineer, Miami
Thomas Parent, M.D., Orthopedic Surgery, Naples

PLAINTIFF'S ATTORNEY'S COMMENTS: Plaintiff's Motion for New Trial, based on defense counsel's improper questioning and arguments during summation, is pending.

DEFENDANT'S ATTORNEY'S COMMENTS: Judgment for Defendant's attorney's fees and costs is pending based on Defendant prevailing on its Proposal for Settlement. Plaintiff demanded \$ 282,000.