

MARIAN SCHWARTZ vs. OSPREY AT SAWGRASS MILLS HOMEOWNERS
ASSOCIATION, INC. and JOSE & SANDRA PENA

Docket No.: 05-006626 (13); FJVR Reference No. 08:10-8

Verdict Date: **March** 7, 2008; Publication Date: **October** 2008

TOPIC: Defense Verdicts - Falldown - Sidewalk

RESULT: For the Defendants. (verdict)

STATE: Florida

COUNTY: Broward

JUDGE: Leroy H. Moe

PLAINTIFF PROFILE: Age: 51
Sex: Female
Occupation: Tradeshow Event Organizer

PLAINTIFF ATTORNEY: Alan Goldfarb and Justin C. Leto of Goldfarb & Gold, P.A.,
Miami

DEFENDANT ATTORNEY: Daniel J. **Santaniello** and Carl W. Christy of **Luks,
Santaniello**, et al., Ft. Lauderdale for the Penas

CAUSE OF INJURY: On October 30, 2004, at the Osprey at Sawgrass Mills residential development in Sunrise, Plaintiff alleged that while walking her dog on the sidewalk located in front of the residence of Defendants, she tripped and fell on an uneven, elevated sidewalk. Plaintiff alleged that Defendants breached their duties owed to Plaintiff by: (1) negligently failing to maintain the sidewalk in a reasonably safe condition; (2) negligently creating a tripping hazard; (3) negligently failing to inspect the sidewalk; (4) negligently failing to warn Plaintiff of the dangerous and hazardous condition on the sidewalk; (5) negligently planting trees close to the sidewalk causing the trees' root system to lift the sidewalk; and (6) failing to repair the sidewalk which they knew or should have known required repairs.

Defendants denied that allegations, contending that Plaintiff did not trip where she alleged, a distance of some twenty-five feet from where she ultimately landed, and that she, in fact, tripped over her own feet as she admitted to a neighbor who offered assistance immediately after the fall. Defendants further argued that the elevated sidewalk condition was open and obvious and known to Plaintiff, who had lived in the subject subdivision for fifteen years.

NATURE OF INJURY: Comminuted fracture of mid-shaft of left humerus accompanied by separation of humeral head. Surgical repair resulted in placement of intramedullary rod and five screws. Plaintiff incurred \$ 38,000 in medical treatment expenses reduced by health insurance payments of \$ 10,100. She made no claim for lost earnings or earning capacity.

PLAINTIFF EXPERT WITNESSES: Khosrow Maleki, M.D., Orthopedic Surgery, Washington, D.C. (video depo)
Ronald F. Zollo, Ph.D., Engineer, Univ. of Miami, Coral Gables
C. Way Hoyt, Arborist, Oakland Park

DEFENDANT EXPERT WITNESSES: Wilson C. Hayes, Biomechanics/Orthopedic Research/Injury Reconstruction, Corvallis, OR (video depo)

EDITOR'S NOTE: This was a five day trial. The jury was composed of six females. The jury deliberated for one hour. The jury found that there was no negligence on the part of Defendants Pena which was a legal cause of loss, injury or damage to Plaintiff. Plaintiff demanded \$ 97,500. Defendant offered \$ 45,001. Plaintiff asked the jury for \$ 638,000, including \$ 38,000 in economic damages, \$ 300,000 for past pain and suffering, and \$ 300,000 for future pain and suffering. An Order on Joint Stipulation for Dismissal as to Defendant Osprey at Sawgrass Homeowners Association was entered by the court on March 25, 2008.