

**CASE INFORMATION SHEET**  
**FLORIDA LEGAL PERIODICALS, INC.**  
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**COUNTY AND COURT:**

Orange County, Circuit Court

**NAME OF CASE:**

DIANA BARKER v. PUBLIX SUPER MARKETS, INC.,

**CASE DOCKET NO.:** 2009-CA-23128                      **JUDGE:** Stan W. Strickland

**PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:**

Donald N. Williams, Esquire  
Law Office of Piercy J. Stakelum

**DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:**

Art C. Young, Esquire  
Meredith M. Stephens, Esquire

**AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:**

At the time of the incident Plaintiff, Diana Barker, was a 37 year old pet kennel technician.

**DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:**

September 2, 2008, Plaintiff entered Publix store #00659, located on Edgewater Drive in Orlando and allegedly slipped and fell on a clear liquid.

**CAUSE OF INJURY:**

Plaintiff alleged that the slip caused her to twist her right ankle and back.

**NATURE OF INJURY:**

Plaintiff claimed that, as a result of the subject incident, she suffered injuries to her neck, left ankle, left leg, left foot and back.

**PLAINTIFF'S EXPERT WITNESSES:**

N/A

**DEFENDANT'S EXPERT WITNESSES:**

Paul J. Maluso, M.D.  
Nicole Bonaparte

**DATE OF VERDICT/SETTLEMENT:**

N/A

**VERDICT/SETTLEMENT AMOUNT:**

N/A

**COMPARATIVE NEGLIGENCE:**

N/A

**JUDGMENT:**

The Court granted Defendant's Motion to Strike Plaintiff's Pleadings for Fraud on the Court.

**DATE OF JUDGMENT:**

February 4, 2011

**DEFENDANT'S OFFER:**

Zero

**PLAINTIFF'S DEMAND:**

Plaintiff never made a formal demand.

**ATTORNEY'S COMMENTS:**

On August 12, 2010, Defendant, Publix Super Markets, Inc., filed a Motion to Dismiss Plaintiff's Pleadings for Fraud on the Court. Defendant argued that Plaintiff's false and misleading testimony on material issues relating to her medical history, employment history and details of the subject accident was

evidence of her intent to interfere with the Court's ability to impartially adjudicate the matter.

In her September 15, 2009 Answers to Interrogatories, Plaintiff claimed that as a result of the subject incident, she sustained injuries to her neck, left ankle, left leg and back. She indicated that these were all **new** injuries.

During her November 9, 2009 deposition, Plaintiff denied that she suffered any injuries or sought any treatment for her low back or neck prior to the subject incident. Plaintiff's medical records revealed that, contrary to her sworn testimony, she had a long history of back pain and neck pain pre-dating the subject incident.

In addition to her false deposition testimony, Plaintiff also indicated under oath in her September 15, 2009 Answers to Interrogatories that she never suffered from left ankle pain or left leg pain before the incident. Plaintiff's medical records revealed that Plaintiff had a long history of treatment and pain complaints related to her left ankle and left knee pre-dating the subject incident.

Plaintiff's medical records also indicated that during her post incident treatment related to the subject incident, Plaintiff denied ever having suffered from pre-incident back, knee, foot or ankle pain to her treating providers. Plaintiff also denied pre-incident injuries or trauma to Defendant's orthopedic expert, Paul J. Malsuo, during her Compulsory Medical Examination. The information Plaintiff told her treating providers and Dr. Maluso was contrary to Plaintiff's medical records which revealed a long history of back pain, neck pain, left leg pain and left ankle pain before the subject incident.

During her November 9, 2009 deposition Plaintiff testified that she was hired as a kennel technician after the subject incident. Plaintiff claimed that she lost her job as an animal kennel technician because she could no longer perform her job duties due to the back injuries she sustained in the subject incident. Plaintiff testified that her employers at the animal clinic knew about her prior back injuries before hiring her. On December 16, 2009, Plaintiff's former employer, Mike Magaldino, testified that Plaintiff never told him about her prior back injuries when he hired her.

Plaintiff also testified fraudulently regarding the details of the subject incident. During her November 9, 2009

deposition, Plaintiff testified that after the incident, Maria Thomas, an on duty police officer, approached her and indicated that the substance on which she slipped had "been on the floor awhile" before her slip and that Ms. Thomas had made a Publix employee aware of the substance before Plaintiff's slip.

On November 19, 2009, Ms. Thomas testified that she did not tell Plaintiff that a substance had "been on the floor awhile" before Plaintiff's slip. Ms. Thomas also testified that she did not tell a Publix associate to clean up a spill before the slip.

On July 11, 2011, Defendant's Motion to Dismiss Plaintiff's Pleadings for Fraud was argued before Judge Stan Strickland. Judge Strickland reserved ruling. On February 4, 2011, Judge Strickland entered an order granting the Motion to Dismiss.

**Submitted**     **Meredith M. Stephens**                     **Date: May 31, 2011**  
**By:**

**Firm:**             **Rissman, Barrett, Hurt, Donahue**  
                         **& McLain, P.A.**

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