

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

Pinellas County Circuit Court, Clearwater, Florida

NAME OF CASE:

Patricia Donahue,

Plaintiff,

v.

Decade Gulfcoast Hotel Partners Limited Partnership d/b/a
Clearwater Beach Holiday Inn,

Defendant

CASE DOCKET NO.: 11-02985 CI **JUDGE:** Honorable Bruce Boyer

PLAINTIFF ATTORNEYS/TRIAL COUNSEL:

Chris Jayson, Esquire
Mark Wright, Esquire
Jayson Farthing Skafidas & Wright, P.A.
Tampa, Florida

DEFENDANT ATTORNEYS/TRIAL COUNSEL:

Karissa L. Owens, Esquire
Amy L. Baker, Esquire
Rissman, Barrett, Hurt,
Donahue & McLain, P.A.
Orlando, Florida

AGE/SEX/OCCUPATION OF PLAINTIFF:

Mrs. Donahue was 59 years old on the date of the accident. She was employed as a loss prevention supervisor for Staples, Inc.

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

July 20, 2010 at the entrance to the Clearwater Beach Holiday Inn swimming pool.

CAUSE OF INJURY:

Plaintiff alleged that on July 20, 2010 she experienced a slip and fall as she was descending the steps of the swimming pool. Plaintiff sustained a left Grade IV trimalleolar fracture that necessitated two surgeries with the possibility of a third surgery.

Plaintiff alleged that her fall was caused by various dangerous conditions that purportedly existed at the pool entranceway including a handrail that was too short, a back-sloped gutter that comprised the first step into the pool, and surface materials on the gutter (a marcite finish and bullnose tile on the edge of the gutter step) that were not constructed with slip resistant material. Plaintiff alleged that these conditions violated Florida Administrative Code 64E-9.006 applicable to public swimming pools.

Plaintiff initially alleged that the fall was caused by a foreign substance such as sunscreen oil or algae on the pool steps but the Defendant obtained partial summary judgment on the transitory foreign substance theory on October 10, 2012.

Plaintiff also alleged that she sustained a subsequent injury to her shoulder in October 2010 when she purportedly tripped over her crutches while recuperating from her ankle surgery.

NATURE OF INJURY:

Left Grade IV trimalleolar fracture, right rotator cuff tear and aggravation of pre-existing medical conditions.

PLAINTIFF'S EXPERT WITNESS:

**Zdenek Hejzlar, Ph.D.
Engineering Systems, Inc.
Fort Myers, Florida
Human Factors**

Plaintiff's human factors expert, Zdenek Hejzlar, Ph.D., testified that Plaintiff encountered an unexpected and insufficient slip resistant surface on the submerged pool steps, which combined with the back-sloped step, caused Plaintiff to slip. Dr. Hejzlar also testified that the handrail was two inches too short and thereby caused Plaintiff to be off balance and failed to prevent her fall.

**George Morris, M.D.
Orthopaedic Specialties of Tampa Bay
Tampa, Florida
Orthopedic Surgeon**

Dr. Morris was Plaintiff's treating orthopedic surgeon who performed the ORIF surgery and subsequent hardware removal surgery. Dr. Morris testified via videotaped deposition and opined that Plaintiff's injury was caused by a "ground level" fall and that Plaintiff had continued to complain and seek treatment for swelling and discomfort following the hardware removal. Dr. Morris testified that a third surgery had also been discussed with Plaintiff.

DEFENDANT'S EXPERT WITNESSES:

**Donald Fournier, P.E.
Forensic Engineering Consultants
Orlando, Florida
Engineer**

Defendant's expert engineer, Donald Fournier, P.E., testified that the surface materials of the pool steps were not only slip resistant but were also considered to safe within the pool industry. Mr. Fournier testified that the back-slope of the gutter step was common in the industry and was necessary to allow efficient skimming of pool contaminants. Mr. Fournier also testified that the pool handrail height complied with safety standards and that none of the conditions complained of by Plaintiff constituted dangerous conditions.

**Joseph Funk, D.P.M.
Orlando Orthopedic
Orlando, Florida
Podiatrist**

Defendant's expert podiatrist, Joe Funk, D.P.M., testified that the fracture pattern of Plaintiff's ankle revealed an external rotation pronation injury that was inconsistent with a slip injury as described by Plaintiff. Dr. Funk explained that Plaintiff's fracture pattern was consistent with a twist-type injury most likely caused by a mis-step and not a forward slip of the foot.

CHECK APPROPRIATE SPACE: X Verdict

DATE OF VERDICT:

August 22, 2013

VERDICT:

Defense verdict

COMPARATIVE NEGLIGENCE:

N/A

JUDGMENT:

Not yet entered

DATE OF JUDGMENT:

N/A

DEFENDANT'S OFFER:

Proposal for Settlement: \$52,500 to Plaintiff on July 9, 2012.

PLAINTIFF'S DEMAND:

Proposals for Settlement: \$299,000 on October 14, 2011, \$150,000 on June 20, 2012 and \$120,000 on January 28, 2013. Plaintiff asked for \$325,000 in closing.

ATTORNEY'S COMMENTS:

The defense was precluded from offering testimony of its expert engineer and two DOH inspectors, as well as the pool contractor who resurfaced the hotel pool three years prior to the Plaintiff's accident, to confirm that the swimming pool entrance met applicable code requirements.

The jury returned a verdict for Defendant after 90 minutes.

Submitted By: Amy L. Baker

Date: August 28, 2013

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

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