

**CASE INFORMATION SHEET
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COUNTY AND COURT:

Lee County Circuit Court

NAME OF CASE:

Barbara A. Jones, Plaintiff v. Perkins & Marie Callendar's, LLC, Defendant

CASE DOCKET NO.: 13-CA-002109

JUDGE: Michael McHugh

PLAINTIFFS' ATTORNEYS/TRIAL COUNSEL:

Christopher J. Smith, Esquire
Goldstein, Buckley, Cechman, Rice & Purtz
P. O. Box 2366
Fort Myers, FL 32902-2366

DEFENDANT'S ATTORNEYS/TRIAL COUNSEL:

John P. Daly, Esquire
Rissman, Barrett, Hurt,
Donahue & McLain
201 E. Pine Street, 15th Floor
Post Office Box 4940
Orlando, FL 32802-4940

**AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT [AT TIME OF ACCIDENT
OR OCCURRENCE]:**

At the time of the incident, Plaintiff, Barbara Jones, was a 62-year-old chemistry teacher employed by Florida Virtual School, which is part of Florida's Department of Education.

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

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

The subject accident occurred on January 14, 2012 at approximately 6:00 p.m. at the Perkins Restaurant located at 13620 Cleveland Avenue, Fort Myers, FL 33903.

CAUSE OF INJURY:

On January 14, 2012 at approximately 6:00 p.m., Ms. Jones tripped and fell on the sidewalk outside the Perkins Restaurant in North Fort Myers, Florida. Ms. Jones alleged that she tripped on a return curb between a handicap ramp and weight bench platform.

Plaintiff's liability expert, Christopher Zimmerman, opined that the change in elevation created by the return curb constituted an unreasonably dangerous condition and violated several building code provisions.

Mr. Zimmerman identified three ways that Perkins could have made the ramp safe in order to prevent Plaintiff's fall:

1. Remove the weight bench and sidewalk portion under the bench;
2. Erect a barricade such as a guardrail or landscaping between the bench and the accessible ramp to obstruct pedestrian traffic; or
3. Adequately warn of the elevation change.

Perkins presented the testimony of forensic engineer, Joseph Patrick Parrish. Mr. Parrish conceded that the return curb presented a "minor trip fall hazard." However, Mr. Parrish felt that Perkins had adequately warned of the change in elevation by painting the perimeter of the ramp, including the return curb, bright blue.

NATURE OF INJURY:

Following the accident, Ms. Jones was transported to the emergency room of Lee Memorial Hospital in Fort Myers, Florida. She complained of severe left wrist pain.

Following x-rays and a physical examination, Ms. Jones was diagnosed with a fracture of the radius with dislocation of the distal radial ulnar joint. Ms. Jones underwent a closed reduction of the dislocated distal ulnar at the emergency room.

On January 16, 2012, Ms. Jones came under the care of Dr. John Kagan of Athletic Orthopedics & Reconstructive Center in Fort Myers, Florida. Two days later, Dr. Kagan performed an open reduction and internal fixation of Ms. Jones' radius fracture. The fracture was aligned using a locking plate and screws.

Ms. Jones' recovery was complicated by prolonged healing time of the radius fracture. In addition, Ms. Jones developed nerve irritation and tendonitis in the hand and wrist areas, which Dr. Kagan related to the accident.

By the time of trial, Dr. Kagan's medical bills were \$59,639.60. Dr. Kagan testified that the Plaintiff's injuries were permanent and would require future care consisting of one to two office visits per year, medication, and possibly additional physical therapy.

PLAINTIFFS' EXPERT WITNESSES:

John Kagan, M.D.
Orthopedic Hand Specialist
3210 Cleveland Avenue
Suite 100
Fort Myers, FL 33901

Christopher Zimmerman
Building Inspector & Plans Examiner
12765 Forest Hill Boulevard
Wellington, FL 33414

DEFENDANT'S EXPERT WITNESSES:

J. Patrick Parrish
Forensic Engineer
P.O. Box 1466
Gainesville, FL 32604

CHECK APPROPRIATE SPACE: X Verdict

DATE OF VERDICT: April 1, 2015

VERDICT AMOUNT [provide components of itemized verdict/settlement]:

\$59,639.60	Past medical bills
\$ 2,288.32	Past pain and suffering
<u> 0.00</u>	Future pain and suffering

\$61,927.92 **Total Gross Verdict**

COMPARATIVE NEGLIGENCE:

The jury found Plaintiff 80% comparatively negligent, which resulted in a net verdict of \$12,385.58.

JUDGMENT: Pending

DATE OF JUDGMENT: Not applicable

DEFENDANT'S OFFER: \$30,000

PLAINTIFFS' DEMAND: \$50,000

ATTORNEY'S COMMENTS:

The net verdict of \$12,385.58 will be further reduced to \$3,952.19 due to offsets resulting from medical bill reductions by Plaintiff's health insurer. This will trigger Perkin's right to receive attorney's fees and costs pursuant to a \$10,000 proposal for settlement filed early in the litigation.

On April 15, 2015, Plaintiff filed a Motion for Additur or New Trial on Damages, arguing that the jury's failure to award future non-economic damages resulted in an inadequate verdict based on the evidence presented.

Submitted by: John P. Daly

Date: May 19, 2015

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