

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

Manatee County Circuit Court, Twelfth Judicial Circuit

NAME OF CASE:

Sandy Wittke v. Wal-Mart Stores, Inc.

CASE DOCKET NO.: 12-CA-3458

JUDGE: John F. Lakin

PLAINTIFFS' ATTORNEYS/TRIAL COUNSEL:

Melton Harry Little
Scott B. Kallins
Kallins & Little, P.A.
433 8th Avenue West
Palmetto, FL 34221

DEFENDANT'S ATTORNEYS/TRIAL COUNSEL:

Richard B. Mangan, Jr.
Paul B. Fulmer III
Rissman, Barrett, Hurt,
Donahue & McLain
1 North Dale Mabry Hwy.
11th Floor
Tampa, FL 33609

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

At the time of the incident, plaintiff, Sandy Wittke, was a 52-year-old medical assistant employed by Dr. Arrojo.

**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 December 18, 2009 at approximately 6:30 a.m. at Walmart store 1004 located at 5315 Cortez Road West, Bradenton, FL 34210.

CAUSE OF INJURY:

On December 18, 2009 at approximately 6:30 a.m., Ms. Wittke slipped and fell on her very first step crossing the threshold of the outer doors entering the Walmart store in Bradenton, Florida. It had recently been raining outside just prior to her entry into the store, and may have been sprinkling at the time.

Plaintiff's initial allegation was that there was a failure to utilize a wet floor sign at the time of the fall. During trial, the allegations changed to include the following:

1. Negligent warning by failing to use a wet floor sign;
2. Negligent maintenance, alleging water or soap on the tile at the threshold due to a floor scrubber machine that had passed through the area 59 minutes prior to the fall; and
3. Failure to utilize a mat on the tile flooring.

Walmart presented testimony from an assistant store manager and the safety team leader that mats at the entrance way were not being utilized in 2009. There was a 3 ft. tall yellow wet floor sign in place as well as two fans to keep the floor dry due to the rainy weather outside. Walmart also presented testimony that in the 59 minutes between the floor scrubber and plaintiff's fall, 79 customers had entered the store without falling. The wet floor sign and the fans were reasonable precautions, along with the non-skid tile, for the prevention and warning of any possible slip and fall hazard.

NATURE OF INJURY:

Ms. Wittke had a lumbar fusion four months prior to the fall. Ms. Wittke claimed significant exacerbation of her back pain. Ms. Wittke had three left knee arthroscopies as a result of the fall causing torn meniscus.

After the fall, Ms. Wittke began treatment with her employer, Dr. Arrojo. Dr. Arrojo provided left knee injections, back injections and hypnosis therapy. Dr. Arrojo referred plaintiff to the law firm that represented her throughout the case and at trial. Ms. Wittke then began care with Dr. Valadie at Coastal Orthopedic for the left knee pain. She underwent her first left knee arthroscopy on May 11, 2010 to repair lateral and medial meniscal tears.

Ms. Wittke continued to complain of pain in the left knee. She was then referred for treatment to orthopedic surgeon Dr. Bishow of Advanced Orthopedics. Dr. Bishow testified that the lateral and medial meniscal tears were still present and performed his first surgery, plaintiff's second surgery, on July 11, 2011. She again continued to complain of pain and underwent a third arthroscopy with Dr. Bishow on February 3, 2012. Ms. Wittke's recovery was complicated and prolonged due to an osteochondral lesion of the medial femoral condyle of the left knee. Dr. Bishow testified plaintiff would likely need a knee replacement.

By the time of trial, the medical bills due and owing were \$96,592.03. Both Dr. Bishow and Dr. Arrojo testified that plaintiff's injuries were permanent and would require future care consisting of conservative care and a left knee arthroplasty.

PLAINTIFFS' EXPERT WITNESSES:

Dr. Gustavo B. Arrojo, M.D.
Premier Medical Associates
2109 59th Street West
Bradenton, FL 34209

Dr. Harvey Bishow, M.D.
Orthopedic Surgeon
4947 Clark Road
Sarasota, FL 34233

DEFENDANT'S EXPERT WITNESSES:

None

CHECK APPROPRIATE SPACE: X Verdict

DATE OF VERDICT: June 25, 2015

VERDICT:

Defense verdict

COMPARATIVE NEGLIGENCE:

N/A

JUDGMENT: Pending

DATE OF JUDGMENT: Pending

DEFENDANT'S OFFER: \$50,000

PLAINTIFFS' DEMAND: \$200,000

ATTORNEY'S COMMENTS:

Based upon the fall occurring in 2009, and there being no definitive ruling in the 2d DCA regarding retroactivity of the new slip and fall statute, this case was tried utilizing the old slip and fall statute, Florida Statute 768.0710. Under this statute, plaintiff did not have to prove actual or constructive notice of the transitory foreign substance as a required element to prove her claim.

At trial, plaintiff asked for \$1,388,000. The jury was out for 1 hour, returning a defense verdict.

Submitted by: Paul B. Fulmer III

Date: June 29, 2015

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