

Traumatic Brain Injury Case

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Attorneys Mike Johnson and David Bae received a defense verdict after a nine-day trial in a traumatic brain injury case. Plaintiff alleged that she was struck in the head by a stone tile that fell from a merchandise display in the defendant's stone and tile store. Plaintiff alleged that the stone tile display was negligently constructed in that it was over 7 feet tall, the merchandise was not adequately secured to the display, and the store did not adequately warn about the loose tiles on the display. Plaintiff also alleged that the store clerk told the plaintiff to help herself with obtaining this stone tile.

As a result of the head injury plaintiff alleged that she suffered from traumatic brain injury include fatigue, severe sensitivity to light, nausea, vertigo, cognitive problems, amnesia and other memory problems. Plaintiff presented five experts at trial all relating to her brain injury and associated problems with the accident in the defendant's store. Plaintiff's liability expert John Mroszczyk testified that the tile display was negligently constructed in violation of standards in the industry in that it exceeded the height limitations and the merchandise was not secured properly to the display. Plaintiff also offered expert testimony from Douglas Katz, M.D. a neurologist who stated that plaintiff's brain injuries were permanent and related to the accident at the tile store. Plaintiff also presented evidence from a TMJ specialist, Dr. Padamsee who testified that plaintiff suffered traumatically-induced TMJ disorder from the tile accident. Plaintiff also offered testimony regarding a Positron Emission Tomography scan (PET scan) by way of Dr. S. Monte Buchsbaum. Dr. Buchsbaum opined that irregularities in the plaintiff's PET scans constituted objective evidence that the plaintiff had sustained a traumatic brain injury.

Attorneys Johnson and Bae defended liability and causation. As far as liability, the defense was able to show the tile display was not unreasonably dangerous and had been in use for several years. Further, the jury was able to view the display during the trial. As for causation, defendant showed that all of plaintiff's complaints were subjective and that there were subsequent events that could have caused her symptoms.

Defendant's expert Kirk Frey, M.D. testified that the use of PET scan imaging is not a medically-accepted practice to diagnose traumatic brain injuries. Further, Dr. Frey testified that his review of the plaintiff's PET scan revealed that there was no abnormality of the plaintiff's brain.

After a nine-day trial the jury returned a verdict in favor of the defendant finding that there was no negligence on the part of the defendant.

