

PREMISES LIABILITY

Hotel or Motel — Motor Vehicle — Parking Lot — Pedestrian

Plaintiff claimed hotel failed to protect concrete walkway

VERDICT **\$1,600,037**

CASE Khuong Nguyen v. Peninsula Hotel

Management, LLC dba Ramada Plaza Hotel
and Dzung Truong, No. 30-2010 00387330

COURT Superior Court of Orange County, Orange

JUDGE David R. Chaffee

DATE 2/7/2012

PLAINTIFF

ATTORNEY(S) Alex Galindo, Curd, Galindo & Smith,

L.I.P., Long Beach, CA

Richard Wynn, Wynn Law Group, P.A.,
Long Beach, CA

DEFENSE

ATTORNEY(S) David A. Belofsky, Belofsky & Hanker,

L.I.P., Torrance, CA (Peninsula Hotel
Management, LLC)

Heather M. Roth, Parker Straus, L.I.P.,
Glendale, CA (Dzung Truong)

FACTS & ALLEGATIONS On March 5, 2010, plaintiff Khoung Nguyen, 43, a video editor/cameraman, had plans to attend a business meeting at a restaurant known as the Mini Rex Bar & Grill in the Ramada Plaza Hotel in Garden Grove. While at the Mini Rex, Nguyen stepped outside to have a cigarette near the north side entrance. At the same time, Dzung Truong, who was driving a 2004 Jeep Liberty with his wife as a passenger, was attempting to park in a handicap parking space near the north entrance of the hotel when his vehicle continued up and over the parking space curb, onto the concrete walkway and pinned Nguyen against the hotel's north wall.

Nguyen sustained significant injuries to his legs.

Nguyen sued Truong and the operator of the Ramada Plaza Hotel, Peninsula Hotel Management, LLC. He alleged that Truong was negligent in the operation of his vehicle and that the hotel was negligent for failing to properly maintain the area, creating a dangerous condition.

Peninsula Hotel Management bought the Ramada Plaza Hotel in 2003 and performed some renovations to the subject property in an effort to bring it into compliance with the requirements of Ramada International. Nguyen was smoking in what he claimed he and any reasonable person would believe to be the hotel's designated smoking area. The north side entrance has an ashtray and a bench located on a concrete walkway, which is immediately next to handicapped parking spaces. The west entrance also had an ashtray and bench similar to the north entrance. Plaintiff's

counsel noted that the ashtray and bench were maintained by the hotel's housekeeping staff to accommodate the hotel and restaurant guests.

Nguyen's counsel claimed that Peninsula Hotel Management failed to protect its guests from a foreseeable danger by failing to install, at a minimal expense, protective measures along the concrete walkway at the north and west entrances. Counsel also claimed that Peninsula Hotel Management was negligent per se, as it failed to comply with Garden Grove Municipal Code § 9.16.040.200 B3, which states that safety barriers, protective bumpers or curbsings, and directional markers shall be provided to assure pedestrian and vehicular safety, efficient utilization, and protection to landscaping, as well as to prevent encroachment onto adjoining public or private property. Plaintiff's counsel argued that the failure to comply with the municipal code led to insufficient protection to assure that vehicles not encroach onto the walkway and into the designated smoking area where Nguyen was injured. Counsel also argued that this failure was a violation of the Garden Grove municipal code and was a substantial cause of Nguyen's injuries. Nguyen requested, and was given, the negligence per se jury instruction.

The hotel's counsel argued that the Peninsula Hotel Management had no duty since the area of impact was not an area of congregation and, therefore, did not require protection. Counsel further argued that the hotel had complied with the code as it had a curb protecting the area of impact.

Truong accepted liability. His counsel noted that the Truong's insurer offered its policy limit of \$15,000, which was not accepted by plaintiff's counsel when the matter went to trial.

Defense counsel moved for summary judgment based on whether or not the area of impact was a known area on congregation, but it was denied.

INJURIES/DAMAGES *emotional distress; fracture, acetabulum; fracture, patella; internal fixation; open reduction; physical therapy; pins and rods*

As a result of the impact, Nguyen suffered a left open patella fracture, right open tibiofibular fracture and left acetabulum wall fracture. He was taken from the scene to UCI Medical Center, where he underwent immediate open repair of the right ankle with the insertion of pins and rods. Three days later, he had the acetabular repair performed, also with internal fixation.

Nguyen claimed he became very depressed and withdrawn after the accident, and did not return to work. As a result, he alleged that he did not engage with his friends and family, and refrained from any social activities. Nguyen further claimed that he required life time care and treatment, including pain medication, epidural injections, a spinal stimulator, physical therapy and psychological counseling.

Truong's counsel argued that Nguyen's alleged future medical care and treatment was not necessary, as the plaintiff had made a good recovery.

RESULT The trial was bifurcated, with the same jury for both the liability and damages portions.

The jury found Truong 75 percent liable for the accident and Peninsula Hotel Management 25 percent liable. Thus, it awarded Nguyen \$1,600,037.44 in total damages.

KHUONG NGUYEN

\$454,870 future medical cost
 \$450,000 past pain and suffering
 \$200,000 future pain and suffering
\$495,167 past economic damages
 \$1,600,037

DEMAND OFFER
 \$700,000
 \$60,000

INSURER(S)
 Sequoia Insurance Co. for Peninsula Hotel Management, LLC dba Ramada Plaza Hotel

TRIAL DETAILS

Trial Length: 8 days
 Trial Deliberations: 2 days
 Jury Vote: 11-1
 Jury Composition: 6 male, 6 female

PLAINTIFF EXPERT(S)

Brad P. Avrit, P.E., safety, Marina del Rey, CA
 Van H. Vu, M.D., pain management, Huntington Beach, CA
 Jesse L. Wobrock, Ph.D., ergonomics/human factors, San Francisco, CA
 David Zamorano, M.D., orthopedics, Orange, CA
 Darryl R. Zengler, M.A., economics, Pasadena, CA

DEFENSE EXPERT(S)

Hillel Sperting, M.D., orthopedic surgery, Tarzana, CA
 Ned Wolfe, P.E., safety, Signal Hill, CA

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel and counsel for Truong. Counsel for Peninsula Hotel Management did not respond to the reporter's phone calls.

—*Priya Idiculla*

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SAN BERNARDINO COUNTY

PRODUCTS LIABILITY

Manufacturing Defect — Negligent Assembly or Installation

Defense claimed fire attacked dishwasher's energized wires

VERDICT Defense

CASE

California Capital Insurance v. Electrolux Home Care Products, Inc. and Sears, Roebuck & Co., No. CIVVS 900984

COURT

Superior Court of San Bernardino County, Victorville

JUDGE

John Vander Fleer

DATE

1/26/2012

PLAINTIFF

ATTORNEY(S) Garry Lee Montanari, Michaelis, Montanari & Johnson, Westlake Village, CA

DEFENSE

ATTORNEY(S) Michael L. Amaro, Prindle, Amaro, Goetz, Hilliard, Barnes & Reinholdtz, L.L.P., Long Beach, CA

FACTS & ALLEGATIONS On March 15, 2007, a fire occurred in a residence owned by Amber Crawford in Hisperia. Crawford had an insurance policy with plaintiff California Capital Insurance. The insurance carrier alleged that the fire originated inside a Kenmore under-the-counter dishwasher that was manufactured by Electrolux, and sold and installed by Sears. California Capital Insurance sued Electrolux Home Care Products Inc. and Sears, Roebuck & Co. It sought recovery of the money it paid to its insured for fire damage repairs. Plaintiff's counsel argued that there was either a manufacturing or design defect in the dishwasher, which caused the fire. Counsel also argued that the dishwasher was negligently installed, which also caused the fire. Specifically, plaintiff's counsel contended that the fire was electrical in origin due to an electric arcing event in the dishwasher's wiring.

Electrolux and Sears denied the fire started inside the dishwasher. Electrolux also denied there was any defect in the product. Defense counsel contended that the electrical arcing inside the dishwasher was actually the result of the fire attacking the energized wires, thereby making the dishwasher a victim of the fire, and not the cause of it.

INJURIES/DAMAGES California Capital paid approximately \$400,000 to its insured for damages incurred due to the fire, including damage to personal property and alternate living expenses. Thus, it sought recovery of the insurance payout. Defense counsel noted that both of the plaintiff's retained experts were employed by Exponent, a forensic engineering firm.