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NEWS

Jury Awards \$1.8M, Not Rejected \$60K, for Broken Pinky Finger

"If you have a good client and a corporate defendant that has not preserved evidence or has mishandled evidence, then a case with bad facts can become a strong case," claimed lead plaintiff counsel Drew Gilliland.

May 31, 2024 at 10:45 AM

Premises Liability



Cedra Mayfield
Litigation Reporter



What You Need to Know

- Clayton County State Court jury returns \$1.8 million premises liability verdict against QuikTrip Corporation.
- Nick Schnyder Law Firm plaintiff team secured seven-figure outcome after rejecting \$60,000 offer of settlement for client's broken finger linked to trip-and-fall.
- Crusier Mitchell defense attorneys seek to cap damages at \$75,000, citing case's remand from federal court in 2017.

A pair of Marietta, Georgia, attorneys who rejected a \$60,000 offer of settlement secured a \$1.8 million premises liability jury verdict.

Now the prevailing plaintiff duo at Nick Schnyder Law Firm is opening up about the trial strategy that helped convince a Clayton County State Court jury to return the seven-figure outcome as compensation for their client's broken pinky finger.

"If you have a good client and a corporate defendant that has not preserved evidence or has mishandled evidence, then a case with bad facts can become a strong case," said lead plaintiff counsel Drew Gilliland.

'Uneven Concrete'

Gilliland teamed with firm colleague Teanna Overton to represent Patricia Robinson after her visit to a Riverdale QuikTrip gas station in October 2015 ended with a trip-and-fall that permanently injured one of the plaintiff's digitus minimus manus, or pinky fingers.

“Plaintiff, while walking in a safe and reasonable manner, tripped and fell on uneven concrete sidewalk tiles on property owned and operated by defendants, severely injuring herself including fracturing her hand,” read the complaint filed in July 2017.

[Read the Full Complaint](#)

In the complaint, plaintiff counsel alleged QuikTrip operators and employees “breached their duty of reasonable care” by failing to “inspect the premises for dangerous conditions,” “warn patrons of a dangerous condition they knew or should have known existed on the premises,” and “repair said dangerous condition when they knew or should have known it existed.”

In addition to asserting claims for premise and vicarious liability, plaintiff counsel accused the corporate defendant of engaging in negligent training and supervision.

“She tried to break her fall with her right hand but was unable to. In the process, she broke the joint where her small finger is attached to the wrist,” Gilliland told the Daily Report. “Because she had a comminuted fracture, she had to get surgery. The doctor installed temporary metal pins to hold the fractured joint in place. She missed three months of work as a result of the fracture, and her pinky finger never fully healed and was permanently bent. She was given a 4% impairment rating to her upper extremity as a result of the fracture.”

‘Did Not Have Superior Knowledge’

Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet managing partner Robb Cruser and partner Candice Bryant handled QuikTrip’s defense but did not respond to a Daily Report request for comment.

But in a consolidated pre-trial order, defense counsel countered “that the uneven sidewalk was not a dangerous and hazardous condition.”

“Defendant denies it was negligent in this case as it did not have superior knowledge of any alleged dangerous and hazardous sidewalk condition,” the defense brief read. “Defendant contends that plaintiff was comparatively negligent by failing to exercise ordinary care to see and avoid the alleged dangerous and hazardous sidewalk condition.”

Read: [Consolidated Pre-Trial Order](#)

\$60,000 Settlement Rejected

According to plaintiff counsel, Robinson’s medical expenses totaled \$7,100.

But when defense counsel offered to settle the premises liability dispute for \$60,000 on QuikTrip’s behalf, plaintiff counsel declined the corporate defendant’s proposition.

“QuikTrip repaired the sidewalk two weeks after the plaintiff’s fall. This construction was pre-planned so it was not performed to correct the defect. In order to figure out how uneven the sidewalk was, we had to spend a lot of money on experts. This made the \$60,000 offer difficult, if not impossible, to accept,” Gillian said. “QuikTrip made this offer about four months before trial under an offer of settlement, so I offered to the client to waive my attorney fees if she wanted to accept, but fortunately she declined.”

With Robinson and plaintiff counsel in agreement about the rejected offer, the matter proceeded to trial at Clayton County State Court, with jury selection beginning on April 29.

Throughout the three-day trial that followed before Judge Margaret Spencer, the plaintiff team had to overcome a variety of hurdles.

In addition to addressing the minimality of the defect in the sidewalk, plaintiff counsel had to circumvent their client's pattern of having regularly visited the premise without incident prior to her injury.

"Even though the sidewalk violated the Life Safety Code, the sidewalk was only elevated by 0.44 of an inch. It was an extremely small defect and no customer had ever tripped and fell on the sidewalk in the past 20 years," Gilliland said. "Another litigation hurdle was that the plaintiff had been to this particular store hundreds of times in the past and never tripped and fell and never noticed a problem with the sidewalk."

To transform the obstacles into opportunities, plaintiff counsel centered their trial strategy on credibility.

In order to best connect with the jury and maintain the attention of jurors, Gilliland and Overton opted to juxtapose relatable character testimony from Robinson with the corporate defendant's alleged mishandling of evidence that implicated its liability.

"[Robinson] had worked in the grocery store business for 44 years and put two sons through college, and they were the first to graduate from college in her family," Gilliland said. "She had only missed work when she gave birth to her sons and when she had this fracture."

The plaintiff team then drew the jury's attention to a QuikTrip policy that called for 15 minutes of video footage to be preserved before and after injury incidents on the premises, before highlighting that the corporate defendant omitted "about 15 minutes of footage after [Robinson's] fall."

"A lot of things happened after our client tripped and fell. Our client went inside the store and reported her fall. In response, the QuikTrip employee on duty got a magazine from the magazine rack and walked outside and put down the magazine in the exact spot where Ms. Robinson tripped and fell without Ms. Robinson telling the employee where she tripped and fell," Gilliland said. "This was not on video, and it showed that QuikTrip had knowledge of the hazard. Also, the time of the incident report was incorrect because it said the incident happened at 3:45 a.m., and the corporate representative for QuikTrip blamed Ms. Robinson at trial for reporting the wrong time. If the correct time had been on the incident report, then QuikTrip would have saved the correct amount of video footage. Also, QuikTrip's camera glitched at the exact moment that Ms. Robinson tripped and fell. It was the only time any video footage glitched."

When a corporate representative for QuikTrip testified that the video glitch occurred because the plaintiff "moved fast," plaintiff counsel challenged the assertion. Gilliland said he and Overton leveraged the testimony against the defendant "by pointing out the obvious."

"What kind of gas station has cameras that glitch when people move fast?," plaintiff counsel posed. "What if someone robbed the store? Wouldn't video footage always glitch when someone tripped or slipped? All of these evidence issues chipped away at QuikTrip's credibility."

\$1.8 Million Verdict

After four days of proceedings and a few hours of deliberations, the Clayton County State Court jury returned a \$1.8 million verdict that attributed full liability to QuikTrip.

According to Gilliland, the outcome left plaintiff counsel feeling relieved that they'd "beat the defense's offer of settlement for \$60,000."

“If we did not beat the \$60,000 offer, our client would have had to file for bankruptcy protection,” Gilliland said.

Read: Verdict

2017CV01179

e-Filed 5/6/2024 8:49 AM

Liki Brown
Tiki Brown
Clerk of State Court
Clayton County, Georgia
Waukecia Lawrie

IN THE STATE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

PATRICIA ROBINSON,
Plaintiff,

vs.

QUIKTRIP CORPORATION, JOHN
DOES 1-5,
Defendants.

CIVIL ACTION
FILE NO. 2017CV01179C

VERDICT

Please follow the instructions provided in completing this form.

Section 1:

Please indicate whether, by a preponderance of the evidence, you find in favor of the Plaintiff Patricia Robinson, or in favor of the Defendant, QuikTrip Corporation, (check only one):

We, the jury, find in favor of Plaintiff Patricia Robinson.

OR

We, the jury, find in favor of Defendant QuikTrip Corporation.

If you have found in favor of Plaintiff Patricia Robinson, please proceed to Section 2.

If you have found in favor of Defendant QuikTrip Corporation, please have the foreperson sign and date the Verdict.

But plaintiff counsel can't yet celebrate the seven-figure verdict, as it might not be the final conclusion to the “clean case” defended by Cruser and Bryant—whom Gilliland hailed as “phenomenal attorneys and straight shooters.”

“QuikTrip filed post-trial motions to cap the damages at \$75,000 because the case was remanded from federal court in 2017, but QuikTrip never challenged the remand and never asked us to cap damages at \$75,000—so our position is that they waived it,” Gilliland said. “In addition, there were changes in circumstances after the case was remanded to state court, so we are confident in our legal position. If there is an appeal, Max Thelen of Ashby Thelen Lowry will be handling the appeal.”

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