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Premises Liability

Postal worker delivers suit against property owners

Verdict: Defense

Case Type: Parking Lot, Motor Vehicle - Driveway, Motor Vehicle - Rear-ender

Case: Debra J. Thacker and Roy D. Thacker v. Kerry Young, J.L. Maupin Enterprises, Inc. d/b/a King Electric, Maxine H. Robinson, Holy Spirit Episcopal School, The Dow Chemical Company Employees' Retirement Plan Trust, Institutional Property Managers, Inc., and L&B Realty Advisors, Inc., No. 2002-50198

Venue: Harris County District Court, 295th, TX

Judge: Tracy E. Christopher

Date: 07-21-2005

PLAINTIFF(S)

Attorney:

- John A. Schmidt; McFatridge, Baker & Dean, P.C.; Galveston, TX, for Debra J. Thacker, Roy D. Thacker

Expert:

- Jeffrey Milburn P.E.; Civil; College Station, TX called by: John Schmidt
[VIEW EXPERT'S CASES](#)
- Martin Barrish M.D.; Orthopedic Surgery; Houston, TX called by: John Schmidt
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- Leo Haney; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Houston, TX called by: John Schmidt
- Ken McCoin Ph.D.; Economics; Houston, TX called by: John Schmidt
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- Karen Nielsen; Lost Earnings; Houston, TX called by: John Schmidt
[ALM EXPERTS](#)

DEFENDANT(S)

Attorney:

- Brian C. Lopez; Engvall & Hlavinka, LLP; Houston, TX, for The Dow Chemical Company Employees' Retirement Plan Trust, Institutional Property Managers, Inc., L&B Realty Advisors, Inc.

Expert: None

Insurer:

- CNA Insurance Company for The Dow Chemical Retirement Trust, Institutional Property Managers and L&B Realty

Facts:

In April 2000, around 7 a.m., plaintiff Debra Thacker, a postal worker in her 40s, was en route to work on Beltway 8 in Houston. As she arrived at the post office, she attempted to turn into the parking lot from the feeder road of Beltway 8 north of Westheimer, but she was rear-ended by Kerry Young. Her car was pushed into another car that was in the driveway exiting the post office.

Thacker and her husband, Roy Thacker, sued Young, Maxine Robinson, the driver of the car into which Thacker was pushed, J.L. Maupin Enterprises, Inc. operating King Electric, Young's employer and whose car he was driving, and Holy Spirit Episcopal School, Robinson's employer and whose car she was driving, for negligence. They also sued The Dow Chemical Company Employees' Retirement Plan Trust, the owner of the land on which the post office was located, Institutional Property Managers, Inc., the property manager for the landowner, and L&B Realty Advisors, Inc., the entity that owned the property manager group, on a premises liability theory. Young settled with the Thackers prior to trial for \$28,000 (policy limits), and Robinson, King Electric and Holy Spirit were dismissed before trial. L&B Realty was let out of the case during trial on a directed verdict at the close of the plaintiffs' case.

The plaintiffs claimed that Dow Chemical and Institutional Property were liable for the negligent design of the post office driveways that connected to the Beltway feeder road. The Thackers' counsel argued that the driveway was not wide enough and that it forced drivers to slow down considerably in order to be able to enter the parking lot. They contended that the driveway created a dangerous condition and that it did not meet current building codes. They alleged that if the driveway would have been wider, Thacker could have entered the parking lot at a higher rate of speed and that the accident would have been avoided. The plaintiffs' accident reconstructionist opined that no driver was at fault in the accident, and their expert engineer opined that the narrowness of the driveway caused the accident.

The defense argued that Thacker's, Young's and Robinson's testimonies indicated that Young was responsible for the accident, not the design of the driveway. It claimed that Young was the sole cause of the wreck and that the people who were present at the post office that day, including Thacker, all blamed Young.

Injury:

Debra Thacker sustained injuries to her back and underwent a fusion surgery at L4-5. She accrued about \$100,000 in past medical expenses for the surgery and rehabilitation. She claimed that the surgery may not have been effective because of the continuing pain she allegedly suffered after the surgery. She contended that future surgery was a possibility, and she sought an additional amount in damages for future medical expenses of about \$100,000.

Thacker did not work for two years after the accident, and she sought about \$100,000 for those two lost years of work. She also sought an undisclosed amount in lost earning capacity because she claimed her future ability to continue working was in question due to her back pain.

Because of the surgery and the continuous back pain, Thacker sought an unspecified amount in damages for past and future pain and suffering and impairment. She now has scarring from the back surgery, and she sought an unspecified amount for disfigurement.

Roy Thacker sought an unspecified amount in damages for loss of consortium and loss of household services, claiming that he now performs responsibilities his wife can no longer perform. All in all, the plaintiffs asked the jury for \$1.25 million in damages, asking that it find the remaining defendants 40% liable..

The defense did not retain any experts, but in cross-examination, it questioned the necessity for future surgery. The plaintiffs' orthopedic surgeon remarked that in his opinion, he would not recommend more back surgery for Debra.

Verdict Information The jury did not find that Institutional Property and Dow Chemical Trust were negligent regarding the Thackers' damages. However, it did find that Young was the only negligent party in the wreck, but because Young settled prior to trial, no damages were awarded.