



2007 WL 4976298

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Superior Court, Sacramento County, California

Sara Kate Dickerson v. Garrahan Electric, Inc.

N/A

DATE OF VERDICT/SETTLEMENT: December 13, 2007

TOPIC: CONSTRUCTION - TRIP AND FALL - CONSTRUCTION - SLIP AND FALL - NEGLIGENCE - FAILURE TO WARN

Principal of School Under Construction Fell Over Plywood

SUMMARY:

RESULT: Verdict-Defendant

Award Total: \$0

The jury found in favor of the defense, determining that Garrahan was not negligent.

EXPERT WITNESSES:

Plaintiff: David Ansel; Neurology; Sacramento, CA Eric Heiden, M.D.; Orthopedics; Ogden, UT Gary Nibelink; Vocational Rehabilitation; Sacramento, CA Kenneth N. Derucher; Construction; Chico, CA Pasquale X. Montesano, M.D.; Orthopedic Surgery; Sacramento, CA Richard Allen; Psychiatry; Roseville, CA Robert W. Johnson, C.P.A.; Economics; Los Altos, CA

Defendant: Harry Khasigian; Orthopedic Surgery; Sacramento, CA Ken Todd; Safety (Construction); Tahoe City, CA Timothy R. Sells; Vocational Rehabilitation; Sacramento, CA

ATTORNEYS:

Plaintiff: Roberta L. Franklin; Downey, Brand, Seymour, & Rohwer; Sacramento, CA (Sara Kate Dickerson); Philip Darke; Downey Brand LLP; Sacramento, CA (Sara Kate Dickerson)

Defendant: **Daniel P. Costa**; The **Costa** Law Firm; Sacramento, CA (Garrahan Electric, Inc.); Erica L. Rosasco; The **Costa** Law Firm; Sacramento, CA (Garrahan Electric, Inc.)

JUDGE: Raymond N. Cadei

RANGE AMOUNT: 0

STATE: California

COUNTY: Sacramento

INJURIES: Dickerson claimed to suffer from bulging discs and extensive pain in her neck and upper back; adhesive capsulitis, a condition causing stiffness, loss of motion and pain in her shoulders; and minor injuries to her left ankle, knee, wrist and elbow.

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Facts:

On Oct. 7, 2002, plaintiff Sara Dickerson, 50, an elementary school principal, tripped and fell while pushing a wheelchair over a plywood bridge at a construction site at her school. She claimed to hurt her neck and back in the fall.

Garrahan Electric, Inc. had been retained by the Folsom Unified School District to perform construction work at Oak Chan Elementary School. The construction contract required Garrahan to be responsible for safety at the construction site. The district approved the work being performed while school was in session. The work would typically start at the end of the school day.

Two weeks before her fall, Dickerson had gone to each classroom to caution students and teachers about the construction, in particular about the plywood.

Dickerson sued Garrahan Electric, Inc., claiming negligence.

Dickerson claimed that right after she arrived at the school at about 8:30 a.m. on the day of her accident, someone informed her that there was an injured child on the playground. She said she took a wheelchair from the nurse's office and quickly walked to the playground, taking the most direct route. She testified that as she crossed the plywood, a wheel on the wheelchair became stuck in a seam of the plywood bridge. She said when she was trying to free the wheel the plywood gave way under her feet, and caused her to fall. She said she had not been paying attention to the plywood at the time.

Dickerson immediately went to the office and told the custodian she had fallen. She also filled out two incident reports that day, one simply stating that she had tripped and fallen on the construction plywood, and one giving more details of the accident consistent with her testimony.

There were no witnesses to the entire accident, but witnesses with direct knowledge of the accident scene testified that the plywood bridge was not secure and that there was a gap between the plywood and the rock fill underneath the plywood.

Dickerson testified that the custodian had looked the site over around 6 a.m. the day of the accident, and that he did not notice anything unsafe.

Dickerson claimed the use of unsecured sheets of plywood that would flex and spring violated OSHA regulations.

Dickerson and other school district employees testified that the plywood bridge was unsupported and unsecured.

Garrahan pointed out that Dickerson was well aware of the ongoing construction, as evidenced by the talks she gave to the students before the work began. Garrahan also claimed that Dickerson knew that plywood was being used to cover the construction trenches, and that the school district had requested that the plywood be used. Garrahan alleged that it painted the edges of the plywood orange and placed caution tape and orange cones around the area.

School district employees testified that Garrahan did not place cones, paint, barricades or any other warning signs around the plywood bridges to warn the public of its dangers.

Dickerson treated conservatively with Clint Collins M.D.

Dickerson claimed that she needed a two-level fusion of her neck, which would cost about \$80,000.

Dickerson also claimed that she was forced to stop working as a principal because of the disability and pain caused by the fall.

Dickerson sought a total of about \$3.4 million for her past and future medical care; past and future lost wages; lost pension benefits; lost household services; permanent disability; and general damages.

Defense counsel contended that Dickerson's injuries were the result of preexisting conditions. She had been car accidents in November 1993 and September 1995, and complained of injuries to her neck, as well as headaches and numbness from the accidents. MRI scans taken at the time showed bulging discs at C4-5 and C6-7. At the time, Dickerson's doctors predicted that the injuries would be degenerative, and that she would likely experience chronic pain for several years. She was given the option of surgery. She missed substantial periods of work and required a reduction in her workload.

In both of those accidents, Dickerson claimed injuries similar to what she claimed as a result of her trip over the plywood, including an inability to work to retirement age and a need for surgery. After the first two accidents, Dickerson testified that she did not believe she would be able to take an administrative position with the school district because of her injuries.

From 1999 through the day of the fall, Dickerson had ongoing complaints of neck and shoulder pain, and took pain medication, muscle relaxants and anti-inflammatory medications. Seven months before her fall, she saw a doctor for chronic neck and back pain from the 1993 and 1995 accidents. She reported being no better and no worse, and continued to take muscle relaxants, anti-inflammatory medications and pain medications.

In May 2002, Dickerson was injured at school while pulling a child back from in front of a moving vehicle. She underwent physical therapy for about two months until July 2002, and continued taking the same pain medications.

In 2001, Dickerson and her husband bought property for a new home in Washington, and construction was finished in December 2002. In March 2003, Dickerson applied for disability retirement. In April 2003, her husband retired and moved to the new house in Washington. In June 2003, after her disability retirement was approved, Dickerson retired and moved to Washington.

After moving to Washington, Dickerson continued to treat with doctors in California. She would fly down for her appointments. None of her doctors felt that she needed surgery.

In 2006, Dickerson saw Pasquale Montesano M.D., who gave her the option to have surgery on her neck. Dickerson was also evaluated by Ansel, who testified that whether or not she could return to work was a question of motivation.

Also in 2006, surveillance was done on Dickerson, showing that she could function without limitation or restriction, move her neck about freely and garden.

Defense orthopedic surgeon Harry Khasigian testified that Dickerson had a minimal aggravation of a preexisting condition requiring conservative treatment, with recovery similar to the May 2002 incident of six to eight weeks.

Dickerson testified that the pain from the 2002 fall was much more severe than what was caused by the 1993 and 1995 accidents.

She alleged that, before her fall, her plan was to have one home in Washington and one in California, so she could continue working as a principal at Oak Chan until a normal retirement age. She said she planned to go to the Washington home on weekends, holidays and during the summer to be with her husband.

Dickerson saw a number of doctors between the time of her fall and the trial, all of whom testified that she was unable to work as a full-time principal after her 2002 accident.

Insurer:

Federated Insurance Company Garrahan Electric, Inc.

ALM Properties, Inc.

Superior Court of California, Sacramento County, at Sacramento

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