

**DEMAND** \$35,000, reduced to \$17,000 after first day of trial

**POST-TRIAL** Judge Cain awarded defense counsel \$20,756 in attorney fees and costs.

Nalin, who is now representing himself, filed an appeal.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and defense counsel.

—Rob MacKay

## S H A S T A C O U N T Y

### PREMISES LIABILITY

#### Slip and Fall

## Man fell on freshly mopped floor at mini-mart

<b>VERDICT</b>	<b>Defense</b>
<b>CASE</b>	Ronald Kuykendall v. Colvin Oil Co., Inc, d/b/a Circle K, No. 154937
<b>COURT</b>	Superior Court of Shasta County, Redding, CA
<b>JUDGE</b>	Bradley L. Boeckman
<b>DATE</b>	2/28/2007
<b>PLAINTIFF</b>	
<b>ATTORNEY(S)</b>	Michael B. Cogan, Redding, CA
<b>DEFENSE</b>	
<b>ATTORNEY(S)</b>	Daniel P. Costa, The Costa Law Firm, Sacramento, CA Erica L. Rosasco, The Costa Law Firm, Sacramento, CA

**FACTS & ALLEGATIONS** On May 1, 2005, plaintiff, Ronald Kuykendall, 38, went into the Circle K to purchase items for work. While he was in the store gathering up items he turned to get an additional item and slipped and fell face down on the freshly mopped floor. Kuykendall denied assistance while in the store, but returned later to request an incident report. Kuykendall returned to work a few days later, but claimed an impaired ability to work overhead. Kuykendall also testified that he began falling for no apparent reason and had difficulty using his hands. On May 22, 2005, Kuykendall fell while hooking up a boat trailer and was treated in the emergency room. However, due to his use of medical marijuana the treating physician's encountered difficulty in diagnosing his injuries. A few days later, Kuykendall returned to the hospital complaining of an inability to walk. On May 26, Kuykendall returned to the

hospital complaining of numbness after falling while hooking up his boat, but he refused admission to the hospital. On May 30, Kuykendall was admitted to the emergency room after an MRI demonstrated central cord syndrome.

Claiming premises liability, Kuykendall sued Colvin Oil Co., who was doing business as Circle K.

Kuykendall admitted that he was not paying attention at the time of the fall, but claimed that an excessive amount of water used to mop the floor lead to his fall, and he was not given adequate warning of a dangerous condition.

Defense counsel contended that the wet floor was open and obvious and Kuykendall was given adequate warning because there were three wet floor signs placed in close proximity to where Kuykendall fell. Defense counsel additionally argued that Kuykendall was aware of the wet floor because prior to his fall he had joked with the female employee about her mopping.

#### INJURIES/DAMAGES *fusion, cervical*

Kuykendall claimed he suffered a central cord injury when he fell at Circle K. He underwent a cervical fusion at the C3-4, C5-6 and C6-7 levels to treat his injuries one month after the fall at Circle K.

Plaintiff's expert Steven McIntire, M.D., testified that Kuykendall suffered a central cord syndrome injury as a result of his fall in the store. McIntire additionally testified that Kuykendall's condition got progressively worse and caused him to fall a number of other times; including the May 22 fall.

Defense counsel contended that Kuykendall's spinal cord injury was caused by the May 22 fall not the May 1 fall. Both defense experts testified that the central cord injury was the result of the May 22, fall when his neck went into extension causing immediate paralysis. Both doctors testified that central cord syndrome results in immediate paralysis and is not an injury that becomes progressively worse over time. The doctors additionally testified that the plaintiff could not have returned to work with central cord syndrome.

Plaintiff's expert Mark Hambly, an orthopedic surgeon, testified that Kuykendall's May 1, medical visit to Hilltop Medical Clinic was consistent with a trapezius strain and knee injury, not a spinal cord injury. Dr. Mark Pierce, the doctor from Hilltop was called as a witness by the defense and testified that he found no signs of neurological injury during his examination. The defense additionally called Dr. Kay Kobe, a chiropractor who treated Kuykendall on May 21. Kobe testified that when she treated Kuykendall for cervical strain she found no evidence of neurological injury.

The parties stipulated Kuykendall incurred paid medical expenses of \$35,000 but was billed \$167,000 for medical treatment. Kuykendall additionally claimed permanent disability with a past wage losses of \$124,384 and a future wage loss of \$1,082,506.

**RESULT** A jury found 10-2 that Circle K was negligent in the use or maintenance of their property, but found 10 -2 that Circle K's negligence was not a substantial factor in causing harm to Kuykendall.

## N O R T H E R N

**DEMAND** \$1 million  
**OFFER** \$40,001

**TRIAL DETAILS** Trial Length: 7 days  
 Trial Deliberations: 1 day  
 Jury Vote: 10-2  
 Jury Composition: 2 men, 8 women

**PLAINTIFF**  
**EXPERT(S)** Phil Allman, economics,  
 San Francisco, CA  
 Steven McIntire, M.D., neurology,  
 San Francisco, CA  
 Greg Sells, vocational rehabilitation,  
 Sacramento, CA

**DEFENSE**  
**EXPERT(S)** Mark F. Hambly, M.D., orthopedics,  
 Sacramento, CA  
 Van Buren R. Lemons, M.D., neurology,  
 Sacramento, CA

**EDITOR'S NOTE** This report is based on information provided by the defense counsel.

—Matthew Rabin

## SONOMA COUNTY

## CONSUMER PROTECTION

## Song-Beverly Consumer Warranty Act — Lemon Law

## Couple claimed that their new Mercedes-Benz was a lemon

**VERDICT** Defense

**CASE** Donald Morshead and Claudia Morshead v. R.A.B. Motors Inc.; Mercedes-Benz U.S.A. LLC; Penske Motorcars and Does 1 through 10, No. SCV 237503

**COURT** Superior Court of Sonoma County, Sonoma, CA

**JUDGE** Raymond J. Giordano

**DATE** 2/9/2007

**PLAINTIFF**  
**ATTORNEY(S)** James M. Rhine, Law Office of James M. Rhine, Santa Rosa, CA

**DEFENSE**  
**ATTORNEY(S)** Robert M. Shannon, Universal, Shannon & Wheeler, Roseville, CA

**FACTS & ALLEGATIONS** On Dec. 31, 2003, plaintiffs Donald and Claudia Morshead, both real estate agents in their 30s, purchased a new 2004 ML 350 Mercedes-Benz SUV online, from Penske Motors, in West Covina. The SUV was delivered to the Morsheads with an express warranty, issued by Mercedes-Benz USA, LLC, Montvale, N.J. Shortly after the Morsheads had purchased the SUV they began bringing it to R.A.B. Motors, in San Rafael, for servicing. Within 14,000 miles of the vehicle's purchase the Morsheads reported a number of problems to R.A.B. Motors, including transmission, electrical problems, water leakage, navigation system issues, airbag defects and premature tire wear. The vehicle was in the shop for 54 days.

After repeatedly bringing the SUV to R.A.B. Motors for repairs, the Morsheads sued R.A.B. Motors; Mercedes-Benz USA, LLC, and Penske Motors for violating the Song-Beverly Consumer Warranty Protection Act and the Magnusson-Moss Warranty Act. Seeking general damages, as well as the repurchase of the SUV, which they alleged had irreparable defects, the Morsheads brought several other causes of action that were all dismissed prior to the trial.

Plaintiffs' counsel argued that the repeated problems with the SUV posed a major inconvenience to the Morsheads because they had to continually bring the vehicle in for service. Counsel further argued that the inordinate number of problems with the SUV led the Morsheads to lose confidence in the safety of the vehicle.

Counsel for the defense argued that R.A.B. Motors did everything expressed within the terms of the warranty to repair the SUV when the Morsheads brought it in for repairs. Counsel further argued that the defects that the Morsheads were referencing in regards to their Song-Beverly allegations could not be duplicated by Mercedes-Benz U.S.A.'s technicians and were all too minor to rise to the level of substantial impairments of the use, value or safety of the vehicle.

Defense counsel added that the problems that the Morsheads were alleging were either not covered by the warranty because they were normal and routine maintenance issues or they were resolved within one repair or within a reasonable number of repairs.

**INJURIES/DAMAGES** Plaintiffs' counsel sought to have Mercedes-Benz U.S.A. re-purchase the vehicle and pay additional, unspecified, general damages for the inconvenience that bringing the SUV into R.A.B. Motors for multiple repairs caused the Morsheads. Counsel also sought \$10,000 for the tax deduction that the Morsheads sacrificed by purchasing the SUV, as well as an \$84,690 penalty against Mercedes-Benz for failing to honor the warranty and, therefore, violating the Song-Beverly Consumer Warranty Protection Act.

Counsel for the defendants argued that Mercedes-Benz U.S.A. and R.A.B. Motors both did all they could to satisfy the Morsheads but the Morsheads insisted that Mercedes-Benz U.S.A. re-purchase the SUV.

**RESULT** The jury found that two of the necessary repairs on the SUV were substantial but that the defendants resolved both problems within a reasonable number of repair opportunities.