

Sherwood McPhaul v. Mutual of America Life Insurance Company; 2011 Jury Verdicts LEXIS 202367

300076/10

December 08, 2011

Headline: Building's Lobby a Slippery Hazard, Plaintiff Claimed

Published Date: January 02, 2012

Topic: Premises Liability - Negligent Repair and/or Maintenance - Premises Liability - Dangerous Condition - Premises Liability - Slip and Fall - Premises Liability - Office Building

Injury: Herniated Disc at L4-5, Torn Rotator Cuff, Arthroscopy, Physical Therapy, Decreased Range of Motion, Numbness, Nerve Impingement, Leg

Practice Area: Torts

State: New York

Court: Kings Civil

Plaintiff Counsel

Norman Steiner

Firm Name: The Steiner Law Firm, PLLC

Address: Kings, NY

Plaintiff Name: (Sherwood McPhaul)

Defendant Counsel

Stephen J. McGiff

Firm Name: The Law Offices of Stephen J. McGiff

Norman Steiner

Address: Patchogue, NY

Defendant Name: (Mutual of America Life Insurance Co.)

Judge: Pamela Fisher

Case Summary

On Sept. 11, 1997, plaintiff Sherwood McPhaul, 28, a data processor, slipped in the lobby of the office building that is located at 320 Park Ave., in Manhattan. He fell, and he claimed that he sustained injuries of his back and a shoulder.

McPhaul sued the building's owner, Mutual of America Life Insurance Co. McPhaul alleged that Mutual of America Life Insurance was negligent in its maintenance of the premises. He further alleged that the company's negligence created a dangerous condition.

McPhaul claimed that he slipped on rainwater that had migrated onto the lobby's marble floor. He noted that the incident occurred immediately inside of a revolving door that led to the street.

McPhaul's counsel contended that the incident occurred after several hours of rainfall, and he noted that the building's manager had established a policy of placing mats on the lobby floor whenever it rained. McPhaul claimed that mats were not present when the accident occurred.

McPhaul's expert architect opined that anti-skid material should have been applied to the lobby's floor, and he also opined that the building's entrance was designed in a manner that encouraged the accumulation of water in the lobby. He contended that the entrance's design and the lack of anti-skid material violated municipal codes.

Defense counsel contended that mats had been placed in the lobby and that the entrance's design did not violate a code. He suggested that McPhaul slipped on rainwater that he had tracked into the building and/or rainwater that had fallen off of his umbrella, and he contended that McPhaul failed to exercise due caution.

Injury Text:

The parties stipulated that McPhaul's damages totaled \$250,000. They also stipulated that the damages would be reduced by the percentage of any comparative negligence that was assigned to McPhaul, to a minimum of \$50,000. Thus, damages were predetermined and not before the court.

McPhaul was placed in an ambulance, and he was transported to a hospital. He underwent minor treatment.

McPhaul ultimately claimed that he sustained a herniation of his L4-5 intervertebral disc. He also claimed that he sustained a tear of his right, dominant shoulder's rotator cuff. He contended that the herniation caused impingement of a spinal nerve.

After some six months had passed, McPhaul underwent arthroscopic surgery that addressed the injury of his right shoulder. The procedure was followed by about eight weeks of physical therapy and about eight weeks of pain-management treatment.

McPhaul claimed that his right shoulder remains painful and weakened, and he contended that he suffers a residual reduction of its range of motion. He also claimed that he suffers ongoing neurological problems that cause constant, painful numbness and tingling of his legs.

McPhaul sought recovery of damages for his past and future pain and suffering.

Defense counsel contended that McPhaul's injuries stemmed from accidents that occurred after the instant accident.

Trial Length

3.0 days

Jury Deliberation

12.0 minutes

Jury Composition

1 male, 5 female

Plaintiff Expert(s)

William Q. Brothers, III, A.I.A.

Address: New York, NY

Specialty: Building Codes

Affiliation: **Norman Steiner**

Award: \$ 250,000

Award Details: The jury found that Mutual of America Life Insurance was entirely liable for the accident. Thus, McPhaul recovered the stipulated damages: \$250,000.



www.verdictsearch.com/index.jsp

Copyright 2012 ALM Media Properties, LLC.
All Rights Reserved
Further duplication without permission is prohibited
VerdictSearch
New York Reporter Vol. 29

End of Document