

VERDICTS & SETTLEMENTS

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Woman Settles Stairway Fall Suit *Arnosky v. Kevin D. Flynn Corp.*

\$1.3 Million Settlement

Date of Settlement:

Aug. 25, 2011

Court and Case No.:

C.P. Philadelphia No. 091100973.

Judge:

Was not assigned.

Type of Action:

Personal Injury.

Injuries:

Head trauma.

Plaintiff's Attorneys:

Edith A. Pearce, the Pearce Law Firm, Philadelphia.

Defense Counsel:

Timothy W. Stalker and Darren L. Harrison, Stalker Vogrin Bracken Frimet, Blue Bell, Pa.; James F. Lynn, Bonner Kiernan Trebach & Crociata, Philadelphia; Glenn M. Campbell, William J. Ferren & Associates, Blue Bell, Pa.

Plaintiff's Experts:

John J. Hare, architecture, Philadelphia; Steven Mazlin, neurology, Langhorne, Pa.; Edward Maitz, neuropsychology, Philadelphia; Andrew Verzilli, economics, Lansdale, Pa.

Defense's Experts:

Rosalyn Pierce, vocational expert, Philadelphia; Joseph Bernstein, medicine, Philadelphia; Howard Silverstone, economics, Haddonfield, N.J.; Steven E. Arnold, neuropsychiatry, Philadelphia; Paul J. Moberg, neuropsychology, Philadelphia; David Fleisher, engineering, Ambler, Pa.

Comment:

A woman who suffered a closed head trauma when she slipped and fell down a fire tower stairway has settled for \$1.3 million with the owner, manager, and maintainer of the building.

In November 2007, Wendy Arnosky was exiting the building, owned by Island View Crossing, Inc., that housed the Langhorne, Pa., office of Lenox Group Inc., where she worked, according to the plaintiff's pre-settlement memorandum. As she turned the corner at the top of the third floor stairwell landing, she slipped on the top step, which the plaintiff's memorandum described as "severely

deteriorated, cracked, and irregular." She fell 15 to 18 steps and struck her head.

The plaintiff alleged that the stairway was in an unsafe condition under the knowledge of the building's owners and managers and that this was the cause of her fall and injury. She alleged that she was unable to work because of the accident and that it prevented her from performing normal life functions.

Arnosky suffered "neurological injuries; orthopaedic injuries requiring multiple surgeries; psychological and neuropsychological injuries; permanent loss of function in her right-hand; migraine headaches; light and sound sensitivity; chronic pain; and a permanent twitch of the left eye," according to her pre-settlement memorandum.

Edward Maitz, the plaintiff's neuropsychological expert, determined after tests that Arnosky had significantly impaired cognitive skills due to the accident, the plaintiff's memorandum said.

The plaintiff alleged that "all defendants were aware of the condition of the south side tower steps" prior to Arnosky's fall. The property's facilities manager, an employee of building maintenance company Onesource Energy Services, testified in an April 2011 deposition that he had informed both the owner, Island View, and the property manager, Flynn Development Corp., of the stairs' condition in December 2005. However, no action was taken.

The owner and manager were also notified of the stairs' condition in July 2007 by the Lenox facilities manager, according to the plaintiff's memorandum. They were given an estimate for repair costs amounting to \$970, but no action was taken.

Now, Island View Crossing and Flynn Development Corp., which were jointly insured, will pay \$1.25 million. Onesource Energy Services will pay \$50,000.

Because of her injuries, Arnosky underwent neurological and psychological treatment, carpal tunnel surgery, and physical and occupational therapy. Her workers' compensation lien totaled \$249,562.84, according to the pre-settlement memorandum.

Each defendant filed its own pre-settlement memorandum; however, their arguments were largely the same.

The defendants jointly alleged that Arnosky's fall was caused by a misstep and her own lack of caution. They alleged that she was not using the stairs' handrail and that she was distracted by talking to a friend who was with her at the time.

The defendants also alleged that there was nothing wrong with the stairs.

"There does not appear to be any obvious defect in the location where Ms. Arnosky identified she had slipped," Island View's pre-settlement memorandum said.

David Fleisher, the defendants' engineering expert, noted in Island View's memorandum that the building was constructed in 1917 and therefore could not be expected to comply with building codes enacted since then.

"Mr. Fleisher sees no evidence that the condition of the steps themselves factored into the accident," the memorandum said.

The defendants also alleged that Arnosky's injuries were exaggerated. Their own medical experts concluded that her neurological and psychological symptoms were not as bad as she said, and the defendants' vocational expert, Rosalyn Pierce, said that Arnosky could "perform some work given her current limitations," according to Island View's memorandum.

Arnosky's economic loss was also not as great as she alleged, the defendants said. Howard Silverstone, the defendants' economics expert, estimated her loss to be between \$208,946 and \$662,651, rather than between \$1,209,870 and \$1,389,555, as Andrew Verzilli, the plaintiff's economics expert, estimated.

The plaintiff demanded compensation of \$4.5 million for pain and injury, medical bills and loss of wages. On Aug. 25, 2011, they settled with the defense for \$1.3 million.

"It was a heavily contested case," said plaintiff's attorney Edith Pearce. She also said the result was an "excellent settlement."

— Dan McCormick, for the Law Weekly