

October 16, 1998

Regional News

LAWYER HIT WITH \$300K VERDICT IN LEGAL MAL BEEF

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Of The Legal Staff

A Philadelphia lawyer Wednesday was held liable in a legal malpractice case for failing to communicate to a client that he would not be filing a slip-and-fall case on her behalf, with the jury returning a damage award of \$300,000.

The verdict came at the end of a four-day trial before Philadelphia Common Pleas Court Judge Richard B. Klein. The award was handed down by an eight-person jury after a full day of deliberation, lawyers on both sides of the case said.

Attorney Howard N. Snitow of Snitow & Snitow was sued by his former client, Michele Baker, who had entered into a fee agreement with him, retaining him to represent her in connection with a fall she suffered when she was working as a letter carrier for the postal service.

The Snitow firm secured workers' compensation benefits for Baker, but did not pursue a slip-and-fall case on her behalf. The main questions in the trial were whether Baker had a winnable case for damages arising from the slip-and-fall, and whether Snitow's actions in the case measured up to the professional standard of care owed by an attorney to a client.

Baker slipped and fell on a pavement at Fourth and South streets in the city on Dec. 3, 1991, when, according to lawyers on both sides of the case, it was raining. She retained Snitow as her lawyer, and the contingent fee agreement between lawyer and client said that he would represent her "interests."

Baker's attorney, Tobias L. Millrood of Anapol Schwartz Weiss & Cohan, said that the plural was significant, since it indicated that she would be represented in both a workers' comp and slip-and-fall case.

But, according to Millrood, Snitow did not pursue a slip-and-fall action against any tort-feasor, and did not return repeated telephone calls regarding the status of a slip-and-fall claim.

Millrood was co-counsel with Anapol Weiss lawyer Howard J. Levin in the case. Ricky L. Liss and George S. Marion of Liss & Marion developed aspects of Baker's slip-and-fall claim, Millrood said.

Snitow's attorney, Jacqueline J. Morgan, yesterday said that there were communications between Snitow and his client on the status of the workers' compensation claim, and that Snitow orally informed Baker that he did not believe that she had a viable slip-and-fall case.

Morgan said that Snitow was preparing to file post-trial motions and appeal the case if necessary. She said that the major beef of the defense was that the verdict was against the weight of the evidence and that Klein should have granted a mid-trial motion for nonsuit.

Baker presented \$40,000 in special damages, meaning that at least \$260,000 of the award was attributable to the plaintiff's pain and suffering, Millrood said. There is a \$40,000 workers' compensation lien that must be satisfied, he added.

Baker suffered a fractured left arm in two places, and the forearm was repaired using plates and screws, Millrood said. Baker lost seven months of work and upon her return could not be scheduled for nine-to-five duty as a letter carrier, a job she liked. Instead, she was placed on night shifts, which limited her ability to parent her children.

"That was a large element of the pain and suffering," Millrood said.

Morgan said she got the case three days before it was to come to trial in Klein's court.

"Jackie Morgan tried a good case under difficult circumstances," Millrood said.

The defense said that Baker changed her story twice, from initial statements to her deposition testimony and finally at trial.

Millrood pointed out that in the deposition, defense lawyers didn't ask Baker precisely to identify the spot where she fell.

Levin, in his closing statement to the jurors, called the defense attacks on Baker's story "an argument of desperation," Millrood recalled.

"They were more focused on going against her than on defending their own case," Millrood said.

Morgan said that the theme of the defense was to argue that Baker's slip-and-fall claim was not viable, and that Snitow told her so.

"The bottom line in a legal malpractice case...is [for the plaintiff] to prove a case within a case," Morgan said. The "strongest defense," she said, was that Baker's slip-and-fall case was not viable.

"There were a lot of conflicting statements as to what caused her to fall," she said. "And her story changed from what she said in the emergency room initially."

Morgan said that Baker claimed to have slipped, then at trial said there was an uneven portion of sidewalk that tripped her up.

"There was not sufficient proof of a defect in the sidewalk," she said.

Millrood said that at the time she fell, it was dark and raining, and that therefore it was difficult for her at the time of the accident to discern the condition of the sidewalk. Moreover, he said it was the defense that failed to pin down her story with any precision at the deposition.

Plaintiffs counsel said that calls weren't returned and that Baker was never informed of the statute of limitations and what she would need to do to preserve her rights.

"There is no guaranteed result [in the law], just the best effort of the lawyer," was how Millrood stated the theme of the case from the plaintiff's perspective. "If this lawyer concluded that [Baker] didn't have a case, he should have advised her to go to another lawyer and advised her of the statute of limitations. It was a very, very simple solution. If he truly felt that this was a frivolous case, that was all he had to do."

No such consultation occurred in writing or orally, Millrood said.

Morgan said that Snitow told Baker that her slip-and-fall case "was not worth pursuing," and that the lack of a writing showed that "if there was any negligence it was that [the defendant] did not protect himself."

On the issue of whether Baker was advised properly, they chose to take the plaintiff's word over the defendant lawyer's.

"There are risks involved in litigating a legal malpractice action to a jury," Morgan said. "Some people just don't like lawyers."

The plaintiff's legal expert was Stacey L. Schwartz of Schwartz & Blackman. The defense legal expert was Stephen C. Josel of Philadelphia.