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Pastor settles claim over fall on slippery mat at hospital

BY FRED HORLBECK

Senior Staff Writer

A man who was a trainee in pastoral counseling at a hospital in Charleston has settled for \$775,000 in a federal slip-and-fall lawsuit against an Australian construction company.



Clark

Plaintiff Sylvester Morton claimed that he suffered a herniated disk when he slipped and fell on a rubber mat placed upside down at a construction site at Roper St. Francis Healthcare in September 2004.



Yarborough

He alleged that workers for contractor Bovis Lend Lease, Inc., placed the mat at a temporary entranceway they had erected for the hospital. The upward-facing underside of the mat was smooth and had become slick with rainfall when Morton walked on it and fell, the complaint said.

Morton sued for negligence, claiming that Bovis had a duty to maintain the entranceway and had breached that duty by placing the mat upside down, failing to warn him and not placing handrails along the entranceway.

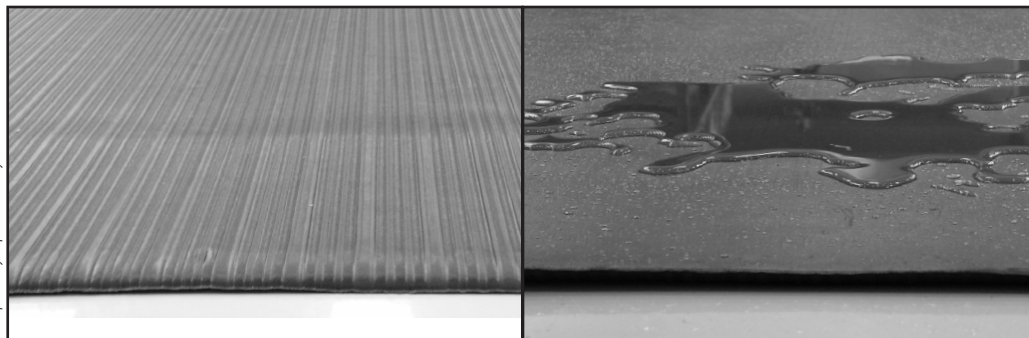
A lawyer for Bovis referred South Carolina Lawyers Weekly's inquiry about the case to a company spokesperson, who declined to comment.

Morton and his wife also sued for loss of consortium but withdrew the claim.

John D. Clark of Sumter and David B. Yarborough Jr. of Charleston, who represented the plaintiff, said the settlement amount was the largest they'd seen in a slip-and-fall case.

"I've never had a slip-and-fall come close to three quarters of a million dollars," Yarborough said.

The case in the U.S. District Court of South Carolina, Charleston Division, was



Photos provided by the plaintiff's attorneys.

The photo on the left shows how a mat similar to the one at issue in *Morton* would look if placed proper side up. The plaintiff claimed the mat became slippery when wet when placed upside down, as the exemplar mat is in the left-hand photo.

Morton v. Bovis Lend Lease, Inc., case No. 2:07-CV-02625-PMD. The case concluded on June 4, according to Morton's lawyers.

'Slip and slide'

Morton claimed the fall left him permanently disabled, but his lawyers said they faced several hurdles in making their case.

The walkway had drawn complaints prior to Morton's fall, they said, but nobody had witnessed the fall itself. That was a weakness in their case, potentially enabling the defense to argue that the fall didn't occur.

Another problem: New construction had replaced the temporary entranceway, obliterating the scene as it existed in September 2004.

"We were having trouble going back and proving what the conditions were like. We had a couple of other employees who said they walked on it and it was slippery, but we just didn't have anything concrete," Yarborough said.

But then the "slip and slide" e-mail came to light.

"About three or four months ago, John and I subpoenaed a bunch of records from the intermediate company, which was the agent for the hospital that dealt directly with Bovis. And they gave us a disk with about 5,000 e-mails and documents on there, and we went through it and found that e-mail," Yarborough said. "It just turned the case around for us."

Written by a hospital administrator after Morton's fall, what became Plaintiff's Exhibit No. 9, said construction workers had "set up slick rubber mats to cover the bare ground" and added that the

area was "an accident waiting to happen."

"You can literally slide yourself from one end of the walkway to the other. It's like a rubber 'slip and slide,'" the e-mail said.

Clark and Yarborough subpoenaed the administrator, who had moved to California.

She gave a videotaped deposition corroborating everything in the e-mail," Yarborough said.

The defense "filed a motion to exclude that, but we felt like we could get it in," Clark said. "And we did."

Other challenges

Morton's lawyers also braced themselves to hear the defense argue that their client wasn't disabled, a claim they saw as an especial danger in the economic loss phase of the trial.

They had an expert who would testify that Morton was permanently and totally disabled, but Morton had what Yarborough called a "very severe history of pre-existing back conditions," including a fused disk.

"Because of his prior disabilities, we talked about it and we wanted to give the jury an option not to just award nothing or the full amount," Yarborough said. "We were not going to be able to get around the fact that he had previously been permanently and totally disabled and that he had never gotten off disability."

They planned to suggest a range of award options based on an appraisal of their client's economic loss. The appraisal indicated that his losses would reach as high as \$1.47 million if his 2004 fall was 100 percent to blame.

"It was going to be tricky because this guy was still an active pastor," Clark said. "He's an AME pastor, and he presides over a church every Sunday, and they were going to argue that if he can do that, he can still work."

But Clark and Yarborough believed Morton's career of choice — pastoral counseling in the health-care arena — was no longer possible.

The fall "took away his opportunity to try it," Clark said.

After his previous injuries, the plaintiff had dropped blue-collar work and had earned a degree in divinity. At Roper St. Francis, he was in the final stages of obtaining his license as a pastoral counselor.

Now, with two fused disks, the plaintiff could manage two hours of Sunday pastoring. But chronic pain precluded the walking and standing included in counseling patients at a medical complex eight hours a day and 40 hours a week, Clark said.

"We felt strongly about the evidence and that he was credible on that, but that was going to be an issue for the jury to decide," Clark said.

Their client's history of injuries invited cross-examination that Clark and Yarborough didn't exactly relish.

But the case never got that far.

One the eve of trial, settlement negotiations hit the fast track.

"We're not really sure why it was they caved at the last minute, but they did, and we felt certainly like it was not an amount of money that we could turn down," Yarborough said.

— Questions or comments may be directed to the writer at fred.horlbeck@sc.lawyersweekly.com.