WEDNESDAY, MAY 2, 2012

DAILY REPORT

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An ALM Publication

Slip-and-fall accident at car dealership nets $800K

FEDERAL JURY FINDS for 81-year-old man who broke hip after dropping from platform that lacked a handrail in violation of building codes, plaintiff's lawyer says

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Robert Tidwell, left, and Orlando Ojeda practiced their case with focus groups in three mock trials.

A PAIR OF RECENT CONVERTS to the plaintiffs' side of the law won an $812,300 verdict for an 81-year-old man who broke his hip in a fall at a car dealership where he was buying a Ford Focus.

A federal jury in Atlanta delivered the verdict April 27 to Charles Chase, represented by Orlando Ojeda Jr. of Walker Ojeda and Robert Tidwell of Brodhead Law.

Ojeda said Chase's case was one of the first 10 he took after transitioning from the technology practice at Morris Manning & Martin to plaintiffs work a few years ago. The trial was the first as a plaintiffs lawyer for Tidwell, who joined Brodhead from the in-house legal department of Progressive Insurance.

The defense team for Jim Tidwell Ford in Kennesaw—Jeffrey Bashuk of Bashuk & Glickman and Scott Schweber of Evans, Scholz, Williams & Warncke—is "evaluating options," said Schweber. The attorneys were retained by the self-insured parent company Group One Automotive of Houston.

"The case is more complicated than it looks," he added.

The trial before U.S. District Judge Charles Pannell Jr. of the Northern District of Georgia lasted a week, with three days of testimony and two days of jury deliberations.

In the end, the jury returned a $1.083 million verdict—$165,567 to cover Chase's medical expenses and $917,500 for his pain and anguish. But Chase received only 75 percent of the sum because the jury apportioned 25 percent of damages to his negligence.

Lawyers for both sides said jurors told them afterward that their decision was based not on why Chase fell off a raised platform in the showroom but on the absence of a handrail. Both sides also reported that the jury found the plaintiff likable.

Chase is a native New Yorker and retired chief financial officer for a luxury hotel chain. His lawyers said he told them he once lived in a suite on the 25th floor of Manhattan's Milford Plaza, one of the hotels in the chain.

Chase was 78 when, on Oct. 27, 2009, he came to the dealership to pick up documents related to his purchase of the Focus. He had renegotiated the deal because he felt he was being overcharged, according to his lawyers. At the office, he stepped onto a raised stair and landing next to a "sales tower," as the defense called it, or a "counter" as the plaintiff's side called it.

Chase's complaint described the structure as "a carpet covered wooden box that was not bolted to the floor or counter and was not otherwise secured to the floor of the showroom."

The defense attorney, Schweber, said it was an eight-inch step. The defendant's answer said the step was not hazardous, and the defense summary in the pretrial order said the plaintiff fell because of his own carelessness.

Chase testified that he picked up the papers and turned to leave. As he started to step down, he testified that he felt the step shift under his feet.

"He reached out to grab hold of something, but there was nothing there," said Tidwell.

Chase fell off the side onto the tile floor, breaking his hip. He was taken by ambulance to WellStar Kennestone Hospital, then transferred by ambulance to Piedmont Hospital because his cardiologist group was located there. Chase has a pacemaker, said Tidwell.

Chase underwent surgery for hip replacement. But because of his age, his bone density could not support the hardware, which sunk into the joint and ultimately caused one leg to be ¾ of an inch shorter than the other.

Dr. Marvin Royster, the surgeon, testified by video, describing the procedure in great detail, said Tidwell.

"The jurors were wincing," he said, such as when the doctor described hammering a spike into the leg bone.

It took Chase months to walk again on a cane, with difficulty. Tidwell said he told the jury, "Every step is pain and suffering."

The defense focused on Chase's pre-existing conditions, including a malady called "drop foot" that made him more likely to trip, and three previous falls.

Those factors, plus Chase's advanced age, made the case particularly challenging, said plaintiffs lawyer Ben Brodhead. He had referred the case to Ojeda because it was "just under the threshold" of the types of cases the Brodhead firm typically handles, mostly trucking accidents with catastrophic injuries, he said.

As the trial date neared, Ojeda brought in Tidwell, who had joined Brodhead's firm last fall.

The plaintiffs lawyers ran the case by three focus groups in mock trials the week before the trial. From that exercise, they learned that it would be a mistake to focus on Chase's allegation that the step moved under his feet and instead to zoom in on the absence of a handrail, which he said is a building code violation.

"Fortunately, we were able to keep the jury focused on the code violations," said Tidwell. Again repeating a phrase he used for the jury, he added, "Follow the rules, people stay safe. Break the rule, people get hurt."

Indeed, the defense brought the actual platform from which Chase had fallen into the courtroom and set it up for display. The jurors walked all over it and bounced on it, without incident, according to attorneys for both sides.

Tidwell said Ojeda had already put a great deal of work into the case and formed a strong bond with the client before Tidwell stepped in. "Orlando would have walked through a wall for him," said Tidwell, who added that he soon felt the same way.

Tidwell, who had earlier worked as an in-house defense lawyer for State Farm, said he found a surprise in the switching-sides experience.

"When the jury in this case announced they had a verdict, my palms started sweating. I was so nervous for my client. I was really concerned for him," Tidwell said. "I knew it would be different putting on a case and carrying the burden of proof as opposed to picking apart a case. But I didn't expect the sweaty palms."

Tidwell and Ojeda took Chase out to dinner after winning the case, and they said they have talked on the phone with him several times. Said Tidwell, "He said he has slept so much better—better than any time in the past two and a half years."

The case is *Chase v. Tidwell Ford*, No. 1:11-cv-00173-CAP. DR