

# Daily Journal

## VERDICTS & SETTLEMENTS

FRIDAY, MAY 27, 2022



**Alan Van Gelder**

## WINNING VERDICT — \$12 MILLION —

### PERSONAL INJURY

#### PREMISES LIABILITY

Slip and Fall

VERDICT: **\$12,211,641**

CASE/NUMBER: Jessica Vu v. 2447 Pacific Coast Highway LLC, Mar Ventures Inc., Arris Builders Inc., DFS Flooring Inc., and Does 1-100, inclusive / BC650966

CASE/DATE: Los Angeles Superior / Apr. 21, 2022

JUDGE: Frederick C. Shaller

#### ATTORNEYS:

**Plaintiff** – Alan L. Van Gelder, Aaron L. Osten (Greene, Broillet & Wheeler LLP)

**Defendant** – Lisa N. Shyer, Veronica S. Webb (Procter, Shyer & Winter LLP); Lena J. Marderosian (Bradley & Gmelich LLP); Esther P. Holm (Lewis Brisbois Bisgaard & Smith LLP)

#### EXERTS:

**Plaintiff** – Marissa Chang M.D. (neurology); Leonard N. Matheson M.D. (neurorehabilitation); Al Casas (carpet cleaning standard of care); Rami Hashish Ph.D. (biomechanics); Brad P. Avrit P.E. (accident reconstruction); Peter Formuzis Ph.D. (economics)

**Defendant** – Edwin C. Amos M.D. (neurology); David M. Lechuga Ph.D. (neuropsychology); Nicolas Rose M.D. (orthopedics); John R. Brault

M.S. (biomechanics); Nikhil Kar Ph.D. (mechanical/ metallurgical/materials behavior and equipment function to determine cause(s) of premature failure); Alex Carpenter (architect and general contractor); Mack A. Quan (accident reconstruction)

#### FACTS:

The plaintiff, 38-year-old Jessica Vu, worked as a counselor for children with autism in an office building in Hermosa Beach. On Aug. 29, 2016, Vu was working late studying for her licensing credential exam at the office. That evening, the defendants, a carpet cleaning crew working for DSF Flooring Inc., hired by the defendant building owners, 2447 PCH LLC, and property managers, Mar Ventures Inc., arrived and cleaned the common area hallways, as previously scheduled.

Vu and two co-workers eventually needed to clear out of their offices for the carpet cleaning. While exiting the building, Vu walked across the alleged wet carpet, opened the door to the stairwell, and walked across an epoxy landing. The epoxy landing had been recently installed and plaintiff alleged it did not have adequate grip-and-slip resistance. According to the complaint, the wetness on Vu's shoes caused her to slip and fall down a flight of stairs hitting her head on the concrete steps. Vu drove herself home after the fall and went to urgent care the next day, where doctors diagnosed her with

a head injury. Within 48-hours, she claimed that she began to suffer headaches and cognitive issues. Within several weeks, Vu's mental and cognitive abilities had declined, forcing her to resign and move back to her hometown in Florida. Six years after her slip and fall, Vu contended she continues to suffer from memory problems, issues with executive function, difficulty multitasking, fatigue, head-aches, dizziness, and nausea. She also has emotional problems and anxiety arising from her brain injury.

#### PLAINTIFF'S CONTENTIONS:

Plaintiff claimed that defendants improperly cleaned the carpet and failed to warn Vu about the wet carpet. Defendants also improperly installed a new epoxy flooring that had inconsistent grit/anti-slip additive. Vu hit her head when she slipped and fell causing a traumatic brain injury which led to cognitive problems that impacted her ability to work and has impacted every aspect of her life. Within a month she is unable to do a job she loved and excelled at for years and had to go on leave. Vu's cognitive injuries developed over time as established by the science, the testing, the diagnosis of doctors, a comparison of pre and post-injury performance, and were also supported by findings on advanced imaging studies/functional MRI. Damage to executive function, memory, multi-tasking, and emotions are things that are not easily spotted on the surface, but once you get into the details of Vu's life, those damages,

that would last for 50 years are significant and required significant compensation. Plaintiff also contended that defendants 2447 and Mar Ventures engaged in spoliation of evidence by altering the epoxy landing before it could be tested by plaintiff's experts.

#### DEFENDANT'S CONTENTIONS:

Defendants claimed that the carpet on which plaintiff walked before entering the stairwell had properly been cleaned and dried before Ms. Vu walked on them, as the clean crew testified. Defendants' expert conducted two tests to determine the drying time of an exemplar of the same carpet, which was cleaned with the same low-moisture cleaning method. He showed a video of his testing that established that the carpet dried within 30 minutes after cleaning. Vu had received warnings about the wet carpet, also evidenced by the testimony of the cleaning crew. Vu's co-workers did not slip on the epoxy. The epoxy was properly gritted, sufficiently slip-resistant, as the co-efficient of

friction testing by both sides' expert established. Instead, Vu was entirely at fault for her fall since she misstepped on the top of the concrete steps of the landing, as plaintiff's two co-workers who witnessed the fall testified. If Vu suffered a traumatic brain injury it was mild and likely resolved within the first 24-48 hours. Vu's problems are simply the result of poorly treated depression/anxiety (of which she had prior history). Vu could not be seriously injured since she was able to travel with friends/family outside of the country, go to restaurants, work as a receptionist, get married, and pass her four-hour Behavioral Analyst Board Certification examination two days after the fall. The evidence and testimony were inadequate to support damages and the imaging studies relied upon by the plaintiff were not reliable and did not show evidence of a traumatic brain injury.

#### INSURER:

Valley Forge/CNA for DFS Flooring and Nationwide for 2447/Mar Ventures.

#### RESULT:

Verdict for \$12,211,641 (\$93,147 past loss of earnings; \$1.5 million non-economic damages including physical pain and mental suffering; \$418,494 future meds; \$1.7 million future loss of earnings; \$8.5 million future non-economic damages including physical pain and mental suffering).

#### OTHER INFORMATION:

Cross Complaints for indemnity defendants have brought against each other been severed from the main action and will be resolved separately via an agreed upon post-verdict private arbitration. Although the jury found plaintiff negligent, they did not find her negligence was a cause of her damages. As such, there was no reduction for comparative fault of plaintiff.

FILING DATE: Feb. 17, 2017