

PREMISES LIABILITY

Negligent Repair and/or Maintenance — Dangerous Condition

Restaurant's worn step caused fatal fall, lawsuit alleged**MEDIATED****SETTLEMENT** \$900,000**CASE** Michael Ross as Administrator of the Estate of Carrieree Strother-Ross, Deceased v. Powell Foods of 14041, LLC, Burgerking 14041 and Burgergerking Corporation, No. 705199/16**COURT** Queens Supreme**NEUTRAL(S)** Robert Adams**DATE** 3/28/2019**PLAINTIFF****ATTORNEY(S)** Lawrence H. Singer, Ronemus & Vilensky LLP, New York, NY
Robert Vilensky, Ronemus & Vilensky LLP, New York, NY**DEFENSE****ATTORNEY(S)** Thomas M. Martyn, Martyn and Martyn, Mineola, NY**FACTS & ALLEGATIONS** On June 23, 2014, plaintiff's decedent Carrieree Strother-Ross, 34, a business's owner, fell while she was ascending an interior stairway of a restaurant that was located at 159-29 Jamaica Ave., in the Jamaica section of Queens. She suffered an injury of a knee. After five days had passed, she suffered a fatal pulmonary embolism.

Strother-Ross' partner, Michael Ross, acting as administrator of Strother-Ross' estate, sued the restaurant's operators, Burger King Corp. and Burger King 14041, and the premises' owner, Powell Foods of 14041, LLC. The lawsuit alleged that the defendants were negligent in their maintenance of the premises. The lawsuit further alleged that the defendants' negligence created a dangerous condition that caused Strother-Ross' fall.

The estate's counsel claimed that Strother-Ross' fall was a result of Strother-Ross having tripped on a worn, slippery step. The estate's safety expert submitted a report in which he contended that the stairway's tread noses were worn to a degree that created a dangerous downward slope of each step. The estate's counsel contended that the stairway's condition should have been apparent to the restaurant's staff.

Defense counsel contended that the accident was a result of Strother-Ross having failed to grasp the stairway's handrail. He contended that the stairway was safe and that the restaurant's records do not document a prior accident involving the stairway.

INJURIES/DAMAGES abrasions; death; embolism; knee; pulmonary/respiratory; respiratory

Strother-Ross suffered an abrasion and a bruise of her right knee. She was retrieved by an ambulance, and she was transported to Jamaica Hospital Medical Center. Her right knee was bandaged, and she was provided crutches.

After five days had passed, Strother-Ross' chest became painful. She also developed impairment of her respiration. She was retrieved by an ambulance, and she was transported to Franklin Hospital, in the village of Valley Stream. She was pronounced dead upon arrival. A medical examiner determined that Strother-Ross' death was a product of a pulmonary embolism. The medical examiner opined that the embolism was a result of Strother-Ross' fall, and the estate's counsel blamed resultant damage of a blood vessel within the right knee, combined with the effects of a sedentary lifestyle imposed by obesity.

Strother-Ross, 34, died on June 28, 2014. She was survived by a 16-year-old child, an 11-year-old child, an 8-year-old child and a 6-year-old child. The estate sought recovery of wrongful-death damages that included the cost of Strother-Ross' funeral and burial, damages for Strother-Ross' pain and suffering, and damages for her children's loss of parental guidance and support.

The defense's expert pathologist submitted a report in which he opined that Strother-Ross' obesity and sedentary lifestyle led to the development of her embolism, though he also acknowledged that Strother-Ross' fall could have contributed to the embolism's development.

RESULT The parties negotiated a pretrial settlement. The defendant's primary insurer agreed to pay \$900,000, from a policy that provided \$1 million of coverage. The negotiations were mediated by Robert Adams, of National Arbitration and Mediation Inc.**INSURER(S)** Liberty Mutual Insurance Co. for all defendants**PLAINTIFF****EXPERT(S)** Leo J. DeBobes, C.S.P., safety, Stony Brook, NY (did not testify)**DEFENSE****EXPERT(S)** Stephen Factor, M.D., pathology, Bronx, NY (did not testify)**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from court documents.

—Melissa Siegel

RICHMOND COUNTY**MOTOR VEHICLE**

Multiple Vehicle

Auto accident led to spinal fusion, plaintiff claimed**SETTLEMENT** \$485,000**CASE** Madelyn Ortiz v. Joseph T. Anzalone, PV Holding Corp., No. 150832/17**COURT** Richmond Supreme**JUDGE** Kim Dollard**DATE** 4/4/2019**PLAINTIFF****ATTORNEY(S)** Jason Herbert, Krentsel Guzman Herbert, LLP, New York, NY**DEFENSE****ATTORNEY(S)** George F. Sacco, Staten Island, NY, trial counsel, Purcell & Ingrao P.C., Mineola, NY

FACTS & ALLEGATIONS On Dec. 22, 2017, plaintiff Madelyn Ortiz, a 58-year-old unemployed woman, was driving on East 98th Street, near its intersection at Fifth Avenue, in Manhattan. While she was reversing toward a curbside parking area, her vehicle collided with a trailing vehicle that was being driven by Joseph Anzalone. Ortiz claimed that she suffered injuries of her back and neck.

Ortiz sued Anzalone and his vehicle's owner, PV Holding Corp. Ortiz alleged that Anzalone was negligent in the operation of his vehicle. Ortiz further alleged that PV Holding was vicariously liable for Anzalone's actions.

PV Holding was dismissed via summary judgment. The matter proceeded to a trial against Anzalone.

Ortiz claimed that she had nearly completed parking her vehicle when the rear portion of her vehicle's right side was struck by Anzalone's vehicle. A responding police officer's report corroborated Ortiz's claim regarding the point of impact.

Anzalone claimed that Ortiz initiated the collision. Defense counsel challenged Ortiz's credibility, based on the fact that Ortiz had filed lawsuits stemming from other motor-vehicle accidents.

INJURIES/DAMAGES *annular tear; bone graft; bulging disc, cervical; bulging disc, lumbar; bulging disc, thoracic; decompression surgery; discectomy; facetectomy; fusion, lumbar; hardware implanted; herniated disc at C4-5; herniated disc at C5-6; herniated disc at C6-7; herniated disc at L3-4; herniated disc at L4-5; laminectomy; laminectomy, lumbar; nerve impingement; physical therapy; pins/rods/screws; radiculopathy; trigger point injection*

The trial was bifurcated. Damages were not before the court.

After several weeks had passed, Ortiz presented to New York–Presbyterian Hospital, in Manhattan. She claimed that she was suffering severe pain that stemmed from her back and neck. She underwent X-rays, and a follow-up evaluation was recommended.

Ortiz ultimately claimed that she suffered herniations and annular-tissue tears of her L3-4 and L4-5 intervertebral discs, herniations of her C4-5, C5-6 and C6-7 discs, and trauma that produced bulges of her C3-4, L1-2, L2-3, T6-7 and T7-8 discs. She claimed that she developed residual impingement of spinal nerves and resultant radiculopathy that stemmed from her spine's lumbar region.

On April 18, 2018, Ortiz underwent surgery that addressed her spine's L3-4 and L4-5 levels. The procedure included a discectomy, which involved excision of her L3-4 and L4-5 discs; a facetectomy, which involved decompression of roots of her spine's L3, L4 and L5 nerves; a laminectomy, which involved excision of a portion of a vertebra; fusion of her spine's L3-4 and L4-5 levels; implantation of stabilizing hardware, which included rods and screws; and application of a stabilizing graft of bony matter. Ortiz also underwent physical therapy, the administration of epidural injections of steroid-based painkillers and the administration of painkilling trigger-point injections.

Ortiz claimed that she suffers residual pain and limitations that hinder her performance of everyday activities. She also claimed that she will likely require administration of further trigger-point injections and that her spine may require further surgery. She sought recovery of damages for past and future pain and suffering.

Defense counsel contended that Ortiz's injuries predated the accident. Ortiz had previously undergone surgery that addressed a portion of her spine's lumbar region.

RESULT The jury found that Anzalone was liable for the accident. Prior to the scheduled start of the trial's damages phase, the parties negotiated a settlement. Anzalone's insurer agreed to pay \$485,000, from a policy that provided \$1 million of coverage.

INSURER(S) Privilege Underwriters Reciprocal Exchange for both defendants

PLAINTIFF

EXPERT(S) Andrew A. Merola, M.D., orthopedic surgery, Brooklyn, NY (treating doctor; did not testify)

DEFENSE

EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from court documents.

–Caitlin Granfield