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Slip on ice lands man \$2M award

By Lauraann Wood
Law Bulletin staff writer

A Cook County jury has awarded \$2 million to a man who required ankle reconstruction surgery after slipping and falling on black ice.

Plaintiff Michael Berk sued Pepper Construction Co. in 2013, alleging the company failed to properly shovel snow from a parking lot behind its River North building at 643 N. Orleans St., causing the ice to form on a city sidewalk in January 2012.

Berk, 30 at the time, was walking eastbound on the 300 block of West Erie Street when his left foot suddenly slipped out from under him. During trial, Berk testified that he tried to anchor his right foot to the ground and prevent his fall but heard his bones crack as he fell.

Berk didn't immediately know what caused him to slip, said his attorney, Guy Delson Geleerd Jr.

But once Berk looked around, Geleerd said, he noticed a rivulet of water had flowed down the driveway from Pepper's parking lot onto the sidewalk and refrozen into black ice.

Berk also observed the water was trickling from a pile of snow that had been shoveled against the lot's east and south walls but below a drain that would otherwise have caught the water flow, Geleerd said.

"The drain slopes downward. So, by putting the snow along the east wall and the south wall below where it slopes to the drain, when that snow melts it's going to naturally hug the brick wall and flow right onto the sidewalk," he said. "Then it will refreeze under the right weather conditions and form black ice."

Berk underwent surgery about two weeks after the incident in which doctors installed a metal plate and several screws to help the ankle heal. He underwent a second procedure about a year later to remove the hardware because of infection.

Geleerd said Berk was still experiencing pain and swelling after the second procedure, so he underwent a total ankle reconstruction in January that called for physicians to shave and rebuild his bone while also installing more hardware.

Berk, who used to enjoy playing basketball and baseball, is severely limited in his ability to remain as athletic and active as he was before his fall.

"All he can do now is either swim or keep his foot on a stationary bike," he said. "He can't run around with his three children, and he's allowed to stand up and shoot baskets but someone else has to rebound."

Pepper contended it wasn't liable in Berk's suit because no ice existed on the sidewalk, Geleerd said.

However, Berk presented photographic evidence during trial of the incident site's conditions — which showed the snow piled against its walls and "what appeared to be ... black ice coming right from there."

Pepper also alleged it couldn't be liable for the fall even if ice was there because it didn't know about it and Berk was distracted with ear buds in and his phone out.

Berk couldn't remember whether he was holding his phone when he slipped, Geleerd said.

"What he definitely does remember is that when he was laying there, he put his ear bud in his ear, called his wife and said, 'I won't be home,'" he said.

Franco & Moroney LLC partners Robert J. Franco and Andrew C. Patton represented Pepper Construction. Patton deferred comment to Franco, who could not be reached.

After a three-day trial before Cook County Circuit Judge Daniel Joseph Lynch, the jury June 9 awarded Berk \$181,000 for his medical expenses, \$500,000 for past and future pain and suffering, \$1 million for past and future loss of a normal life and \$319,000 for disfigurement.

Geleerd said the verdict came as somewhat of a surprise to him because proving the existence of black ice in a case is hard, but proving that someone was injured on it because of another party's breach of duty is even harder.

"The theory that it came from someone else's property, we thought it was too hard for the jury to believe," he said. "It may have been the argument that Pepper had advanced that there was no ice — that may have angered the jury. I don't know. I was too much in shock as I was talking with the jurors."

Geleerd said Berk, who is still receiving physical therapy and sometimes had to miss the trial to make his appointments, began crying when the jurors announced their verdict.

"I'd never seen a man cry like that before. He's extremely pleased with the verdict," he said.

Berk was also represented by former circuit judge James A. Shapiro, the principal at the Law Office of James A. Shapiro P.C.

The case is Michael Berk v. Pepper Construction Co., 13 L 010526.

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