

CASE STYLE: Dwight Robinson vs. Bailey Lumber & Supply Co., *et al*; In the Circuit Court of the First Judicial District of Hinds County, Mississippi; Cause No.: 251-09-128CIV

JUDGE: Honorable Malcolm Harrison

COUNTY: Hinds

PLAINTIFF: Dwight Robinson

PLAINTIFF ATTORNEYS: James Ashley Ogden and Jim Smith, Jr. of Ogden & Associates, PLLC

DEFENDANTS: Bailey Lumber & Supply Company

DEFENSE ATTORNEYS: Michael Baxter and Mason Montgomery of Copeland Cook Taylor and Bush

TRIAL TIME: four days

FACTS

Plaintiff went to Bailey Lumber in September 2006 to return paint purchased for his house because it was the wrong color. A Bailey Lumber employee took the plaintiff into a back room of the store to look on the computer to determine why the paint had been mixed wrong. The lights in the room were turned off so employees trying to use the old computer screen could see the screen better. On the way out of the poorly lighted room the plaintiff's left foot stepped half-on and half-off a two inch drop-off deformity that ran across the doorway transitioning from the computer room to the paint mixing room. The plaintiff was following the employee in the dark and was not warned or aware of the drop-off. The plaintiff tripped, stumbled and fell on his left hip. The fall aggravated the plaintiff's previous hip condition of osteoarthritis and eventually resulted in the plaintiff receiving a left hip replacement surgery.

Defendant disputed all liability and damages and charged the plaintiff with being inattentive. There were only three fact witnesses, plaintiff, Bailey Lumber's manager and the paint department manager. Baileys employees testified Bailey Lumber was concerned about customer safety. The witnesses testified the plaintiff was taken by an employee to a back room that was not part of the general area accessed by customers. The plaintiff testified the lights in the room were off or dimmed. The paint manager testified that he thought the lights in the computer and paint mixing rooms were on and that the plaintiff should have seen the deformity in the floor. The Plaintiff testified because it was so dark in the room and because he was following behind the employee he did not see the deformity in the floor. The plaintiff testified that he was not warned of the deformity, it was not marked with tape or conspicuity treatments, and no ramping was placed over the deformity. The defendant's employees testified they had ramping and signs in other parts of the store to prevent customers from getting hurt. The paint manager gave contradictory testimony first stating the plaintiff had been in the computer room with him before the fall on several occasions then stating the plaintiff had never been in the computer room until the day of the fall.

Plaintiff's doctors testified that the fall at Bailey Lumber aggravated his preexisting injury. Plaintiff's orthopedic doctor testified the plaintiff had a previous fall as a fireman in April 2006 where he suffered a torn quadriceps and this would mean his right leg was apt to randomly give out. The defendant presented no expert testimony to rebut the plaintiff damages or future medical bills but relied on the contradictory testimony between the plaintiff's doctors. One of the plaintiff's doctors testified the hip replacement surgery was related to the fall. Two other doctors said they could not relate the surgery to the fall but felt it was a preexisting condition. Plaintiff presented about \$76,000.00 in medical bills and future medical treatment needs.

At trial, the jury was allowed to consider contributory negligence of the plaintiff. They returned a verdict in favor of the plaintiff finding the defendant to be 100% liable. The jury awarded \$1,500,000.00 to the plaintiff.