

JULY 22, 2015

DAILY REPORT

A SMART READ FOR SMART READERS

An ALM Publication

Plaintiff's Reduced Pain Meds Are Key to Defense Win in Slip-and-Fall Case

KATHERYN HAYES TUCKER

A PLAINTIFF SUING THE Decatur gas station where he slipped on ice lost at trial after the defense lawyer pointed out that the plaintiff reduced how much pain medication he was taking after the accident.

A DeKalb County Superior Court jury returned a verdict in favor of QuikTrip Corp. last week after a four-day trial before Judge Linda Hunter.

"It was really just a credibility determination," said QuikTrip's attorney, Nicole Leet of Gray, Rust, St. Amand, Moffett & Brieske.

In investigating the claim, Leet found the plaintiff, Isaac Daniels, had been prescribed a "significant amount" of pain medication for various complaints before his fall in December 2010. But she found less pain medicine used after the fall. Leet used five years of past medical records to show that the plaintiff had cut down his use of pain medication, hydrocodone, by half the year after the fall, negating his claim of pain and suffering.

Daniels had claimed nearly \$200,000 in damages: \$99,000 for medical treatments, including a rotator cuff surgery for an injured shoulder, and another \$100,000 for pain and suffering.

QuikTrip made no settlement offers, according to Leet.

The plaintiff's attorney, John Hadden of Turkheimer & Hadden, said, "We realized we were going to have to try it and see what the jury said."

The plaintiff is still evaluating appeal



Nicole C. Leet

John Disney/Daily Report

options, Hadden said. But he added, "Both sides did a good job of getting the case out there. We were glad to get our day in court."

An important moment for the defense came when the judge denied a motion in limine from the plaintiff to keep out the past medical evidence, according to both attorneys. Leet argued that the past treatment for injuries and pain related to the case to show previous conditions.

Also assisting the defense was the record of the emergency room visit after the fall, in which the plaintiff did not report a shoulder injury, Leet said. She said Williams did mention shoulder pain on his ambulance ride, but not in the ER. The ER records showed only complaints of a sore back and hip, and no broken bones, Leet said.

Leet also used a later emergency room visit complaining of shoulder pain from moving a dresser to argue that the rotator cuff surgery was not caused by the QuikTrip fall.

The plaintiff had a strong witness in the treating orthopedic doctor, who said the shoulder surgery was likely caused by the QuikTrip fall, Leet acknowledged. But she added that on cross-examination she was able to elicit an answer from the doctor to show that rotator cuff injuries are often caused by a lifetime of wear and tear and other degenerative issues.

The case is *Daniels v. QuikTrip*, No. 15-CV-1253-8.

Reprinted with permission from the 7/28/15 edition of the DAILY REPORT © 2015 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. Contact: 877-257-3382 reprints@alm.com or visit www.almreprints.com. # 451-07-15-02