

CENTRAL

BEXAR COUNTY

PREMISES LIABILITY

Slip and Fall — Dangerous Condition — Store

Shopper claimed she fell on especially slippery floor

VERDICT

Defense

CASE

Maria Ines Gonzalez v. The Gap Inc.,
No. 2008-CI-15757

COURT

Bexar County District Court, 224th, TX

JUDGE

Gloria Saldana

DATE

9/16/2009

PLAINTIFF

ATTORNEY(S)

Michael M. Fulton, Law Office of Michael
M. Fulton, San Antonio, TX

DEFENSE

ATTORNEY(S)

C. Robert Dorsett Jr., Dorsett Swift,
L.L.P., Austin, TX
Gregory V. Gallagher, Dorsett Swift,
L.L.P., Austin, TX

FACTS & ALLEGATIONS On June 29, 2008, plaintiff Maria Ines Gonzalez, 48, a regional sales representative for a pharmaceutical company, was shopping in the "body" department of the Gap store at Quarry Market in San Antonio. She slipped and fell on the wood floor near the cash registers.

Gonzalez sued The Gap Inc., alleging its store had a dangerously slippery floor. According to Gonzalez, two Gap employees stated right after the incident that they had to wear special shoes because the floor was so slippery. She also claimed that the manager on duty at the time promised to pay her medical bills.

The defense denied a dangerous condition and argued comparative fault. The manager denied promising to pay Gonzalez's medical bills.

At the time of the incident, Gonzalez was carrying in her right hand some pajamas that she intended to purchase. In her left hand, she was carrying a 32-ounce Diet Coke and her purse over her left shoulder. When she fell, the Diet Coke spilled on her and the floor. She was wearing 3-inch heels, with leather in the bottom of the heel and wood on the rest of the sole.

No GAP employees were in the immediate area, but one heard Gonzalez fall. The defense argued that Gonzalez could not identify any fall-causing substance or object on the floor and that she declined the manager's offer of medical assistance.

A Gap employee testified at trial that the floor was slick, but no slicker than any other hardwood floor. The plaintiff's attorney said that this witness testified in deposition to having slipped often on the floors and complaining several times to management, which took no action.

INJURIES/DAMAGES *comminuted fracture; fracture, displaced; fracture, elbow, fracture, olecranon; fracture, ulna, pins and rods*

Gonzalez fell and landed on her left elbow. The next day, she went to an orthopedist and was diagnosed with a comminuted displaced fracture of the olecranon, part of the ulna.

On July 3, the doctor surgically realigned the elbow and installed pins and tension wires. By Aug. 18, Gonzalez had full range of motion in the elbow. She returned to work the first week of September. Until then, her elbow limitations kept her from driving and making her sales rounds.

The doctor removed the pins and tension bands on Oct. 16.

The parties stipulated that the "paid or incurred" past medical bills were \$5,500, and the issue of past medical was not submitted to the jury. However, the amount billed was \$24,225, and the jury was aware of this amount.

RESULT The jury found no negligence by either party.

DEMAND

\$50,000

OFFER

\$20,000

TRIAL DETAILS

Trial Length: 3 days

Trial Deliberations: 3 hours

Jury Vote: 10-2

Jury Composition: 6 male, 6 female

PLAINTIFF

EXPERT(S)

Russell J. Kendzior, slips-trips-falls,
Southlake, TX (did not testify)

DEFENSE

EXPERT(S)

Jason T. English, floors safety,
College Station, TX (did not testify)

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

—John Schneider