



SDSBS wins case of negligence by property management company and condo association

Holes left in lawn by tree removal were not refilled, resulting in injury.

Months after SDSBS attorneys obtained a \$12.1 million verdict against a local condominium association and property management company for negligence in maintaining proper entrances/exits, attorneys **Karen Terry** and **Matt Schwencke** obtained a substantial settlement for Lisa Smith (not her real name), a visitor to a condominium complex in Tequesta, Florida, who was severely and permanently injured as a result of negligent maintenance of the property's parking lot.

On February 23, 2011, Lisa drove to her sister's condominium for a visit. She parked in a designated guest parking space and walked to the entrance of her sister's building. Crossing a grassy area, she stepped into a large hole that was concealed by the grass and abruptly fell down. Bystanders called for help and emergency responders took her to the local hospital where she underwent surgery to repair her badly fractured ankle.

The hole was about eight inches deep. The insurer for the condominium association and the property management company denied any wrongdoing or responsibility for Lisa's injuries. Lisa contacted SDSBS and Ms. Terry and Mr. Schwencke filed suit on her behalf. Discovery revealed a prior complaint about the concealed hole. A landscaping contractor had removed a number of trees and neither the management company nor the association board had inspected the premises to ensure that the holes had been refilled. The defendants argued that Lisa Smith was responsible for her own injuries because it was negligent and unreasonable for her to walk through the grass. On the eve of selecting a jury, the case was settled for \$550,000. ♦

SDSBS attorney Mara Hatfield publishes article about admissibility of expert testimony

On August 1, 2013, *Law360*, an online media company that publishes news and analyses on business law, published an article written by SDSBS attorney **Mara Hatfield**. The article, "Putting Daubert in Proper Perspective," concerned recent federal circuit court opinions that resolved a long-standing misconception about the rule regarding admissibility of expert testimony as set forth by *Daubert v. Merrel Dow Pharmaceuticals, Inc.* 509 U.S. 579 (1993). In *Daubert*, the Supreme Court found that "general acceptance" is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence. Such a test would not allow for an expert to rely on evolving, novel scientific issues.

"The decision determined that a judge should act as a gatekeeper, but . . . the key to the gate is not the ultimate correctness of the expert's conclusions . . . it is the soundness and care with which the expert arrived at her opinion . . ."

The Federal Rules of Evidence indicate that if scientific, technical, or other specialized knowledge would assist the judge or jury to understand the evidence or to determine a fact in issue, a qualified witness may testify or provide an opinion. Ms. Hatfield's article notes that the Supreme Court decision determined that a judge should act as a gatekeeper, but it did not require a court to verify the accuracy of a conclusion: ". . . the key to the gate is not the ultimate correctness of the expert's conclusions. Instead, it is the soundness and care with which the expert arrived at her opinion . . ." Since science is an evolving discipline, courts cannot sit around waiting for a conclusion to be irrefutable or they would never be able to allow any evidence to go to a jury. Efforts to convince a court that a certain study is unreliable merely because it is contradicted demonstrate a fundamental misunderstanding of *Daubert*. "Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." ♦