

June 26, 2017

An ALM Publication

# CALIFORNIA

## STATEWIDE

### PREMISES LIABILITY

Dangerous Condition — Negligent Repair and/or Maintenance

## Claimant alleged fall aggravated prior arm fracture

**ARBITRATION \$1,327,392**

**ACTUAL \$1,227,392**

**CASE** Cheryl White v. Kaiser Foundation Health Plan Inc., Kaiser Foundation Hospitals, Kaiser Permanente, Kaiser Permanente Medical Care Program, and Permanente Medical Group

**COURT** Matter not filed

**NEUTRAL(S)** Eli Chernow

**DATE** 6/7/2017

#### PLAINTIFF

**ATTORNEY(S)** Jeffrey J. Greenman, Greenmanlaw P.C., Aliso Viejo, CA  
Court B. Purdy, Paoli & Purdy, LLP, Aliso Viejo, CA

#### DEFENSE

**ATTORNEY(S)** Myra A. Firth, Pivo, Halbreich, Martin & Wilson, Santa Ana, CA

**FACTS & ALLEGATIONS** On Nov. 12, 2012, claimant Cheryl White, 59, a woman on permanent

disability, went to a Kaiser Permanente facility in Anaheim for a cancer follow up appointment. While using a restroom at the new Kaiser Anaheim facility, she allegedly had difficulty opening a door. White claimed that as a result, she fell and re-injured her arm, which she had previously fractured a month earlier.

White brought a claim against Kaiser Foundation Health Plan Inc., Kaiser Foundation Hospitals, Kaiser Permanente, Kaiser Permanente Medical Care Program, and Permanente Medical Group. She alleged that the door constituted a dangerous condition and the respondents failed to address the hazardous condition.

The matter proceeded to arbitration.

The claimant's safety expert opined that the door at the Kaiser facility was not compliant with the Americans with Disabilities Act, as it was too heavy and could cause someone to fall.

The respondents' counsel argued that the fall at the Kaiser facility was not caused by any negligence on Kaiser's part. The respondents' counsel noted that White had suffered multiple falls, both before and after the one at the Kaiser facility, and that the falls were all noted in White's

medical records. The respondents' counsel also contended that White normally had a friend, who was with her on the subject date, open restroom doors for her because White had difficulty opening such doors. However, counsel asserted that on the subject date, White failed to request help from her friend and allegedly fell after having difficulty with opening the door.

In addition, the respondents counsel contended that the hospital had only been open to the public for two months and that in the months prior to its opening, the restroom door had been inspected by the subcontractor who installed the door and the door closing mechanism, the general contractor, and multiple governmental entities that approved the door and its closing mechanism in order for the hospital to be opened to the public. Thus, counsel asserted that the door was fully ADA compliant.

**INJURIES/DAMAGES** *aggravation of pre-existing condition; arm; fracture, ulna; hardware implanted; infection*

White claimed that she suffered an aggravation of the previous radius fracture of the right arm during the subject fall, resulting in microfracturing and an eventual nonunion.

While she only had initial complaints of pain to her buttocks after the fall and was provided no treatment that day, White claimed she began to have pain in her right arm four days later. X-rays taken four days after the incident showed a nearly healed and calcified fracture, but another X-ray

taken a month later showed angulation, which she asserted lead to the eventual nonunion.

One year after the incident, White sustained an ulna fracture to the same right arm. White claimed that due to the nonunion of the radius for a year, a stress fracture was created, leading to an eventual break of the adjacent ulna. (Thus, she claimed she suffered the new fracture, in addition to her already fractured radius.) A month later, an infection set in, which White also claimed was due to the nonunion. She alleged that the uncontrolled infection lead to her right arm requiring eight repair surgeries, including a few clean out surgeries, a few surgeries to implant hardware, and a few surgeries to remove the hardware.

White claimed that she now has very limited use of her right arm, though she has fully healed from her fracture. She remains disabled due to her pre-existing condition.

The respondents' counsel asserted that White's alleged fall did not further injure her already broken arm to the extent that White would require additional treatment for that arm. Counsel noted that White did not complain of any arm pain immediately after the incident and that she reported landing on her bottom, and not her side. Counsel also noted that White had only initially complained of pain to her buttocks and that White required no treatment that day and didn't complain of arm pain until four days later. The respondents' counsel further contended the X-ray that showed angulation was performed

after White had reported other unrelated and subsequent falls.

The respondents' counsel asserted that even if White's arm was injured at Kaiser, it had no bearing on the fractured ulna a year later or the ensuing infection in her arm, which respondents' counsel attributed to non-compliance. Counsel contended that after the third surgery, White failed to comply with some instructions, namely, she left a skilled nursing facility, against medical advice, before finishing her intravenous antibiotics.

Thus, the respondents' counsel asserted that White's alleged injuries were due to her subsequent falls, as well as her non-compliance after a surgery.

In response, the claimant's counsel asserted that White's leaving the skilled nursing facility before finishing her intravenous antibiotics was not significant and that White was not comparatively at fault for her ongoing infection/surgeries.

**RESULT** Arbitrator Eli Chernow found the Kaiser entities were 100 percent negligent. He also determined that White's damages totaled \$1,327,392.15. Of the total award, Chernow gave White full value of her medical costs, which was charged at \$427,392.15, but then took into account what he

felt would be a 25 percent reduction by MediCal. Thus, the final award was \$1,227,392.15.

**CHERYL WHITE** \$900,000 general damages  
\$427,392 medical specials  
\$1,327,392

**DEMAND** \$100,000

**OFFER** None

**PLAINTIFF**

**EXPERT(S)** Brad P. Avrit, P.E., safety,  
Marina del Rey, CA  
Vance Eberly, M.D., orthopedic  
surgery, Downey, CA

**DEFENSE**

**EXPERT(S)** Michael Panish, construction,  
Woodland Hills, CA (door  
installation expert)  
Eugen Williams, M.D.,  
orthopedic surgery, Yorba  
Linda, CA

**EDITOR'S NOTE** This report is based on information that was provided by claimant's and respondents' counsel.

—Priya Idiculla