

**IN THE CIRCUIT COURT FOR THE \_\_\_\_\_ JUDICIAL CIRCUIT  
\_\_\_\_\_ COUNTY, ILLINOIS**

JANE SMITH and JAMES SMITH,	)
	)
Plaintiffs,	)
	)
vs	)
	)
MEGA STORES, INC. and THOMAS	)
JONES,	)
	)
Defendants.	)

**MEDIATION SUMMARY**

**Introduction**

This is a personal injury case arising out of an accident at the Mega Stores in Killarney on 7-22-00. Thirty-one year old Jane Smith twisted her right ankle in water spilled by an employee carrying a wet mop. The sprain developed into reflex sympathetic dystrophy (RSD) in the right leg and has now spread to the left leg. RSD is a chronic and debilitating pain syndrome which has rendered Ms. Smith disabled and requiring future medical care and treatment. Medical bills to date total approximately \$228,839.72 while wage loss to date totals approximately \$93,836.00. The total for past specials is approximately \$322,675.72. Future medical is estimated at \$635,960.0 while future wage loss is estimated at \$707,038.00 to \$1,188,574.00. Total future specials are \$1,326,798.00 to \$1,808,334.00.

**Liability**

On 7-22-00, at approximately 9:00 p.m., Jane Smith went to the Killarney Mega Store to shop for her daughter's birthday party. Accompanying her were her husband, James, her 3 year old daughter, Krystal, her 5 year old daughter Anne, her 9 year old step

old daughter, Jade, and her 15 year old nanny, Amy Boyd. After entering the store, Jane got a cart and put 3 year old Krystal in it. Jane, Amy, Krystal and Jade all stopped at the bakery to order a cake while James and 5 year old Anne walked ahead to get chips and pop.

James testified that he was holding Anne's hand walking near the lobster tank when a Mega employee crossed his path from right to left carrying a wet mop dripping water on the floor. The employee was walking towards a back room with double doors and turned back to look at the water. When James and Anne got to the water, they playfully jumped over it holding hands.

After ordering the birthday cake, Jane, Amy, Jade and Krystal continued shopping following the route previously taken by James and Anne. Jane testified that she was pushing the cart near the lobster tank when her right foot suddenly slipped in water causing her ankle to invert. She caught herself on the cart and did not fall to the floor. Jane felt immediate pain in the right ankle and limped over to the adjacent produce department where an employee called for assistance. The assistant store manager came to the scene. Jane explained what had happened and from the produce area pointed out where it occurred without walking over to the spot. The manager took Ms. Smith's contact information and asked if she wanted an ambulance which she declined. James and Anne came back looking for Jane but arrived after the discussions were almost complete. James did not speak to the manager.

Amy Boyd testified that immediately after the slip she saw water smeared on the floor. After assistance arrived, she saw an employee place a wet floor sign and mop the area where Jane slipped. She also saw the employee mop from the area of the slip all the

way to the back room, the path taken by the employee James saw walking with the mop.

Jessie Mendez, the assistant manager on duty at the time of the accident, testified that she was called to the produce department for a customer incident. Upon arrival, she saw Jane and three children and Jane appeared to be in pain. Jane explained that she slipped in water and twisted her ankle. Ms. Mendez admits to seeing a “puddle” of water on the floor but locates it on the other side of the lobster tank from where Jane and Amy described the accident and where James observed the employee with the dripping mop. Ms. Mendez admits that she asked an employee to clean up the water but she did not see him do it and does not know how he did it. Mendez also testified that she had a camera in her office but did not take a picture of the water even though it is her usual practice to do so. Mega cannot identify the employee who cleaned up the water or the employee who reported the incident. Mendez corroborates that James arrived to the scene after discussions were almost complete and that she did not speak to James.

Liability is premised on the fact that Jane slipped in water spilled by a Mega employee. Notice is irrelevant under these circumstances.

### **Medical**

The accident happened on a Saturday evening (7-22-00) and Jane first saw a doctor on Monday (7-24-00). She saw her chiropractor (Dr. James McCoy) when she was not able to get into her family physician. The recorded history is that she twisted her right ankle on a wet floor at Mega and caught herself with the cart. She was having constant pain around the ankle down to the mid-foot. Bruising was noted about the ankle and foot. Jane followed up with Dr. McCoy on 15 occasions between 7-25-00 and 9-18-00. She was treated with ultrasound and electrical stimulation and used an air cast and crutches. Dr.

McCoy ultimately referred her to Dr. Rodney Reiger at Fox Valley Orthopaedic Institute.

Dr. Rieger treated Jane from 8-15-00 through 11-22-06. By 9-11-00, less than two months after the accident, she was experiencing coloration changes, swelling, burning, hyperesthesia, intolerance to touch, nocturnal pain of a burning throbbing nature and extreme hypersensitivity over the ankle. Dr. Rieger referred her to the pain clinic at Delnor Community Hospital with a diagnosis of reflex sympathetic dystrophy (RSD), now known as complex regional pain syndrome (CRPS).

Jane treated at the Delnor Pain Clinic between 9-13-00 and 6-17-03. During this time, she received approximately 20 spinal, sympathetic and Beir blocks, intravenous lidocaine infusions, radio-frequency ablations, multiple sessions of acupuncture, physical therapy, use of a TENS unit and trials of oral medications such as neurontin. The diagnosis at the pain clinic was RSD.

In additional to referring Jane to Delnor Pain Clinic, Dr. Rieger tried to control the pain through multiple local injections in various parts of the foot and ankle. Believing some of the pain might be due to local pathology, he performed surgery to remove a digital nerve (Morton's Neuroma) at the third and fourth intermetatarsal space on 1-9-02. This seemed to relieve pain in the forefoot. He performed a surgical decompression of the tarsal tunnel and tibial nerve to help control the ankle pain on 7-5-02. The RSD pain persisted ultimately leading to a recommendation for implantation of a spinal cord stimulator. Jane was referred to Dr. Eugene Lipov, medical director of the Poplar Creek Pain Center.

Dr. Lipov examined Jane on 8-4-03. He observed edema around the right ankle and calf, decreased range of motion of the right ankle, hypersensitivity of the skin on the right compared to the left, colder skin temperature on the right compared to the left, decreased

pulse, muscle strength and sensitivity on the right compared to the left and darker hair growth on the right side. He confirmed the diagnosis of RSD. Dr. Lipov recommended proceeding with the spinal cord stimulator.

Phase I of the spinal cord stimulator was surgically implanted on 3-5-04 by Dr. Lipov. Phase II was surgically implanted on 3-12-04. The generator was implanted in her abdomen. Subsequently, the electrode became dislodged and began stimulating the left leg rather than the right leg. Jane was referred for neurosurgery consultation to Dr. Konstanine Slavin at the University of Illinois.

Dr. Slavin examined Jane on 5-24-04. He noted hypersensitivity and pale discoloration of the skin. He confirmed the diagnosis of RSD. When asked at deposition whether he ever questioned the diagnosis, he said no, she had classic symptoms and she had come from a very good specialist (Dr. Lipov) who has huge experience in the treatment of chronic pain. He recommended a spinal laminectomy for implantation of a new electrode for spinal cord stimulation.

Dr. Slavin replaced the original electrode on a trial basis in surgery performed under general anesthesia on 6-4-04. The surgery consisted of a T10 and T11 Hemi laminectomy on the right side with insertion of a spinal cord stimulation electrode. The preoperative diagnosis was intractable pain in the right leg due to RSD. The permanent electrode was implanted in surgery performed under general anesthesia on 6-11-04. The generator was also removed from the abdomen and reinserted in the low back. The preoperative diagnosis was RSD of the leg with intractable severe pain.

Presently, Jane continues to follow up with Dr. Rieger on a periodic basis for medication management and medical updates. She last saw Dr. Rieger on 11-22-06. This

note is enclosed.

### **Damages**

Jane is currently 38 years old and has a life expectancy of 43. In addition to the injury claim, a loss of consortium claim is pending for her husband, James. He is 40 years of age and has a life expectancy of 36 years.

#### **Past Medical Bills**

Medical bills to date total approximately \$228,839.72. An itemized statement is attached.

#### **Future Medical Expenses**

One of the medical experts retained by plaintiff is Dr. Timothy Lubenow, professor of anesthesiology and pain medicine at Rush University Medical Center. Dr. Lubenow is widely recognized as one of the preeminent experts in RSD. Dr. Lubenow confirms the diagnosis. Future medical care and treatment is projected to total approximately \$635,960.00. An itemized list is attached.

#### **Past Wage Loss**

At the time of the injury, Jane was employed as a floral designer in Sugar Grove earning \$468.00 per week. Wage loss to date is approximately \$93,836.00. This is outlined in the report of James Radke, a vocational expert disclosed by plaintiff in Rule 213 answers.

#### **Future Wage Loss**

Dr. Rieger has placed Jane on severe restrictions and limitations which essentially disqualify her from competitive employment according to both Dr. Rieger and Mr. Radke. Dr. Lubenow has likewise confirmed the restrictions. Mr. Radke has calculated the present value of future lost earnings in a range from \$707,038.00 to \$1,188,574.00, depending on wage and job assumptions.

### Past, Present and Future Pain & Suffering and Past, Present and Future Disability

Jane has already endured six years of RSD and six years of painful and disruptive medical care and treatment. She continues to suffer from chronic pain on a daily basis which averages between 7 and 8 on a scale of 10 even with the spinal cord stimulator and pain medication. The pain in the right leg extends from the toes up to the knee. It is a continuous burning pain that fluctuates in intensity. She continues to get swelling and changes in skin color, temperature and sensitivity episodically. The burning pain has now spread to the left foot and is located in the toes. She relies on crutches for weight bearing and ambulation. Pain interferes with almost every activity of daily living from personal care and comfort to child care and home care responsibilities. It substantially interferes with her sleep which itself produces collateral consequences of both a physical and emotional nature. The condition is permanent and she has a life expectancy of 42 years.

### Loss of Consortium

The RSD from which Jane suffers has produced a corresponding burden on her husband, Philip. His responsibilities have increased because of the physical limitations imposed on Jane by the RSD. He has also lost consortium by virtue of the changes in temperament, demeanor, patience and attitude the chronic pain has produced in Jane.

### **Conclusion**

Jane and James Smith are a young couple suffering the damaging and permanent effects of a serious and chronic medical condition. The condition is life changing and impacts every aspect of daily life. The economic and non-economic components of loss are substantial. The original settlement demand submitted before consultation with Dr. Lubenow and Mr. Radke was \$2,544,000.00. This demand is conservative given the

substantially higher future medical and future wage loss projections made by Lubenow and Radke. For purposes of this mediation, however, that demand has not been withdrawn.

This summary is submitted in connection with settlement negotiations and is not to be used as evidence in discovery or trial.

KINNALLY FLAHERTY KRENTZ & LORAN, P.C.

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