Diary of a Fair Trial: Case of Ovideo Chapparo against Fraser Commercial Services, Inc, 23-25 May 2023

John Smigel, Juror, 26 May 2023

This is my recollection of the above case and how the final decision was reached. I provide this with hope it may help where future defendants are wrongfully sued in personal injury cases; where laws are stacked against the defendant. These are my thoughts about the experience and why I acted the way I did. I comment on the other jurors based on what I observed, but do not know exactly what they were thinking.

Judge: Steven Jacobs (CT Superior Court)

Defendant's atty.: Cara Hale, **Plaintiff's atty.**: Kyle Zrenda

Witnesses: Mr. Chapparo, Cleaning Lady, John (plaintiff's partner), Dr. Odonkor (by video deposition for plaintiff) https://medicine.yale.edu/profile/charles-odonkor/, Dr. Karnasiewicz (by video deposition for defendant) https://nossmd.com/departments/neurosurgery-dr-karnasiewicz/

Jurors: Bridget(foreperson), John Smigel, Riandra, Shannon, Franz(don't remember first name – Simon?), Elizabeth

I will only give trial details where it seems relevant. Judge Jacobs said the jurors can speak (or not) with anyone about the case now. The judge also said an attorney might contact us.

Trial Summary: If you are familiar with the trial, you can skip this section. I provide a summary of the trial as I recall it; in case someone is interested in my view. I did not keep my notes so this is from my memory.

1st day of Trial: After swearing in, the trial started with the opening statements of the plaintiff's attorney, who gave the plaintiff's claims about the primary incident on June 12, 2019 (here as I remember them. They were not evidence or facts since they were part of opening statements). Note: we were all asked to raise our right hand and swear to the things that the judge told us we had to do (only consider evidence, etc.). After the judge asked us if we agreed, apparently no one wanted to be the first one to actually say "yes." I did not say yes, or hear anyone else say "yes." I thought the judge would make us actually say "yes," but I guess not saying "no" was enough. I wonder what the court recorder put down about what the record showed.

Plaintiff's Attorney's Opening Statement: Attorney gave the plaintiff's claim of what happened: plaintiff was working late, took the elevator down to basement floor (below lobby/exit level) to (pick up multiple food containers to take home?), then took elevator to leave at lobby level, but accidentally hit 2nd level, did not realize on wrong floor so got out of elevator carrying multiple items with tunnel vision, so did not see large yellow mop bucket or that wet floor, slipped on wet floor near stairs, but not on the stairs, dropped containers down the stairs, twisted to grab on to the railing causing worsened injury of back/pain, did not fall, proceeded to go down stairs/get items, went to car, called partner who offered a ride home that he declined. He claims

pain was getting better, but got worse after he slipped and twisted his back, and pain is now worse and no longer seems to be getting better.

The plaintiff's attorney then gave his argument/reasons why the jury was required decide in favor of the plaintiff. This was due to the law and instructions we would be given by the judge. He used a simple PowerPoint presentation that summarized the law and points he had to prove and why we should find that he proved them "more likely than not." Explained prove in this civil case means "more likely than not." Attorney Zrenda claimed the defendant trained employees to put the caution cone(s) up after mopping the floor. The need and plan to use a caution cone was argued as proof wet floors are dangerous. The cleaning lady admits the cone was not put out until after mopping. Therefore, it was proven that defendant created and knew of a dangerous defect. He claimed the only other thing he needed to prove for us to be legally required to rule in plaintiff's favor is that the dangerous defect more likely than not made the plaintiff's injury worse (to be shown by expert witness testimony).

Defendant's Attorney's Opening Statement: Defendant's attorney Hale gave reasons for finding in favor of the defendant. Attorney Hale gave many reasons why the plaintiff's own evidence and case facts should cause us to rule in the defendant's favor. She gave reasons to support the defendant's claims: 1) the plaintiff was more responsible than the defendant for his pain/injury (special defense); the defendant slipped because he was reckless (carrying multiple items down stairs when he was injured rather than taking the elevator); 2) if he did slip due to a wet floor, it was more likely that the subsequent injury and pain is due to prior accidents (on the record he claimed 11 out of 10 pain from prior motor vehicle (MV) accident less than 4 months earlier and 6 of 10 after his "slip"; 3) He was already and still receiving treatment for prior injuries, including strong addictive narcotic drugs); 4) the defendant's expert witness testifies the MRI evidence shows no significant injury, the MRI is the same before and after "slip", and any pain after "slip" was most likely caused by prior MV accidents. Generally, the defendant's attorney could only provide hints that the plaintiff was not be being fully honest (slip may not have been unintentional, pain after might not have been worse), and/or his injury was primarily due to the prior MV accident. I am sure the defendant's attorney was not legally allowed to openly speculate on alternative likely scenarios that would conflict with the plaintiff's testimony. Also atty. Hale was not allowed to suggest the plaintiff was not fully honest; just able to point out parts of the plaintiff's testimony that are inconsistent or suggest he is highly motivated to make false claims.

Plaintiff Testimony: Summary of answers given: Ovideo is 33 years old, employment history (worked at Dime Bank for at least 2 years, the location he slipped), two previous MV accidents (both rear ended, first one in 2010, resulted in pain to neck and shoulder; last one, 14 Feb 2019: not hit very hard, but holding coffee that spilled, resulted in pain from his lower back down), his pain history detail, wore a brace to work and had difficulty walking immediately after 14 Feb 2019 MV accident, lives with 58 year old male partner & two of his brother's children, his story about the slip incident on June 12, 2019 at the Dime bank where he worked was as stated by his attorney above. Ovideo gave details of how, when, and why he slipped. He said after slipping near the top of the stairs it was a nightmare trying to go down all the slippery stairs. He was questioned by the defendant's attorney about: why there were conflicting records about whether or not he fell and if on the stairs or not, one foot or both feet, which foot, why got off on the

wrong floor, was working injured, why he changed doctors multiple times? He explained how his injury/pain has affected his and his family's life (misses out on playing with children, sex/relationship with partner, worried not able to provide for his family due to pain.) The defendant's attorney also questioned about two other times he reported injuring himself according to his medical records. I think both were after his "slip." According to his testimony and records, he was doing PT-prescribed stretches in church and felt something pop, causing his pain to get worse. In the other recorded incident, he was lifting something heavy (at a subsequent employer location), and hurt his back. The plaintiff said he was actually moving a heavy sliding stock shelf, not lifting something heavy.

Cleaning Lady Testimony: (testifying for the plaintiff) She was cleaning a small non-carpet area by the elevator using a mop, cleaning agent, and water. She was using a big yellow mop bucket located on the carpet immediately adjacent to the washed floor. She can't say if it was visible or not. She dried the floor with rung-out mop before leaving to get a caution cone from a nearby storage closet. She heard the elevator ding and returned to see plaintiff getting up (not clear what she saw because he claims he did not fall). She asked plaintiff if he was OK and he said yes. She immediately called her boss, Scott, (she pointed to him – he was present at the trial). When asked why she immediately called her boss, she answered "of course I would call him." I presume that was company policy if anything unusual happened. The cleaning lady testimony seemed honest and believable. She was asked if she was trained to put out the caution cone before; she said no, but did not remember exactly how she was trained. She said they put the cones out first in larger areas, including the bank lobby downstairs. Riandra said she did not still work for the defendant, according to her notes, and was probably fired. The building was closed to the public at 5:30 for cleaning. They occasionally had events after hours, but those were held in the basement.

Plaintiff's Partner Testimony: Poor Ovideo. He feels so guilty that he may not be able to provide for his family. He provides the only income. His partner is too old to work. They care for young children and the burden now falls on Ovideo. Ovideo was working late the day of "slip" because he is so hard working and responsible. Continues to work even though he is in pain/injured. Ovideo never talked to him (his partner) about any of his pain/injury because he feels so guilty. Pain has hurt their sexual relationship and their relationship in general. He will never be the same.

After this, there was an early end of first day (about 3pm vs 5pm) because attorney Zrenda was not ready to show the Dr. Odonkor video deposition. They said the trial was going faster than expected. We were not told exactly why they were not ready; probably did not bring some video equipment they needed; but I am speculating.

2nd Day of Trial (Wed 24 May 2023):
Plaintif's Current Doctor and Expert Witness Deposition: Dr. Odonkor was the plaintiff's current doctor and the plaintiff switched to him after the "slip" (from Dr. Pasha). Dr. Odonkor said he is a physiatrist (a doctor who practices physical medicine and rehabilitation, see appendix B). Gave his full credentials (see link above). He said he did examine the plaintiff and his MRI results. Did not see any injury on the MRI scans that would obviously cause severe pain, only minor bulging of L4 disk in spine that might cause some lower back or leg pain. Said pain is not

fully understood, complicated, and difficult to understand, even by experts like him. Explained nervous system, and 3 kinds of pain: 1) direct/nociceptive, 2) neuropathic/nerve damage, and 3) nociplastic pain/arises from changes in how nociceptive pain works recurring even though no remaining injury). There can be physical changes in the brain that make nociplastic pain remain even after no other reason remains. Repeated injury can cause nociplastic pain, which is hard to treat. He gave a summary of past treatments and plan for future treatments. Said what treatments he gives and did give to the plaintiff. Included epidural injections of a combination pain killer and steroid to reduce inflammation. His key statement was that in his opinion it was more likely than not that the slip caused worsening of the plaintiff's pain.

There was a trial break at this point. The judge cautioned us to pay full attention and not to fall asleep during the depositions when the lights were turned down, no matter how boring. We all felt bad if they thought one of us was sleeping (would not doubt it, but I did not see; I was taking notes, I swear). I did notice when the attorneys reacted to something about the jury; and they looked over, met, and discussed something with each other and the judge. I did not look at the jury to see what they were discussing. During the break, most jurors said they were not sleeping and one juror said she looked at all the other jurors when the attorneys were reacting and she saw no one sleeping and everyone was taking notes. Elisabeth joked that she thought the judge was sleeping.

Defendant's Expert Witness Deposition: Dr. Karnasiewicz gave his qualifications and experience as a neurosurgeon (see above link). Key items from deposition questioning: Mostly now works as expert witness for defendants, but also does Worker's Compensation evaluations. He is a board-certified neurosurgeon-emeritus (emeritus: of the former holder of an office, especially a college professor; having retired but allowed to retain their title as an honor) for Neurosurgery, Orthopaedics, & Spine Specialists, PC (NOSS). He was paid to spend about 3 hours examining most of the plaintiff's medical records, but did not do a physical evaluation. Plaintiff's attorney tried to make the fact that he had a right to examine the plaintiff, but did not, a big deal. In my opinion, a physical examination long after the "slip" by the opposition's expert witness would not be useful in determining the state of his spine and pain before and after the "slip", for obvious reasons. The plaintiff's attorney also tried to get the witness to say the MRI was not that useful because one has to stay still while it is taken. It does not evaluate when moving. The doctor commented about the plaintiff's spine condition based on the MRIs: the MRIs indicate some Degenerative Disk Disease (DDD) that is more than typical for his age and is generally caused by genetics and aging (not injury due to a slip). Shows up as darker disks on the MRI. DDD is when spinal disks lose moisture and become harder and therefore provide less cushion. Can cause pain. He said mild bulging of one disk is also seen. (I was particularly interested in the DDD information because I have been diagnosed with severe DDD from MRI's of my spine.) He saw no difference between the MRI's before and after the "slip." He also said an MRI is overall best medical test to evaluate spinal injury. In my opinion, Dr. Karnasiewicz was believable and a qualified expert, but was very unlikeable and appeared very arrogant. The demeanor of Dr. Karnasiewicz and his not personally evaluating the plaintiff hurt the defendant in the battle of expert witnesses who, no surprise, gave opposite opinions. Attorney Zrenda pointed out that the NOSS web site advertised expert witness services. Dr. Karnasiewicz said he was surprised that it still said that and it should not be something that is currently advertised. Attorney Zrenda asked if he was a professional hired expert. After initially trying to argue, Dr.

Karnasiewicz said he was a hired expert and not ashamed about it. I had in my notes that a record existed of a different doctor's opinion the injury was 50% caused by the previous MV accident and 50% caused by the slip, but this evidence was ruled inadmissible.

Closing Arguments

The attorneys then summarized their cases in closing arguments. Attorney Hale pointed out the many inconsistencies in the plaintiff's story and circumstantial evidence that he was not telling the whole truth and highly motivated to testify inaccurately to support his claims and lawsuit(s).

Attorney Zrenda said there were cases where people injured their backs even doing normal things. He gave two examples from trials where attorneys injured their backs: 1) bending over to pick up a piece of paper, and 2) standing up to make an objection. This was to make us believe the "slip" was likely to cause back injury. It also means that it is impossible to make anywhere completely safe. Attorney Zrenda went over the form we had to complete to find for the plaintiff and each decision we had to make. He argued how could we not find 100% for the plaintiff with all the evidence he presented. He also said the medical expenses were clear and summarized a plaintiff's exhibit. He gave the total expenses due to the slip. He said the only hard decision was how much to award for past/future pain and suffering. He gave an example of how to convert into money something the client missed out on due to his injury. His specific example was to calculate how much it cost to eat dinner out every night for a year. He calculation was that just this was worth about $500,000 ($500K).

The judge then read a long instruction about the claims in the case, the legal rules involved, how we were to process the evidence, and what decisions we had to make based on just the evidence; which did not include the attorney's opening statements and closing arguments.

The trial closing arguments finished at about 4:30pm on Wed May 24. Jurors received the evidence box, including our notes at about 4:45. It was difficult to know what evidence was available to us, both in and out of the box. We asked the jury clerk for a summary of the exhibits/evidence, but she said we were not allowed to have that. I never saw any exhibits from the defendant.

Jury Deliberation

We did not want to start deliberating with only 15 minutes left, but were told to start. The first step was to elect a foreperson. Everyone said they did not want to be foreperson. Bridget said she would do it – we all said great. We started by polling what our starting positions were regarding what percentage each of us favored the plaintiff's case over the defendant. All the other jurors said they were 100% or more in favor of the plaintiff and I said I was in favor of the defendant. So I was clearly the limiting factor to reaching a decision. They all thought that it was open and shut case because the caution cone was not put out before the cleaning. They asked me to explain why I was in favor of the defendant's case. I had many reasons in my head but was tired and could not give a very good argument at that time. They asked me specifically why I thought any responsibility less than 100% should be assigned in favor of the plaintiff. I stated that I thought he could be partially responsible because he made decisions that led to the accident, including getting off at the wrong floor and deciding to carry things down the stairs

when he was injured. He could have just went back down on the elevator and instead he chose to go down the stairs even though he knew they were slippery and wet. I did not think I said that would be common sense, but Bridget must have implied my saying that. My statement that some fault could be the plaintiff's got everyone else mad at me. Riandra was furious and yelled at me that he had to go down the stairs because he dropped his containers down them and was embarrassed. Bridget was also furious because she said we had to use common sense and it was common sense that someone should have to get off an elevator without being in danger due to someone's negligence. We quickly went through the rules we were given on the legal constraints that would force us to rule in favor of plaintiff or client and it was not clear we could legally find for the defendant. I agreed to accept the decision of 100% in favor of the plaintiff because: it was 5 against 1 and (unless I could convince them all to accept only 49% in favor of the plaintiff) it would not be a final decision on the damage, and we could still adjust the amount awarded and/or percentage later after deliberating and reviewing the evidence. I told them that I would agree to accept the 100% and some of my reasons, but that I did not really agree. We quit at 5pm. I was very unhappy about being of the opposite opinion of all 5 other jurors. I was so upset and anxious that I could not sleep all night. I spent all night trying to think of ways to convince the other jurors to see the case closer to how I saw it. I thought at the time that my only option might be to force a hung jury and I would feel bad about that and everyone would hate me for it. Also forcing a hung jury would likely cause a retrial where all 6 jurors would favor the plaintiff. That could be a disaster for the defendant. I was worried that I should dissolve my cottage rental business because it was clearly so easy to win this type of personal injury lawsuit. The table below give a summary of my impression of the jurors. The order is counterclockwise around the table, starting with myself.

Juror	Initial for Plaintiff	Final for Plaintiff	Experience	Personality
John	0-49%	0%	Math and problem solving, spine problems	Meyers Briggs INTJ
Bridget	100%	50%	Prison nurse	Smart, capable, take charge
Riandra	100%	75%	Medical/Records?	Smart, capable, independent
Elizabeth	100%	50%?	Medical Miracle	Sociable, funny, strong
Shannon	100%	100%	??	Very caring, honest, kind, responsible, and sociable
Franz	100%	100%	Professional/EB	Hard working

My background: Electrical engineer/Lockheed Martin Fellow. Areas of expertise include: advanced adaptive signal processing algorithms, radar, sonar, electronic countermeasures, counter IED and counter ballistic missile warhead technology. I am good at math, science, and problem solving. My expertise is developing optimal algorithms for determining if a threat is more likely than not present (threat=enemy sub, IED, nuclear warhead, incoming projectile, mine). I will not stop trying to solve a problem until I am dead. I had a reputation at work for being able to solve impossible problems and never being wrong. Since I am honest and

trustworthy, I hate when others are not. I had a traumatic college experience that proved to me: 1) the justice system is not always fair, and 2) people you could not imagine would lie and bear false witness will do so if it is in their best interest and they think they can get away with it. This was a paradigm shift that I suspect that most people have not had, fortunately or unfortunately; even with the advent of cell phones and recent politics.

One of the jurors said, "That's what insurance is for." This made me mad. I have a small cottage rental business and worry about someone getting injured and filing a personal injury lawsuit. The only insurance I can get is regular liability insurance, not expensive Professional liability insurance (also called Errors and Omissions (E&O) or malpractice insurance). Regular liability insurance does not pay if you are found negligent by a jury.

When I woke up after a >4hr surgery to remove cancer, both my arms were numb for the first time ever. The numbness then started happening every morning if I slept on my back. I saw a neurologist and an MRI showed that I have a severely displaced disk in my neck and Degenerative Disk Disease (DDD) in my spine. Doctors and my PT were surprised I was not in pain. I wondered if some accident happened during surgery to cause my neck problem, but of course it would be in bad taste to sue the surgical team that just saved my life.

Impression of Jurors:
Bridget: Young white woman who is very smart, competent, confident, and take-charge. Quickly volunteered to be foreperson. As a prison nurse, she had extensive experience with medical records and medical bill evidence. She also had experience dealing with difficult medical patients. I was particularly impressed by how well, fast, and organized she (and Riandra) processed all the medical records and bills. It was her idea to focus on the Workers' Comp evaluation report and the PT records before and after the "slip." I believe her husband was a police officer. Clearly wanted to be fair and come to a fair decision. I believe she was the first one to re-read the judge's instructions. I did this next, and then Shannon. The other jurors did not re-read the instructions.
Riandra: Young black woman with 2 small children. Very smart and capable. She was not going to let anyone tell her what to think or to decide. She argued most strongly for the plaintiff. She said he would have to be crazy to go through all he was going through (medical treatments and drugs) just to win a trial so his story must be true. She seemed to have medical knowledge (at least billing, reports, drugs, doctors) because she quickly went through and commented on the medical bills and records. She helped Bridget a lot in this task. None of the rother jurors helped significantly in evaluating the specific medical records/bills. Riandra would tease me about showing sympathy for the defendant because I had accused them deciding based on sympathy for the plaintiff. Riandra needed to go out and smoke periodically.
Elisabeth: Older white woman. Nice and sociable. Did not argue consistently for or against the plaintiff. I did not see her examining any of the exhibits. She appeared to be basing her judgement on what she saw and heard. These were the comments I remember her making: 1) she said "He's here" periodically. It eventually became clear she did not feel he was significantly injured now because he was able to participate in the trial without much difficulty. She commented on seeing him walking around outside with no significant difficulty. I also saw him and his partner coming back down the large flights of steps from the front of the courthouse to the rear entrance. He was limping slightly and carrying the 2 cushions he used to sit on. Both

Elizabeth and Shannon were confused by the instruction to us that we had to "take him as he is at the time of the injury" and not fail to award in his favor due to any prior accident or pre-existing condition. They both thought this seemed to require us not consider any prior accidents or injury at all; and therefore, had to award him damages as if that were his only source of injury. The end of the same instruction paragraph seemed to conflict with this (Shannon and I noted this, not Elizabeth). The end of the paragraph said we are required not to assess damages to the plaintiff that were caused by a prior injury or that were not proximately caused by the defendant. (I am paraphrasing the instructions; I don't remember the exact legal wording.). At one point near the end of deliberations, I started another discussion by noting that it would have been nice if there was some video evidence of slip details. Having none seemed strange since banks usually have cameras everywhere. Elisabeth stated that she found the whole story strange. I said I felt the slipping and not falling story was the easiest to argue because if you fell, one might expect other injuries that would show. Elisabeth said she just twisted once and broke three ribs. Riandra called Elisabeth a "Medical Miracle" because she had recovered from an extreme injury doctors did not expect her to recover from (I don't think I heard the details, maybe in a coma). Other jurors said it might have been better for Ovideo to slip/fall somewhere in the bank with cameras so there was video evidence. They said if he was faking, he would have had a better story.
Shannon: Very sociable and extremely caring/feeling person. She could not help feeling sorry for the plaintiff. The first thing she said was she had to follow all the rules exactly and did not bring her cell phone because she thought that was against the rules. Everyone else was occupying themselves with their cell phones. She also said she could not stand us all sitting there without talking. She always argued for the plaintiff because she clearly believed his whole story and felt he needed to be helped (by us). She tried to review his doctor's specific plan for his future care to determine in detail how much money he would need in the future, but there was no way to determine actual future care costs. Her husband was a K-9 police officer.
Franz: Middle-aged black man. Professional and always dressed in a suit and tie. Hard working and conscientious. Said he worked long hours and normally started at 4am. I think he worked at EB. During breaks he was always worked via his cell phone. He worked by phone during deliberation until we found out we were not supposed to use our cell phones when deliberating. He always argued for the plaintiff. Initial comment: I work where a lot of floor cleaning is done and "They always put the cones out first." That was enough to convince him to side with the plaintiff. He also said that the defendant should have had supervisors watching the cleaning employees to make sure they did not make any mistakes. Franz was going by what the plaintiff and his attorney said and could not see other subtle evidence that favored the defendant. His other hot button was attorney Zrenda's emphasis that the defendant's expert "witness" was less credible because he did not examine the plaintiff. Franz effectively set the final total damage by saying it should be at least $300K.

Impression of Attorneys:
Plaintiff's Attorney: Atty. Zrenda is young, passionate, and extremely good at arguing with and convincing others. He broke his case down into a series of simple steps he said proved his case was true "more likely than not." He is good at making you think things are fact when they are just claims (see Appendix A). Also good at showing one thing is probably true and then arguing it means that then something else is true, when it may not be. If I was filing a wrongful injury suit, I would want him as my attorney.

Defendant's Attorney: Atty. Hale is young very charming, smart, and attractive. She made you like her and did what she could to raise questions about the accuracy of the plaintiff's story. She also tried to counter attorney Zrenda's misleading omissions of the full legal rules, by pointing out important things parts he did not say. She needed a more organized and clear argument for most of the jurors to side with the defendant. Not sure if this would have been possible within the law constraints (no speculation, for example). I may try to document some arguments in an appendix using the admitted evidence and without a "no speculation" constraint. The goal would be to prove the probability is higher that the defendant was not responsible for the plaintiff's pain.

3rd Day: (Thursday 25 May 2023)
After not sleeping, Thursday morning I was so tired and upset I had trouble getting dressed, almost had an accident on the way to the courthouse, made a wrong turn getting there, and realized I forgot my wallet (only did that one time before). I got there a few minutes early (each day). I was always on time, but all the other jurors were always there before me. We always had to wait pretty long for everything.

I was worried since all the other jurors agreed with each other; they would want to get it over quicky and not work hard to get a fair decision. Fortunately, this was not the case. All the other jurors took the responsibility seriously and insisted on following all the rules exactly (at least Shannon and I did).

We had to wait again to restart deliberation. We were scheduled to start at 9:30am and started about 10am. I sat across from Riandra. Riandra and I tended to argue opposing sides the strongest. Foreperson Bridget sat at the head of the table next to and between Riandra and me. Since I was the limiting factor to reaching a unanimous decision, I gave a passionate (for me) speech about the reasons I favored deciding for the defendant. The key things I pointed out were:

1) Except for the plaintiff's testimony (clearly biased), I had not yet seen a single piece of medical evidence or other testimony supporting the plaintiff's claim he slipped or actually had severe pain (ever). (These were not my exact words) Before and after MRIs show no change to back/neck and no significant evidence of injury that would cause severe pain. Both expert witnesses expressed this same thing, but the plaintiff's witness was less clear about it.

Riandra's looked at me and said with shock "You think he didn't even slip." I suspect she and Bridget considered my position a challenge to find such evidence in the mountain of medical bills, medical reports, and testimony notes. I always called it the "alleged slip" – I will just use "slip" in the following text. Also: 2) no one, even the cleaning lady, saw him slip, 3) reports varied whether he slipped or fell, and if on the stairs or at the top of the stairs, 4) he had at least three classic personal injury accidents (slip/fall, rear end MV collision holding hot coffee) with neck/back pain; one less than four months before, 5) it is impossible for anyone except him to know how much pain, if any, he is suffering, 6) if he was injured and carrying multiple things down the stairs, as he testified, he either: a) could not hold on to the rail because he carried items, b) chose not to hold on to the rail but when he "slipped" he could reach the rail, as he testified. As was the missing cone, the rail was there to prevent slips/injury, 7) strange that he pressed

wrong elevator button and got off on the wrong floor in the first place; he worked there for a long time, 8) even though a bank, no video evidence of what happened, 9) why not just push the elevator button for down rather than trying to carry items down the stairs when having trouble walking, 10) he was still being treated for the previous MV accident and had PT the same day, 11) plaintiff's partner testimony was that the plaintiff before the "slip" felt extreme shame and guilt about possible failure to financially support their family of four who depended on Ovideo, 12) As expected, the "expert witnesses" for the opposing sides had opposite opinions about who should win the case. In particular, the experts disagreed about a) if the "slip" was a likely cause of the pain/injury, b) if there was pain that would not get better, and c) whether or not it was caused by the "slip" and not the prior accidents, 13) the plaintiff's attorney stated the cleaning lady was improperly trained to specifically put the cone out after she cleaned the floor. There was no evidence presented to support this statement. Her testimony was that she did not recall how she was trained and they normally put out the cones out first (on the first floor bank lobby, for example), but she did it in that specific area next to the elevators because the area was so small (less than 6 ft x 6 ft by her estimate) and the big yellow mop bucket was right there next to the wet area while she got the warning cone that was a short distance away. She also stated that she dried the area with a relatively dry mop and she did not think the area was very wet or slippery after she dried it. The plaintiff's counter to this was that he had "tunnel vision" and would not notice a wet floor or bucket that was not clearly visible (if true, he probably would have tripped over a cone placed in front of the elevator), 14) the plaintiff had switched between doctors multiple times. When asked why he switched under testimony, he stated he did not like the results he was getting from the original doctors and did not feel they had a good plan for his future treatment. I am paraphrasing. I got the impression Ovideo was nervous about answering this question and he was not being fully honest. 15) the plaintiff was using the cleaning lady, who was clearly responsible for the claimed danger, as his witness and not suing her personally, 16) the plaintiff's testimony was that he was just starting to get better and his treatment/care was scheduled to end when the "slip" occurred. The plaintiff's story was that this unfortunate timing was what made his pain from the "slip" so much worse and caused it to possibly become permanent (the last straw). 17) the plaintiff filed for worker's compensation due to the "slip" and was evaluated by a doctor (we reviewed the worker's comp. report). The finding was that he was fit for light duty, but recommended reducing hrs. He did not miss any days of work after the "slip," but reduced working hours slightly. We included a small amount of $$ due to the claimed lost wages in the economic damages, 18) the medical records showed that the plaintiff was prescribed multiple narcotic, dangerous, and addicting pain medications, along with oral steroids at the time of the slip, including the addictive opioid-class drugs Tramadol and Vicodin. I was given Tramadol once after my >4hr surgery in the hospital, so I knew about it. We were not allowed to use our phone or research anything ourselves. I Googled Tramadol after the trial was over:

> Tramadol is used for the **short-term relief of moderate to severe pain**. It should only be used when other forms of non-opioid pain relief have not been successful in managing pain or are not tolerated. Tramadol is not usually recommended for the treatment of chronic (long-term) pain.

I did not say all these things (speculation), but could not help thinking them as part of evaluating the credibility of the plaintiff's testimony, which was the main thing we were given to consider as evidence, if not given as "facts" of the case. One rule was is we are not allowed to

"speculate." This appears to suggest that we are required to accept the plaintiff's testimony as facts of what happened (he unintentionally slipped and had more pain after). This would mean we are not allowed to think for ourselves. See things I find unfair below.

I did ask all the other jurors if they thought it was possible for someone to lie under oath. They all said "of course," and asked me if I thought the plaintiff was lying. I said not necessarily, but probably at least not telling the whole truth or being intentionally misleading to strengthen his case.

Key Issue/Question
Assuming his injury/pain did get worse, was the defendant's negligence a proximate cause for the plaintiff's injury/pain getting worse? (proximate - especially of the cause of something; closest in relationship; immediate.) Or was there some other explanation for this case and the associated "evidence"?

Things I Find Unfair
One thing I find unfair in a case like this is that we are told not to speculate even though we need to evaluate if claims are "more likely than not," which inherently involves speculating on likeliness of alternate scenarios from the plaintiff's story. This is worse than a "he said-she said" case; just a "he-said" filed against a corporation, not a person. Also determining future non-economic damage and pain/suffering requires speculation. By "case like this," I mean a case where the only direct evidence about what happened and the resulting pain/injury are from the plaintiff's testimony. There was very little chance of determining if the plaintiff's claims were accurate without speculating. If a trial is based on just a plaintiff's testimony, then it would be fairer to have a judge rule. Or at least tell the jurors they can speculate to decide accuracy of the plaintiff's testimony. The defendant in this case was a corporation that had no way to testify about what happened. There was no clear or direct evidence of the plaintiff's claimed injury or pain.

We asked for a summary of the exhibits and evidence that we were provided in the large box that was placed on the table. It was in many packages and binders that were labeled as a particular plaintiff's exhibit number. Our jury clerk said that we were not allowed to have a summary of the exhibits. I did not notice any exhibits or data labeled as from the defendant. It was difficult to know if there was none or if any was missing. Evidence could have been hidden or misplaced by one of the jurors; no way to know. We had to examine the exhibits to determine what they were. The only things I saw were: 1) many packages of medical bills from various providers, 2) medical reports from doctors and physical therapists, starting from the date of the "slip." This included report from Worker's Compensation examination associated with the "slip" incident, 3) a summary list of the plaintiff's medical expenses, 4) list of lost wages, 5) table of official life expectancy vs age. I don't remember seeing anything else and did not see anything labeled as from the defendant. We were given a written copy of the about 10 pages of judge's instructions, which was helpful.

There was nothing to write on except sticky notes and no white board. Also no calculator or PC/spreadsheet, which would have helped evaluate the large amount of medical bills. Not being able to do research also hinders the ability to predict future medical expenses.

We were expected to evaluate the large amount of evidence in less than one day. The attorneys had 2.5 years to evaluate. We felt time pressure to decide because: we knew the trial was supposed to end the third day, everyone appeared to be waiting in the courtroom for our decision, and we were called into the courtroom periodically to make sure we were all still there and working.

We were not given a picture of where the "slip" happened. This would have helped to evaluate the credibility of the testimony. We were also not allowed to know if the plaintiff was suing in the other accident cases and whether either side had insurance.

Recollection of the Rules and Jury Instructions
We were not allowed to speculate or let sympathy influence our decision.

We were not allowed to deliberate unless all jurors were present.

The Plaintiff is required to "Prove" the below items to win their case. Prove means show "more likely than not"; not really prove:

1) The defendant had control of the premises (and plaintiff was "invited") – not argued by defendant
2) The defendant was aware of the defect/danger in time to fix - not argued by defendant because the defendant (their employee at the time) caused the claimed defect by not placing the cone out before washing the floor
3) The floor was wet/dangerous and therefore negligent. The defendant failed to properly train/supervise employee.
4) The wet floor was a proximate cause of the plaintiff's injury

The above 4 items had to be "Proved" for the plaintiff to win. The above is based on my memory (this is not the exact legal wording). The following paragraphs describe how we arrived at damages assessed for the plaintiff against the defendant. Because we collectively decided to rule in favor of the plaintiff and needed to come up with a specific damage amount, we assumed he did slip unintentionally and this resulted in more injury, as he claimed.

Existing Medical Bills/Reports
The next step was to determine what medical bills should be attributed to the alleged slip and not already required due to previous accidents. Riandra, Bridget, and I proceeded to go through all the medical bills and reports and validated the plaintiff attorney's summary list totaling $38K. The list items ranged from about $100 to $15K for the PT. We asked the judge if we needed to consider insurance coverage and he said no, he handles that. Going through all the medical bills and reports, adding them, and correlating them with the summary list took the longest. We asked if we could at least use our phone calculators or get a calculator and the answer was we could not use our phones but they would try to find us a calculator. The nice jury clerk eventually brought a big old simple calculator. Probably lucky it was not an abacus (see also later request results). Riandra and Bridget were amazingly good at going through all the medical bills and reports. We never could have done that without them. Riandra went through medical records for evidence of

pain or injury that would cause pain. She found the large number of high strength pain killers and steroids prescribed and reviewed the MRI findings. She said he had to actually be in severe pain or be crazy to take all the prescribed medications and go through all he went through. I thought this was a good point. Near the end of deliberation, she said we definitely needed to include $$ for psychiatrist(s) because he was clearly going to need them. I did not think of it at the time, but just because he was prescribed medications does not prove that he took all of them. Hard to argue with the injections, so that might be why injections were emphasized. I started to think he may be in pain from the motor vehicle accident, but we could not know if the alleged slip aggravated the pain.

Bridget and I went through the large binder of PT reports. We focused on the ones immediately prior to (same day as) and after the alleged slip. The reports were on consecutive days and included all the therapy given and listed the measured range of motion, etc. He was having physical therapy twice a week. There was no significant difference between the reports before and after the alleged slip, other than a couple of therapies that were withheld on the day after the "slip." Bridget and I were not sure that was conclusive, one way or the other.

We found most of the medical bills could possibly be attributed to the "slip," if it aggravated the pain or directly resulted from the "slip." We checked what each bill was for and verified they were dated after the "slip." PT for the prior MV accident was scheduled to stop 6 months after the "slip" so we subtracted the first 6 months ($6K) of PT as attributed to the prior MV accident. We also subtracted what appeared to be a primary care regular doctor bill ($1.2K) as not specific to the "slip." We were able to correlate almost all the other bills (to a few dollars) with the plaintiff's summary totaling $38K. I reviewed each bill and said if I approved that it could possibly be attributed to the "slip." I had threatened not to agree and force a hung jury otherwise. We also included a small amount for claimed lost wages in the non-economic damages.

We were having difficulty keeping track and sharing all the data with just sticky notes; so we asked the clerk for a white board. Be sure to read the result later. We finished evaluating the existing medical bills and records just before lunch time, 1pm. We broke for lunch until 2pm.

Note: I am writing this part on Sunday morning, 28 May 2023, about 2 days after the trial ended. I have been thinking about the trial and what happened; trying to figure out if my assessment was correct or if the other 5 jurors were correct. I am embarrassed to admit that I just realized that it is more likely than not that the plaintiff's actions were motivated by addiction to pain killers, a known epidemic in New London. In hindsight, I realize that 3 things are probably true:

1) The plaintiff's motivation for the suit included addiction to the pain medication that was starting to be hard to justify and scheduled to stop

2) Bridget and Riandra had concluded that the plaintiff was probably lying due to both an addiction to medication and hope for a large financial jackpot

3) Bridget, Riandra, and Elizabeth discussed the possibility the plaintiff was lying to his doctors and in his testimony during the lunch break (whether the doctor believe what their patients tell them and if patients lied to their doctors)

The reason I suspect 2) and 3) above is that some time shortly after lunch those three jurors simultaneously asked me: "John. Do you think doctors believe what their patients tell them?" I said I thought they had to accept what their patients told them. All three of them laughed and seemed to think my answer was hilarious. I did not (and still do not know) the exact point they were trying to make and if it favored the plaintiff or the defendant. Bridget then told me she was a prison nurse and a big problem for them was the prisoners always lying to the doctors and nurses. Elizabeth and Riandra also expressed that doctors do not always believe their patients and patients sometimes lie. Two possible points they were making are: a) the doctor's report(s) should indicate if the doctors did not believe the plaintiff and/or they would not have treated him the way they did (favoring plaintiff) or b) the other jurors also suspected the plaintiff could be lying to his doctors (favors defendant). Bridget told me there are ways to determine if someone is actually in pain and not lying by measuring brain wave response to a stimulus. I suppose a lie detector test could be used, but I don't know the reliability or legality. No evidence of either test in this case.

Depending on what they discussed, if anything, they could have been breaking the rule to not deliberate unless all jurors were present. Perhaps they were trying to tell me they did not disagree with me as much as I thought. The women jurors did talk during the breaks, but not about the case (that I witnessed). For example, they commented on the jury clerk's choice of shoes. Even though the clerk's primary job was to walk the jurors from one place to another, they all wore stiletto's. This I did not notice until they pointed it out. Riandra said they definitely have regular shoes to change into in their bags. I found this interesting since my trans friend, Nadia (ex Troy) had just told me: "women dress for other women and not men." This is because women know men will find them attractive no matter what. Women notice the details of how other women dress and judge them based on it. She felt sorry for men because it was as if they had an incurable disease that made them attracted to women.

Also, after lunch Riandra and Bridget seemed to be siding more with the defendant based on how much they were suggesting for damages. Riandra thought we were all done with medical expenses and were ready to start non-economic damages, but we told her we still had to add future medical bills.

Future Medical Bills

Predicting the future is difficult to impossible. We struggled with how to estimate a reasonable cost for future medical bills attributed to the "slip" (assuming the slip did aggravate the pain as claimed). This could range from almost nothing if he gets better soon, to huge amounts if he continues with the same condition or worse (spine surgery). Shannon spent much time trying to go through the future medical plan that had been documented (included all kinds of things) in a plaintiff's exhibit; but there was no way to know the specific costs so she eventually gave up. Bridget and I decided to base future expenses on his medical expense rate after the "slip" divided by a scale factor to adjust for a post-accident expense rate decrease and prior MV accidents. I suggested the rate should be 4 times lower (times 2 for MV accidents and times 2 for healing over time). Bridget wanted a factor of 2 so we used a factor of 3. The resulting expense rate was about $30K/(5 years) or $6K/year. Reducing by the negotiated factor of 3 resulted in ~ $2K/year for just the "slip." Shannon suggested having a rate that changed over time to account for age or other time-variable factors, but that seemed too complicated since this was just a wild guess. His

official remaining life expectancy was ~46 years. This gives $2K*46 = $92K. We decided to use a round number of $100K.

At about this time, our young jury clerk came in with one of those old portable green chalkboards that had to be at least 50 years old. This was the closest they could get to fulfill our request for a whiteboard. We said: " You are so young – How do you even know what that is?" I did not see any chalk or an eraser. I appreciate the effort to satisfy the jury's requests. If we had any question or request, the jury foreperson had to put it in writing and give it to our jury clerk.

Non-economic Damages

The hardest to estimate was Non-economic Damages (Pain and Suffering). The plaintiff's attorney had used $500K as their "example" for cost of eating out every night for a year. We were not sure what they intended for us to do with that number. Probably hoped we just used it or some even larger number that included the cost of all the things he might miss out on. Elizabeth said it was crazy since no one would eat out every night for a year. I suggested it was how much the attorney estimates the defendant could afford before going bankrupt. At any rate, I suggested it should be an upper limit on the amount we chose. Considering the millions of dollars that have been awarded for pain/suffering in similar cases, I thought the defendant would be lucky to only get $100K or less ($0K, if just up to me). I was surprised when Bridget suggested she thought $20K would be fair. I was thinking at least $50K using the assumptions we had used. If we used $50K non-economic damages, total damages would be about $180K. I thought an upper limit on the total should be $250K and Riandra thought a lower limit should be $250K. We were going to call this a win at $250K total, including $120K of non-economic damages; because Riandra and I had never agreed on anything yet. However, the hard-core plaintiff supporters, Franz and Shannon, thought the total should be at least $300K; so we ended up compromising at about $280K total. Riandra said, "We definitely need to include future medical costs for psychiatrists."

I said "a fair decision is one where both sides are not happy, but should be." The jurors commented again on the arrogance of the defendant's expert witness. I commented to Shannon that I thought the plaintiff's attorney and expert witness did better than the defendant's attorney. She was surprised I would say that. The reason I did was 5 out of 6 jurors did not side with her arguments. Shannon said Ovideo was going to have a difficult time over his remaining 46-year life expectancy. I said his life expectancy is probably shorter because he is so accident-prone.

Summary and Final Jury Decision

Bridget filled out the single-page form to fill out if we ruled for the plaintiff and signed it:

Decision for Plaintiff: 100%
Previous Medical bills accepted for plaintiff: ~$30K
(Total previous medical bills and lost wages claimed: $38K
Amount deducted: PT for other accident: $6K, Primary Care: $1.2K)
Future Medical Bills: $100K
Total Economic Damages: $130K

Non-economic Damages: $150K
Total Damages: ~$280K

We were again escorted across the hall to the courtroom where our decision was read aloud two times by the clerk. The clerk handed the judge the single-page written decision signed by Bridget, reviewed it and said it was accepted. He asked the defendant's attorney if she wanted the jury polled and she did. Each juror was then asked to affirm that they agreed with the decision. We were then thanked and told we were now allowed to discuss (or not) the case with anyone.

In summary, 5 out of 6 jurors felt it was more likely than not the plaintiff did slip unintentionally and that slip caused his pain to get worse. I feel part of their reason for this belief was they felt if the judicial system is fair, it would not get as far as a jury trial if he did not in more pain from an unintentional slip. They felt this was true even though there was significant circumstantial evidence favoring the defendant. However, we all agreed that it was likely that the defendant did fail to either properly train or supervise the cleaning lady because she admitted to not putting the caution cone out first. This required us to file in favor of the plaintiff. The awarded damages were the minimum we felt would be fair assuming the plaintiff did slip and aggravate his injury. I initially had decided to force a hung jury if there was any significant monetary award to the plaintiff. I did not believe his story was the most likely scenario that fit the evidence presented. However, I eventually decided not to force a hung jury because I was not 100% sure the plaintiff was lying. Also, a "minimal" award for pain and suffering might not be enough to encourage future such law suits and might even be viewed as a win for the defendant.

What do you think? Was everything fair? The trial? Our deliberation? Our decision? Should I have forced a hung jury and retrial? I probably will never know and will always wonder.

John Smigel
Juror

Appendix A. Examples of Convincing, but Wrong Proofs

The plaintiff's attorney's arguments remind me of proofs where each step looks correct, but the overall result is incorrect. Below are two examples.

Example 1

Given: 1+1 = 3
Problem: Find proof of the above expression
Solution: To prove the above expression, we assume the following:
We consider four numbers and they are 41, 40 on the left-hand side and 61, 60 on the right-hand side.
We consider 41-40 on the left-hand side and 61-60 on the right-hand side both equal 1.
$\therefore$ 41-40 = 61-60
$\Rightarrow$ (16+25)-40 = (36+25)-60 [41 can be written as 16+25 and 61 can be written as 36+25]
$\Rightarrow (4)^2+(5)^2- (2\times4\times5) = (6)^2+(5)^2-(2\times6\times5)$ [$\because 4^2=16$, $5^2=25$, $6^2=36$ and 40 is written as $(2\times4\times5)$ and similarly for 60]
$\Rightarrow (4-5)^2 = (6-5)^2$ [Implementation of $(a-b)^2=a^2+b^2-(2\times a\times b)$]
$\Rightarrow$ 4-5 = 6-5 [taking square roots on both sides]
$\Rightarrow$ 4-5+5 = 6 [Rearranging sides]
$\Rightarrow$ 4-0 = 6
$\Rightarrow$ 4 = 6
$\Rightarrow$ 2 = 3 [Dividing both sides by 2]
$\Rightarrow$ 1+1 = 3 [2 can be written as (1+1)] (proved)
Hence the expression 1+1 = 3 is proved.

Example 2

A simpler example with more easily seen flaws:
10–10 = 15–15 (since 0=0)
2(5–5) = 3(5–5)
2 = 3(5–5)/(5–5)
The (5–5) in the numerator cancels the (5–5) in the denominator.
So, 2 = 3
And 1+1 = 3 (since 1+1 = 2, but this conflicts with 1+1 = 3, can't be both)

The flaw in 2) is that you can't set zero divided by zero as cancelling to 1.

Appendix B. What is a Physiatrist?

Both physiatrists and physical therapists use their medical expertise to help restore your movement, prevent injury, and improve your overall health. Though their end goal may be similar, the differences between the two professions are markedly different and involve separate modes of care.

5 Top Differences Between Physiatrists and Physical Therapists

Education

The first major difference between physiatrists and physical therapists is their medical training. A physiatrist is a licensed, board-certified medical doctor who has completed medical school and a required internship and residency. A physical therapist completes a three-year post-graduate degree in physical therapy and must earn their certification.

While both medical providers know the body's musculoskeletal system inside and out, a physiatrist's more extensive training gives them even greater in-depth knowledge about the structure and function of the human body. They also have an intimate understanding about how the nervous, cardiovascular, and other systems affect the musculoskeletal system.

As physical medicine and rehabilitation practitioners, physiatrists also have the ability to prescribe medication and perform additional non-surgical therapies like injections, which physical therapists don't have. Physical therapists use advanced tools like traction and transcutaneous electrical nerve stimulation (TENS), but they must refer you to your physiatrist who can administer prescription-level therapies. If you have complicated medical needs, you'll appreciate having a physiatrist at hand.

Role

A physiatrist takes the leading role in diagnosing, treating, and managing musculoskeletal issues. Your MD designs a comprehensive treatment plan based on their findings, oversees its execution, and assesses its effectiveness. They check in with you and your physical therapist at intervals during your inpatient stay to make sure their plan is working.

Your physical therapist is responsible for executing the treatment plan provided by your physiatrist. During physical therapy sessions, you can expect to perform the bulk of the actual physical rehabilitation techniques including specialized exercises and hands-on procedures.

Initial Visit

In your sequence of care, your visit with the physiatrist comes before physical therapy. As an integral part of your care team, your physiatrist gathers detailed information from your medical history, physical exam, and diagnostic testing during your first visit to formulate a treatment regimen.

A physiatrist takes a comprehensive look at all facets of your health before diagnosing or treating you. From there, your physiatrist can assemble a team of healthcare providers to help restore your physical abilities, including a physical therapist, among other specialists.

After you see your physiatrist, you may also have an evaluation with your physical therapist. They might perform a few of their own assessments to check your strength, muscle balance, reflexes, and range of motion. Using the information from your physiatrist and their own assessments, they will then begin your first therapy session.

Diagnostics

Physical therapists don't diagnose medical conditions, but physiatrists do. A physiatrist uses diagnostic tools like X-ray, nerve conduction studies, and electromyography to identify the underlying medical conditions that require rehabilitation.

Your physiatrist looks at your whole health picture and takes co-existing health issues into account to design a treatment protocol. They help you and your physical therapist work around conditions like diabetes, heart disease, arthritis, and COPD. They also offer a variety of non-surgical techniques for pain management.

In cases like diabetic limb amputation that require specialized care, a physiatrist plays a key role in your recovery. They supply all the tools you need to regain function, from prosthetic devices to pain management.

Your physical therapist uses the diagnostic information and recommendations provided by your doctor and physiatrist to carry out their part of your treatment. They can help

you use a prosthetic or assistive device and modify your treatment programming with your physiatrist's advice.

Frequency of Visits

You will likely see your physiatrist much less frequently than you see your physical therapist.