

MISSOURI LAWYERS WEEKLY

Man Fell Outside Taco Bell

Ice Formed On Sidewalk Near Drive-Thru



James Krispin



Pamela S. Wright

the Taco Bell/KFC restaurant on Business Route 36. During the day, rooftop snow had melted and drained through a down spout next to the entry door near the drive-thru window.

The two entered through the door without incident. Upon leaving, Scott's brother noticed that ice had formed on the sidewalk near the down spout. He stepped over it and continued into the parking lot. Scott was talking to a restaurant employee at the door as he left, and his attention was also drawn to a vehicle that was at the drive-thru with its headlights on. Scott took two steps and slipped and fell on the ice. There was no salt on the sidewalk at the time.

Scott went home early the next morning after awakening in severe discomfort. He was referred to Dr. Ravindra Shitut, an orthopedic surgeon, who diagnosed an aggravation of pre-existing — although asymptomatic — spondylolisthesis at L5-S1. For six months he tried non-surgical treatment to no avail. He eventually underwent



Scott fell on the sidewalk near the down spout.

inter-body fusion at L5-S1 under a combined (anterior and posterior) approach.

Scott was a self-employed marble installer, a job that required heavy lifting. After recovering from surgery he resumed his work but had to hire contract labor to do the lifting at job sites. Over the next three years Scott incurred \$45,000 in contract labor costs.

He sued Bischco, Inc., which was the franchisee operating the restaurant, and KFC Corporation under both actual and apparent

agency theories. His experts testified that his pain and physical limitations were permanent, and that the cost of contract labor was attributable to the injury.

The defendants argued that Scott was at fault for failing to keep careful lookout and also disputed the nature and extent of his injuries.

After a three-day trial, the jury assessed Scott's damages at \$450,000 and allocated 40 percent of the fault to him, for a final judgment of \$270,000. Bischco and KFC were found jointly liable.

A man injured when he slipped on ice outside a Taco Bell restaurant sued for premises liability.

Larry Scott and his brother were deer hunting in Monroe City, Mo., in early January 2001. It had been extremely cold and snowy there for a period before their arrival, but in the two days immediately prior to their trip daytime temperatures rose into the low 40s.

Jan. 7 was a sunny day, with a high of 44 degrees. In the early evening, Scott and his brother returned to town and ate dinner at

\$270,000 Verdict

Type of Action: Premises liability

Type of Injuries: Aggravation of previously asymptomatic spondylolisthesis at L5-S1 requiring fusion with internal fixation

Court/Case No./Date: St. Louis City Circuit Court/032-00661/Oct. 6, 2004

Caption: Scott v. Bischco, Inc., et al.

Judge, Jury or ADR: Jury

Name of Judge: Jimmie Edwards

Special Damages: \$80,000 medical expense and \$45,000 lost wages

Last Offer: \$200,000

Last Demand: \$425,000

Verdict or Settlement: \$270,000 verdict after allocation of fault

Allocation of Fault: 40 percent to plaintiff, 60 percent to defendants

Attorneys for Plaintiffs: James G. Krispin, St. Louis; Pamela S. Wright, St. Louis

Insurance Carrier: AMCO Insurance Company

Plaintiffs' Experts: James M. England Jr., St. Louis (vocational rehabilitation); Dr. Ravindra Shitut, St. Louis (orthopedic surgeon)

Defendant's Experts: Michael Hayes, Monroe City (building inspector)