

2010 WL 3617260 (La.Civil D.Ct.) (Trial Filing)
Civil District Court of Louisiana.
Orleans Parish

Mary BROUSSARD,

v.

LSU HEALTH SCIENCES CENTER, Medical Center of Louisiana At New Orleans.

No. 2004-17271.
June 8, 2010.

Division "K"

Joint Pre-Trial Order

Respectfully submitted: James D. "Buddy" Caldwell Attorney General, [M. Chadwick Pellerin](#), No. 10390, Assistant Attorney General, 400 Poydras St. Ste 1600, New Orleans, La 70130, Telephone: (504) 599-1200; 599-1212, Attorney for Defendant.

Duval, Funderburk, Sundbery, Lovell & Watkins, [Stanwood R. Duval](#) (27732), 101 Wilson Avenue, Post Office Box 3017, Houma, Louisiana 70361, Telephone: (985) 876-6410, Attorney for Plaintiff.

NOW INTO COURT, through undersigned counsel, comes Mary Broussard and the LSU Health Sciences Center, Medical Center of Louisiana, who respectfully submit the following Joint Pre-trial Order:

1) Names of Parties and Attorneys:

MARY BROUSSARD, Plaintiff
Attorney for Plaintiff:

Stanwood Robert Duval, Esq.

Duval, Funderburk, Sundbery, Lovell & Watkins

P.O. Box 3017

Houma, Louisiana 70361

LSU MEDICAL CENTER

State of Louisiana, Defendants

Attorney for Defendants:

M. Chadwick Pellerin, Esq.

Assistant Attorney General

400 Poydras Street, Ste 1600

New Orleans, Louisiana 70130

2) Summary of Facts by Plaintiff:

On December 8, 2003, Mary Broussard was going to her eye appointment at the LSU Medical Center. She recently had an eye procedure performed there, and she was going for a follow-up visit. While walking in the garage, Ms. Broussard tripped over a yellow bumper curb, causing her injuries. At the time, Mary Broussard was 85 years old. Upon falling, she noted immediate pain and inability to ambulate. She was taken to Tulane hospital via ambulance, where X-rays revealed a right hip fracture. On December 10, 2003, Ms. Broussard had surgery at Tulane hospital. Ms. Broussard remained in the hospital until December 11, 2003. From December 13, 2003 through January 9, 2004, Mary Broussard was at St. Anne Rehabilitation Hospital. From January 10, 2004 through February 17, 2004, Mary Broussard received physical therapy at her home by Lady of the Sea Home Health.

Mary Broussard's medical bills from the accident and injuries are as follows:

Tulane University Hospital and Clinic.....	\$40,248.33
Tulane University Medical Group.....	2,080.00
St. Anne Rehabilitation Hospital.....	26,856.88
Lady of the Sea Home Health.....	3,536.58
TOTAL.....	\$72,721.79

It is the contention of plaintiff that LSU is completely at fault for the accident. The yellow bumper which Ms. Broussard tripped and fell over was in the middle of the garage, where no cars were allowed to park. Furthermore, the bumper was placed on a yellow-striped line. There were several of these yellow-striped lines next to where the one where she fell. The yellow bumper on top of the yellow line created an optical illusion making it difficult to see the yellow curb of the bumper. Furthermore, there was no marker on the curb to help someone see it. Yet there were markers on other curbs in the garage. Furthermore, as this parking garage was part of the LSU Eye Clinic, it was reasonably anticipated by LSU that people parking in their garage would have a difficult time seeing or may have recently had eye surgery.

The fall by Mary Broussard and resulting injuries have caused her much physical pain and discomfort. Furthermore, she has not been able to resume her life activities that she enjoyed doing prior. Ms. Broussard, Murphy Broussard, and Loena Olds will all testify as to these activities.

3) Summary of Facts by Defendant:

Mary Broussard, an **elderly** patient from Cut-Off Louisiana, was walking with her son-in-law, Gary Collins, through the Roman Street Parking Garage at LSU Medical Center, around 9 or 10 a.m. on December 8, 2003. She was scheduled for a follow-up visit with her physician, who had performed a corneal implant ten days earlier. She testified that she was not wearing an eye patch that day and had resumed watching television and reading the newspaper.

She and her son-in-law were walking, hand-in-hand, through a yellow-striped safety zone, when she momentarily looked up to see a passing auto, and fell over a yellow painted parking-bumper, situated over a yellow diagonal stripe on the concrete

floor. She broke her hip and was taken to Tulane Hospital where she remained three days and underwent surgery for her broken hip. She returned to a facility in Raceland for two weeks of physical rehabilitation. Thereafter, she continued home health care until being released from medical care on February 24, 2004. A daughter cared for her for one month during her recovery at home. She is presently 91 years old, walks with a cane, still lives alone, with the assistance of family.

4) Stipulations:

The Defendants will stipulate to medical specials, calculated and paid by Medicare, up until the date of February 24, 2004, when the Plaintiff was discharged by her physician. The Defendants will also stipulate to the lien of one insurance carrier in the amount of \$1,200, and to the Medicare lien, which is approximately one half the amount of the medical specials paid.

The Defendant will stipulate to the photographs taken by Murphy Broussard, and diagram made of the area in question.

5) Possible Stipulations:

The Defendants offer to stipulate to the photographs taken by Mr. Liebkemann, the Defendants' expert.

6) Contested Issues of Fact and Law:

FACTS:

- a) Whether or not a yellow bumper-guard upon which the Plaintiff tripped was clearly marked, and whether it posed an inherently dangerous situation to a reasonably attentive pedestrian.
- b) Whether or not a yellow bumper guard lying across a yellow painted safety-stripe in a safety zone was clearly visible to a pedestrian approaching the area.
- c) Whether or not the safety strip and parking bumper served a social utility as a safety precaution to keep vehicular traffic out of an area where motorbikes and pedestrians traversed.
- d) Whether or not a bumper guard over which Plaintiff tripped was camouflaged to any reasonably attentive pedestrian.
- e) Whether or not Plaintiff should have watched where she was walking, even with the assistance of her son-in-law.
- f) Whether or not Plaintiff relied upon her son-in-law to guide her through the parking area in question, even if she was momentarily distracted by a passing vehicle.
- g) Whether or not there were other reported incidents of falls in the LSU parking garage in the distant history of the building, except Mrs. Broussard's fall.
- h) Whether or not constructive notice of a dangerous area in the LSU parking garage would have required the parking office to remedy changes to the parking area where Plaintiff fell.

LAW:

- a) [La. R.S. 9:2800](#) requires the Plaintiff in bringing a premises liability suit against a governmental entity, either under the theory of negligence or strict liability, to prove that damages caused by a condition of its premises or an object was (1) in the care and custody of the public entity, (2) was inherently dangerous, (3) that the public entity had actual notice or constructive

notice of the particular vice or defect of the object that caused damage prior to the occurrence, and (4) that the public entity had a reasonable opportunity to remedy the defect and failed to do so.

b) Comparative Fault, [Civil Code Art. 2323](#), Section A:

“A. In any action for damages where a person suffers injury, death or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, including but not limited to the provisions of the Worker's Compensation Act (La. R.S. 23: 1032, or that the other person's identity is not known or reasonably ascertainable.

If a person suffers injury, death or loss as a result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death or loss.”

c) [La. R.S. 13:5101, et. seq.](#) Limitations of Liability to public entities, including the limitation of general damages, costs and interest, jury bond, etc.

d) [La. R.S. 9:2798.1](#), the Discretionary Acts Statute. Plaintiff disputes that this law applies to this case.

e) [La. C.C. Art. 2315](#) provides that every act of man that causes damage to another obliges him by whose fault it happened to repair it.

f) [La. C.C. Art. 2322](#) provides:

“The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by **neglect** to repair it, or when it is the result of a vice or defect in its original construction. However, he is answerable for damages only upon a showing that he knew or, in the exercise of reasonable care, should have known of the vice or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of *res ipsa loquitur*.”

g) [La. C.C. Art. 2317.1](#) provides:

“The owner or custodian of a thing is answerable for damage occasioned by its ruin, vice, or defect, only upon a showing that he knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect which caused the damage, that the damage could have been prevented by the exercise of reasonable care, and that he failed to exercise such reasonable care, and that he failed to exercise such reasonable care. Nothing in this Article shall preclude the court from the application of the doctrine of *res ipsa loquitur* in an appropriate case.”

7) Defendant's list of witnesses and areas of testimony:

a) Antonio Cassas, employee and Director of Parking Garage of LSU Medical Center since 1998. He *will testify* that the normal chain of authority of incidents, requires the Campus Police to report incidents in and around the vicinity of parking area to his office, and that Mrs. Broussard's incident was the only visitor's incident occurring his since 1998. He will also testify that all parking bumpers and striping in the parking garage were re-painted by January, 2003, 8 months prior to Plaintiff's incident.

b) Hazel Babin, an employee of the parking office at the time of the incident, will testify by *deposition* that she saw the Plaintiff immediately after the incident. Ms. Babin will testify that she inquired as to what happened, and heard the Plaintiff's relative to tell Plaintiff to keep quiet. She will also testify that in the history of her employment, she had never heard, nor experienced, nor was requested to investigate whether any visitor was injured in the parking lot.

c) Robert Griffin, an employee of the parking office, will testify by *deposition* that he was on duty as a parking booth attendant on the day of the Plaintiff's fall, but did not witness the incident. He will testify that in the over 15 years of his employment at the Medical Center, he never heard nor experienced a fall by any other visitor to the parking lot.

Plaintiffs list of witnesses and areas of testimony:

a) Mary Broussard will testify as to the events surrounding her accident, the treatments she received and how it has affected her life.

b) Gary Collins will testify as to the events surrounding the accident, and the treatment received by Mary Broussard and how it affected her life.

c) Murphy Broussard will testify as to the medical treatment received by Mary Broussard and how it affected her life.

d) Sturgeon Broussard will testify as to the medical treatment received by Mary Broussard and how it affected her life.

e) Leona Olds will testify as to the medical treatment received by Mary Broussard and how it affected her life.

8) Defendant's list of Expert Witnesses and field of Expertise:

a) Fred Liebkemann, Louisiana Licensed Professional Mechanical Engineer *will testify as a Safety Engineer*. He will submit photographs and documents that the parking bumper is painted a safety yellow in contrast to the grey concrete floor, observable to any reasonable pedestrian walking into this safety zone. He will testify that the bumper serves as a safety device to hinder vehicular traffic entering the safety zone for pedestrian and motorcyclists, and complies with applicable New Orleans Building Code.

Plaintiff's Expert

a) Wilfred Gallardo, an expert in Safety is a certified Safety Specialist with the World Safety Organization. He has worked as a safety consultant since 1977, and he has been qualified as an expert in safety on numerous occasions. He will submit photographs and he will testify as to Safety regulations and as to why the bumper is unreasonably dangerous.

9) List of Defendant's Exhibits:

a) Assorted blown-up photographs taken by Murphy Broussard and Fred Liebkemann

b) Selected sections of depositions of Gary Collins and Mary Broussard

c) Any other evidence offered by the Plaintiff

d) Any other evidence to be offered in rebuttal

Plaintiff's list of Exhibits:

1. Medical Bills
2. Medical Records of Tulane University Hospital & Clinic
3. Medical Records of St. Anne Rehabilitation Hospital
4. Medical Records of Lady of the Sea Home Health Agency
5. Photos of Accident Scene
6. Plaintiffs Expert Report and photos - Report of P&W Safety Consultants, Inc.
7. Any discovery in this matter.
8. Any evidence listed by another party.
9. Any evidence to be offered in rebuttal.

10) Objections to Plaintiff's Exhibits:

- a) Use of any materials offered by Plaintiff's Expert as to reliance on codal authorities or opinion as to the nature of the parking bumper.

11) Medical Summary:

Mary Broussard remained in Tulane Hospital for three days for hip surgery, transported to a Raceland Hospital for rehabilitation for two weeks and home health thereafter, and released within 3 months post accident, with no apparent residual permanent disability, resuming normal activities within three months for a person of her age and stamina. Medical Specials are estimated at \$72,000, reduced almost one-half by Medicare. Plaintiff's suspected costs are 20% of the \$40,000 (Medicare's approval of \$72,000 medical specials) or \$8,000 to \$10,000 actually paid by the Plaintiff.

It is the contention of Plaintiff that Defendant has no authority to reduce the medicals to what the lien is or to what was actually paid by Plaintiff.

12) Citations, authorities and quantum:

Citations:

[La. R.S. 9:2800](#)- Limitation of Liability of Public Premises
[Civil Code Article 2323](#), Comparative Fault

[La. R.S. 13:5101, et. seq.](#) Limitation of Liability for public agencies Regarding \$500,000 cap on damages, costs, interest, jury bond.

[La. R.S. 9:2798.1](#), the Discretionary Acts Statute.

Quantum studies: Fractured hip or Pelvis, no complications:

Lower end:

\$36,500 general damages; medical specials- \$12,000:

Female pedestrian broke hip by tripping over a parking guard and was transported to a hospital by ambulance, apparent no residual problems;

Irsch v. Argonaut Great Central Insur. (La. App. 5 Cir. 1/28/03), 841 So.2d 831

\$55,000 general damages; 71 year old woman- hip surgery to repair broken hip, complaints of residual pain; appellate court held award "modest."

Mouhout v. Twelfth Street Baptist Church (La. App. 3rd Cir. 2/7/07, 949 So.2d 668).

Middle Range:

\$108,072 total award; **Elderly** man struck by automobile, suffered fractured pelvis, with lengthy recovery.

Ragland v. Hodge, La. App. 2nd Cir. 12/8/99, 748 so.2d 567

\$95,000 General Damages; Broken leg and pelvis, leg scarring requiring plastic surgery. *Sure v. Jefferson Parish School Board*, 601 So.2d 718 (La. App. 5th Cir. 1992)

\$100,000 General Damages; Six-year-old boy injured in connection with bicycle accident with a motorist.

Jones v. Hawkins 708 So.2d 749, 29,914 (La.App. 2 Cir., 1998)

\$100,000 General Damages; Nurse negligently padded patient's left knee during hip replacement surgery resulting in peroneal palsy in her leg and foot.

Pommier v. ABC Ins. Co. 715 So.2d 1270, 1997-1342 (La.App. 3 Cir., 1998)

Higher Awards:

\$200,000 General Damage; 69-year-old woman with fractured hip and other trauma and ensuing complications until her death. *Fowler v. Western Union Tel. Co.* 357 So.2d 1305 (La.App., 1978)

\$150,000 for general damages and \$85,632 for special damages;

A resident was entitled to damages for subsequent falls she suffered after hip surgery

Thibodeaux v. Stonebridge, L.L.C. 873 So.2d 755, 757 (La.App. 5 Cir., 2004)

\$200,000 for total award; Woman incurred a fractured hip, requiring two surgeries with a 10-25% permanent residual impairment.

Pate v. Skate Country Inc. La. 4th Cir. 10/9/96; 682 So.2d 288.

\$175,000 for General Damages; Passenger incurred several serious injuries suffered in car accident, sustaining a fractured pelvis, resulting in permanently displaced hips had been taunted by schoolmates as the result of his "twisted" walk.

McBride v. State Farm Mut. Auto. Ins. Co. 815 So.2d 249 (La.App. 5 Cir., 2002)

Plaintiff adds the following case:

Award of \$250,000 in general damages was appropriate for a visiting salesman who fell from an unsecured ladder that was leaning against vessel; salesman suffered subcapital fracture of right hip that required five canulated screws, salesman still possessed slight limp 30 months after accident, salesman underwent months of physical therapy, salesman was in constant pain, and salesman had been unable to perform many activities he had regularly performed around the house. *Fromenthal v. Delta Wells Surveyors, Inc.*, 776 So.2d 1 (La.App. 4 Cir. 10/4/00), *writ denied by* 787 So.2d 317 (La. 3/16/01).

13) Suggested Jury Charges: Attached herein as Exhibits

14) Suggested Jury Interrogatories:

1) Do you find by a preponderance of the evidence that the Plaintiff proved the LSU Medical Center's parking garage had an unreasonably dangerous area the Plaintiff traversed into?

Yes

No

If you answered yes to the above question, continue answering the remaining questions.

If your answer is no, the Interrogatories should be signed and returned to the Judge.

2) Do you find by a preponderance of the evidence that the Plaintiff proved the LSU Medical Center had notice, or constructive notice, of the unreasonably dangerous area in its garage?

Yes

No

If you answered yes to the above question, continue answering the remaining questions.

If your answer is no, the Interrogatories should be signed and returned to the Judge.

3) Do you find by a preponderance of the evidence that the Plaintiff proved the LSU Medical Center had a reasonable opportunity to remedy the unreasonably dangerous parking area in its garage?

Yes

No

If you answered yes to the above question, continue answering the remaining questions.
If your answer is no, the Interrogatories should be signed and returned to the Judge.

4) Do you find by a preponderance of the evidence that someone, or something else, contributed to or caused Plaintiff's injury?

Yes

No

If you answered yes to the above question, continue answering the remaining questions.
If your answer is no, go to Question 8.

5) Do you find by a preponderance of the evidence that another person, other than Plaintiff, contributed to Plaintiff's injury?

Yes

No

6) Do you find by a preponderance of the evidence that Plaintiff contributed to her own injury by looking away as she walked into a parking guard?

Yes

No

7) In what percentages do you find the fault, of any of the following parties, contributing to the Plaintiffs injury?

Defendant, LSU Medical Center _____%

Another Person _____%

Plaintiff _____%

(Must total 100%) _____%

8) What amount of dollars and cents will compensate plaintiff for her injuries?

General Damages, including past and future Pain and suffering and enjoyment of _____
life

Plaintiff would propose:

General Damages:

Past, present and future pain and suffering	\$ _____
Past, present and future loss of enjoyment of life	\$ _____
Past present and future mental anguish	\$ _____
Total	\$ _____

Medical Specials have been stipulated to by the parties

Please sign below and return to the Courtroom.

Signature of the Foreperson

Date

Respectfully submitted:

JAMES D. "BUDDY" CALDWELL ATTORNEY GENERAL

BY: <<signature>>

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