

\$4.6M verdict in 25 minutes

Jury undeterred by lack of video, signs of brain injury in falling-chair case

By: Douglas Levy in News Stories October 5, 2015

A 58-year-old woman suffered a traumatic brain injury when a lawn chair fell on her head at a Livonia CVS drugstore.

But the plaintiff's MRI showed no signs of neurological injuries and the store said it had no surveillance video of the incident.

"It was going to be tough to get good money, and we knew that going in," said Robert M. Raitt, who represented the plaintiff in *Thomas v. Woodward Detroit CVS LLC*.

So Raitt said his strategy was to focus on his client's credibility, three neurology experts' knowledge, and a CVS assistant manager's conflicting testimony, which he said amounted to "the defendant's lying and not accepting responsibility."

On Sept. 3, a Wayne County jury took only 25 minutes to decide that CVS was negligent and to award the plaintiff \$4,616,000.

A Verdicts & Settlements report on the case can be found [here](#).

Looking past MRIs

Raitt said the biggest challenge at trial was proving how much damage a falling chair would cause when striking a person on the head and how a TBI could be manifested if the MRIs did not show it.

The plaintiff claimed she asked the CVS assistant manager to help get a lawn chair that she couldn't reach from an aisle's top shelf. The assistant manager reached to handle the stack while the plaintiff leaned over to look at a lower shelf. As she did this, several chairs, and metal storage bins tumbled down, striking her on the hand and the head.

Raitt said the plaintiff testified that she was not knocked unconscious by the falling chair. Rather, she went down to her knees, saw black for a second or two and was a bit out of it.

He added that after the incident, the plaintiff drove herself to the ER, complaining of headaches. She was not bleeding. There was no bruising or signs of swelling on her head. Her neurological evaluation was benign and the ER doctor who testified as a defense witness said the injury was trivial.

Raitt, who tried the case with Alison F. Duffy, both of Michigan Auto Law in Farmington Hills, knew that to prevail, the jury would need additional information.

So Raitt had two neurologists, and a neuropsychologist, explain how TBI occurs and its disabling effects, even when the MRIs show no deficits.

The plaintiff, her family, and a co-worker then described the injury's life-altering effects with before-and-after examples.

"It turned her life completely upside down. And we had to juxtapose that with something where, basically, we had a bump on the head," Raitt said. "She did try to go back to work for a month, but between the cognitive problems and the headaches, which were daily and often severe, she just couldn't do the job."

He said the plaintiff testified that she couldn't drive, be with grandkids or think straight. She had to leave herself sticky-note instructions throughout house, after her memory deficit caused her to start a stove fire.

Raitt said that resonated with the jury when it came to the question of future damages, "because I don't think there was anyone in that courtroom who didn't think she would have problems the rest of her life."

Raitt said her credibility was further enhanced because she did everything she could do to get better, such as treating for three years and not "waiting at home on the couch to collect. ... Those types of things usually impress juries."

Not following procedure

Raitt added that attacking a defendant's inconsistent testimony also makes an impression on jurors, which is what he said he did when the CVS assistant manager took the stand.

He said the assistant manager testified to the jury that the chairs were on a lower shelf and not the top one. In addition, she said that the chairs didn't fall atop the plaintiff, but rather leaned onto her because they were stacked like record album covers, and couldn't cause a head injury that way.

But Raitt said he turned to the assistant manager's depositions, where she testified that the chairs were on the top shelf of the aisle, approximately 6 feet above the ground. He also pointed to her incident report, which noted that the chairs were "flying objects" that fell and hit her.

"That aggravated the jury," Raitt said. "It was bad enough that she came in and lied about the chairs' placement, but she couldn't dispute the fact that her own incident report said 'flying objects' and 'falling objects,' so that weighed against her."

Raitt said he also used a corporate planning guide as an exhibit. The guide had a photo of how the chairs should be set on a middle or lower rack, and should have special clips used to affix them to the bin. He argued that because the store didn't follow the guide, its safety procedures weren't followed either.

He added that the assistant manager also testified in depositions and at trial that she didn't know whether the clips were used, "which you can infer they weren't, because if they were, she would have told us."

Let's not go to the video

Lastly, Raitt made an argument regarding the store's video surveillance system, although he said he wasn't planning to bring that aspect up for trial.

But all 12 participants at a mock trial he conducted wanted to know whether the store had video of the incident. At interrogatory, he asked the defense about it, for which the defense replied that no video picked up the accident.

"So we simply made the argument to the jury at closing, that if [the plaintiff] had stolen a pack of gum, we would have video of it," he said. "I mean, why do you put video surveillance in? You don't do it to only show part of the store. And I got a lot of nods from the jury."

Raitt added, "On the door they have the big sticker about video surveillance, warning people, and there were at least six cameras inside. It just didn't bode well for them."

He said that at closing, the defense did not talk damages or liability, and instead maintained that the store did nothing wrong, "but the jury just didn't buy it."

The jurors needed just 25 minutes to reach its verdict, which Raitt said was the most remarkable part of the trial.

"I mean, to fill out the form, which was nine questions, takes 25 minutes," he said, "They only asked for the exhibits, and I was told by the jury afterward, 'We kind of knew what we were going to do going in.'"

Dean A. Etsios of Kitch Drutchas Wagner Valitutti & Sherbrook in Detroit, who represented CVS, did not return a request for comment.

In an email, CVS spokesman Mike DeAngelis said the company "respectfully disagree[s] with the jury verdict and are considering our options for filing post-trial motions and an appeal."

If you would like to comment on this story, email Douglas Levy at douglas.levy@mi.lawyersweekly.com.