THE CHARTWELL LAW OFFICES, LLP

Another Big Win for Chartwell Partner John Wutz

In his fourth straight jury trial victory on behalf of a Chartwell client in a premises liability case, John M. Wutz, Esquire of Chartwell’s Philadelphia, Pennsylvania and Moorestown, New Jersey offices, obtained a complete defense verdict on behalf of PetSmart, Inc. in the case of *Kim Yazujian v. PetSmart, Inc., et al.*, in the United States District Court for the District of New Jersey. After a six day trial in Newark, NJ, the jury returned a unanimous verdict in favor of PetSmart and against the plaintiff. During trial, Mr. Wutz was also successful in having Plaintiff’s liability expert, Robert Loderstedt, precluded from testifying pursuant to the Supreme Court’s decision in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

The plaintiff was a volunteer for one of PetSmart’s adoption partners who arrived at the PetSmart store before it was open to the public, and during a heavy snowstorm. The plaintiff claimed that when she first walked into the store there were no wet floor signs, which was not unusual given that the store was not yet open for the public. After completing her volunteer duties, at approximately 10:30 a.m., the plaintiff walked from the adoption center to the cat food aisle where she selected cans of cat food. She returned to the adoption area, then again visited the cat food aisle. While in the aisle, the plaintiff slipped and fell on a six inch puddle of clear water, which she believed was tracked into the store from the on-going snow storm. As a result of the incident, the plaintiff sustained a comminuted displaced patella fracture and dislocated knee, which required open reduction internal fixation. Plaintiff remained hospitalized for four days and received follow-up care for many months. At the time of trial, she continued to complain of pain and swelling in the knee. Her last settlement demand at trial was for $750,000.00.

In support of her claims, the plaintiff retained the services of a self-described “retail safety expert,” Bob Loderstedt, who opined that PetSmart violated the “customs and practices of the industry” by, among other things, allegedly failing to perform more frequent scheduled inspections during inclement weather, failing to keep logs to document the completion of inspections, failing to have more frequent mopping of excess water at the entrance/exit of the store and failing to use umbrella bags for customers at the entrance of the store. According to Mr. Loderstedt, PetSmart’s failures to comply with “industry customs and practices” caused the plaintiff’s incident.

Mr. Wutz filed a motion *in limine* to preclude Mr. Loderstedt’s testimony arguing, first, that Mr. Loderstedt lacked the requisite qualifications to testify as a “retail safety” expert and, second, that his ultimate opinions lacked the requisite factual predict for admissibility in federal court. Following a two and a half hour *Daubert* hearing, the Court agreed.

As to his purported qualifications, Mr. Wutz was able to get Mr. Loderstedt to admit that he had no prior experience in the retail industry with the exception of a short stint as a “stocker” while in high school in 1964-1965. Mr. Loderstedt admitted that his only retail experience in the past forty years was shopping at stores and reading a number of retail store manuals and policies in the context of litigation. His background was actually in sales and marketing in the fork lift and communications industries, followed by work for plaintiffs’ attorneys in forklift accident cases.

In approximately 2005, Mr. Loderstedt entered into a deal with another purported “retail safety” expert, who was getting ready to retire. As part of the agreement, Mr. Loderstedt was provided with approximately one hundred and twenty manuals and written policies of various retailers in the United States. He also traveled to retail stores with to “observe” safety issues in the stores. In return, Mr. Loderstedt provides a percentage of all his fees from “retail cases” to the retired expert. This, according to Mr. Loderstedt himself, was the extent of his training and experience as a “retail safety” expert.

As to the factual predicate for his opinions, Mr. Wutz established that there were no actual standards for the retail industry and that Mr. Loderstedt’s testimony regarding industry “customs and practices” came from his review of the retail manuals and policies he obtained from the retired expert and from other cases on which he had worked as a purported expert for plaintiffs’

attorneys. In other words, he determined what “industry custom and practices” were by reading policies as opposed to any actual standard or experience in the retail industry.

In light of the above, and following the ***Daubert*** hearing, the Court held that Mr. Loderstedt did not have the experience necessary to testify as a “retail safety expert.” The Court further held that Mr. Loderstedt’s opinions lacked the requisite factual predicate to be admissible. His opinions were, according to the court, nothing more than “net opinions” inadmissible under federal law.

The plaintiff presented her case without the testimony of Mr. Loderstedt and Mr. Wutz produced evidence that PetSmart neither created the water to be on the floor nor did it have notice, either actual or constructive, of its existence prior to the plaintiff’s fall. The jury unanimously agreed finding that the plaintiff failed to sustain her burden in proving that PetSmart was negligent and/or caused or contributed to the plaintiff’s incident.

Mr. Wutz frequently represents large national self-insured companies, domestic insurers and the Lloyd’s of London leading and following markets in the defense of premises liability, insurance fraud, wrongful arrest, automobile, products liability and general liability claims. He is admitted to practice before the state and federal courts in the Commonwealth of Pennsylvania, State of New Jersey and State of New York.

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