



## ESSEX COUNTY

## PREMISES LIABILITY

## Ice — Sidewalk — Slip and Fall — Landlord and Tenant

## Icy sidewalk wasn't salted, said tenant with broken ankle

<b>VERDICT</b>	<b>\$665,500</b>
<b>ACTUAL</b>	<b>\$495,000</b>
<b>CASE</b>	Monique Simmons and Lawrence Simmons v. Nelson Ramirez, No. ESX-L-2749-07
<b>COURT</b>	Essex County Superior Court, NJ
<b>JUDGE</b>	Claude M. Coleman
<b>DATE</b>	3/13/2009
<b>PLAINTIFF ATTORNEY(S)</b>	Edward C. Lutz, Edward C. Lutz LLC, Parsippany, NJ
<b>DEFENSE ATTORNEY(S)</b>	Joseph J. Galiastro, Jose B. Moreira, P.C., Kearny, NJ

**FACTS & ALLEGATIONS** At about 6:15 a.m. on Feb. 21, 2007, plaintiff Monique Simmons, 30, an administrator at a surgical center, slipped and fell on ice on the top step of a riser leading to the front walkway of her home in Newark, injuring her ankle.

Simmons sued Nelson Ramirez, her landlord, claiming he had negligently failed to clear the icy walkway. The defense appealed the arbitration award in favor of the plaintiff in the amount of \$240,000.

Plaintiff's counsel argued that, although snow had been shoveled from the sidewalk a week before the accident, no salt was put down thereafter. In fact, argued counsel, the sidewalks had not been salted during the entire winter. During the same week, the temperature had repeatedly dipped below and above freezing and the ice had repeatedly refrozen.

Ramirez, who lived in New York City, had delegated the task of clearing the sidewalks to his friend who also lived in New York, said plaintiff's counsel, asserting that Ramirez had a non-delegable duty to make sure his property was free of ice and was responsible for any inaction by his agents.

The defendant did not dispute that he had not salted the property's walkways but argued that Simmons' own negligence had caused her fall. Simmons had admitted that she had not been using the handrail when she fell and Ramirez asserted that her use of the handrail could have prevented her injuries.

**INJURIES/DAMAGES** *decreased range of motion; fracture, ankle; fracture, distal fibula; internal fixation; loss of consortium; open reduction; osteoarthritis; physical therapy; plate; screws; swelling*

Simmons fell backward, fracturing her left ankle. After her fall, she reached for her cell phone and called her husband, who was inside the house. He took her to the hospital where she was diagnosed with a left distal fibula fracture with disruption of the mortise; she underwent open reduction internal fixation surgery and followed up with physical therapy.

Simmons claimed her plates and screws began to cause her constant pain and swelling and had them surgically removed about a year later. Even after their removal and subsequent physical therapy, she continued to have regular pain, swelling, a pronounced limp and a limited range of motion. Simmons was diagnosed with post-traumatic osteoarthritis and her doctors said that she would require ankle fusion surgery in the next decade.

Simmons' previously active, athletic lifestyle was curtailed and as a result she gained unwanted weight. It became difficult for plaintiff to walk and instead of walking a mile to catch a bus to work daily, as had been her habit before the accident, she had to take a taxi to the bus stop daily.

Immediately after the accident, Simmons had worked from home for six weeks before returning to work with the aid of an assistant; therefore, her lost wage claim was minimal. At trial, she sought damages for past and future pain and suffering, as well as for her disability and impairment. Her husband Lawrence asserted a claim for loss of consortium.

The defense disputed Simmons' claimed injuries, contending that she had recovered well and had sustained no permanent disability as a result of the accident.

**RESULT** The jury rendered a verdict for the plaintiffs, finding that although both Nelson Ramirez and Monique Simmons had been negligent, only Ramirez's negligence was a proximate cause of Simmons' accident and injuries. It awarded the plaintiffs \$665,500.

<b>MONIQUE SIMMONS</b>	\$665,000
<b>LAWRENCE SIMMONS</b>	\$500 past loss of consortium
<b>DEMAND</b>	\$240,000
<b>OFFER</b>	\$100,000
<b>INSURER(S)</b>	Philadelphia Contributionship Insurance Co.
<b>TRIAL DETAILS</b>	Trial Length: 4 days Trial Deliberations: 105 minutes Jury Vote: 7-1 on liability; 8-0 on proximate cause and damages
<b>PLAINTIFF EXPERT(S)</b>	David Basch, M.D., orthopedic surgery, Sparta, NJ
<b>DEFENSE EXPERT(S)</b>	Zafer Termanini, M.D., orthopedics, West Orange, NJ

**POST-TRIAL** After the defense moved for a new trial, the plaintiffs agreed to settle the case for \$495,000 of the defense's \$500,000 insurance policy.