

Uncleaned Floor Causes Woman to Slip and Fall

One Sunday afternoon Martha Collier and her husband, Kevin, went shopping for their son's birthday at the J.C. Penney store in Wellington, Florida. Martha Collier was in her 40's and very fit. She was an exceptional athlete, earning letters in four different sports in high school and accepting a golf scholarship to college. She remained active up until the time she was hurt. She was an avid runner, and as her husband describes, the most coordinated person he had ever met.

However, as Martha turned a corner on the marble tile floor around the jewelry section, this coordinated and fit woman was about to suffer a life-changing injury. Unbeknownst to Martha and Kevin, a person who was never identified, possibly a child or a baby, had gotten sick, and the employees of J.C. Penney had allowed vomit to remain on the floor. A beige-oatmeal

type color, the vomit blended in with the light-colored tile floor. There were no warning cones, no warning flags and, even more significantly, no employee stationed by the vomit to warn oncoming customers.

Just as Martha was about to step in the vomit, an employee from about twenty feet away yelled, "Watch Out!" *(Continued on page seven.)*



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(Continued from page one.)



Attorney Greg Barnhart making a point during the trial.

This distracted Martha, and she stepped directly in the middle of the puddle of vomit. So slick was the vomit on the floor that both of Martha's feet went out from underneath her and she fell violently onto her right side.

Helped to her feet by her husband, Martha was humiliated and embarrassed and experiencing pain primarily in her neck and head. She applied ice packs at the store, then at home, and several days later went to orthopedic surgeon Robert Lins. Dr. Lins ordered a series of MRIs which were read by neuroradiologist Brian Young. These MRIs disclosed that Martha had suffered herniations of two of her thoracic discs, T9-10 and T11-12, and one of her lumbar discs, L4-5.

It was soon determined that Martha was not a surgical candidate, so she was referred to physiatrist Gary DiBlasio by Dr. Lins. She became a regular patient of Dr. DiBlasio and remains one to this day.

Seeking to determine responsibility for what happened, the Colliers asked senior partner, **Greg Barnhart** to represent them and protect their family. A reasonable offer was made by the Collier family to settle the case but J.C. Penney would have none of it. The company maintained that they were not at fault, that the vomit had not been on the floor for any sufficient length of time, and therefore they had no reasonable opportunity to clean it up. Further, they felt that unoperated herniated discs were not significant injuries. The case proceeded to trial, and Greg Barnhart asked SDSBS attorney **D.J. Ward** to co-try the case with him. It was Mr. Ward's first jury trial, and it would become a noteworthy way to start a trial career.

During the discovery phase, the attorneys obtained a copy of *J.C. Penney's Safety Manual*. Because J.C. Penney is a corporation that has been in existence over 100 years, they have come to realize what situations may be dangerous for customers and have incorporated some of that knowledge into their *Safety Manual*. When it comes to foreign substances on the floor of their stores, the manual is clear: employees must "never leave a spill unattended." The defense agreed that the manual contained that language but argued that they did not have the information soon enough to even get someone to the location of the spill. The Colliers, through Greg Barnhart and D.J. Ward, argued that store employees must have known of the spill or else one of them would not have yelled, "Watch Out."

On the issue of damages, the defense hired an orthopedic surgeon from Ft. Lauderdale who makes a significant living testifying for defendants on a weekly basis. He stated that there is nothing wrong with Martha Collier and that her treating physicians had misread the MRIs that showed herniated discs. He argued that, in fact, there were no herniated discs, that she was fine and needed nothing more in her life. This defense doctor did not fare well on cross examination; court observers reported that he was "cut to pieces" when cross-examined by Mr. Barnhart.

On damages, it was Mr. Barnhart's and Mr. Ward's position that Martha Collier was going to live a life of pain, would require future surgery on her lumbar spine, and would be forced out of the work place five to ten years earlier than she otherwise would have. Martha and Kevin work

together in their own insurance agency and through the testimony of Dr. DiBlasio, Greg Barnhart explained to the jury that Martha would indeed be forced from the work place early because her herniated discs would continue to degenerate to the point where her pain would become disabling.

After a week-long trial, the jury returned a verdict for the Colliers in the amount of \$824,200. The defense never raised their offer of \$60,000, and they clearly paid for this hard line attitude. ♦

J. C. Penney's Safety Manual is clear: 'employees must never leave a spill unattended.' They must have known of the hazard or else one of them would not have yelled, 'Watch out!'

The jury returned a verdict for Martha and Kevin Collier for \$840,000.