

To: Verdict Search New York

October 22, 2007

Re: Case submission

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**SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK**

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GAIL COHEN and GERARD COHEN

Index No. 105917/05

Plaintiffs,

-against-

**VIP SHOE RESTORERS, INC., LA BONNE, LLC.,
and MICHAEL A. BURAK, INC.**

Defendants.

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Settlement: **\$ 275,000.00**; On July 27, 2007.

Before Michael Tempesta, Esq. New York County mediation part.

Assigned Justice: Braun, JSC

Plaintiff's Attorney:

Kevin L. Mosley, Esq. and Howard Shafran
SHAFRAN & MOSLEY, P.C.
Empire State Building

350 5th Avenue, Suite 2310
New York, New York 10118
(212) 631-7000

Defendants attorney:

HARMS, MAHON, FINNERAN,
GIALLEONARDO, & WHELAN
Attorneys for Defendant
VIP SHOE RESTORERS, INC.
One Whitehall Street
New York, NY 10004-2109
(212) 248-9100

By: B.J. Finnerman, Esq.

Plaintiff: Gail Cohen's date of birth is September 29, 1956, (making her 49 on date of accident)

Date of Loss: March 15, 2005.

Injury:– Lisfranc dislocation with associated fractures of the bases of the 2nd through 4th metatarsals, the anterior process of the calcaneus and the cuboid.

Plaintiff underwent the following surgery few days after the accident:

- open reduction internal fixation of a Lisfranc fracture dislocation.
- open reduction internal fixation of the second metatarsal fracture

Several months later plaintiff underwent a second surgery to remove, partially, the metal hardware and to correct post operative changes:

- excision of the metatarsal cuneiform fixation screw, third ray.
- debridement of bone spur, dorsal base of the third metatarsal

Plaintiff's liability expert:

Richard G. Berkenfeld, P.E.
175 Great Neck Rd.
Suite 301
Great Neck, NY 11021

Facts: Plaintiff entered VIP Shoe Restorers on the morning of the accident to have a pair of shoes repaired. She testified at deposition that she entered, and was unaware that there was a step a few paces into the store, that led from the vestibule into the main area of the store. She stepped

off of the step, and came down on her foot causing the injury. Defendant Shoe store owner was present. He testified he saw the accident; that plaintiff came into the store, had sunglasses on, stood on the platform for awhile and then tripped over her dog's leash. (It was undisputed that plaintiff had her poodle with her). Defendant also produced one of the shoe shine girls for EBT who testified that plaintiff had been in the store before and further supported that the dog contributed to the fall. (Plaintiff claimed the dog had nothing to do with it, if the case was tried, and the mechanics of the fall were such that the dog could not have contributed). Plaintiff denied ever having been in the store before. Defendant would have claimed at trial that there were signs saying watch your step. Plaintiff denied there were any such signs. The facade of the store had been changed a few weeks after the accident and before a site visit by plaintiff's liability expert, Richard Berkenfeld. Nevertheless, the interior entrance platform dimensions remained the same and engineer Berkenfelds would have testified that the width of the entrance was such that handrails were required under the applicable NYC Building Code. Berkenfeld would also have testified that the single step, from the platform to the main display area of the shoe store was also a NYC Building Code violation and a trap for a person entering the store as it was not consistent with expectations. Engineer Berkenfeld would also have relied upon various industry standards regarding handrails (required as per Building Code when the width of the steps is 80" or more), which were not present, and single steps, which as per the Building Code are not allowed.

There were no lost earnings claimed as the plaintiff continued to work from home as a managers of a clothing business.

Plaintiff's surgeon was Dr. Stuart Katchis, New York, N.Y.

Defendants' examining podiatrist was: Dr. Jeffery Adler, New York, N.Y.

There was a **lien** for \$ 10,500 from Rawlings for medical treatment.

Insurance Carrier: Scotsdale, representing VIP.

Note that MICHAEL A. BURAK was alleged to be managing agent. After discovery, they were dismissed from the case by stipulation. The defense of the owner, LABONNE was assumed by VIP and La Bonne would have claimed owner out of possession.

Please contact the undersigned if you require any additional information.

Thank you,

Kevin L. Mosley

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