

**MIDDLESEX COUNTY****PREMISES LIABILITY**

Negligent Repair and/or Maintenance — Dangerous Condition

**Mall: Pothole was obvious condition, didn't cause injury**

<b>VERDICT</b>	<b>Defense</b>
<b>CASE</b>	Chettra Bryant v. Menlo Park Associates, Menlo Park Mall, Simon Property Group Inc. and Shopping Center Associates No. MID-L-4759-16
<b>COURT</b>	Middlesex County Superior Court
<b>JUDGE</b>	Thomas Buck
<b>DATE</b>	4/30/2018
<b>PLAINTIFF</b>	
<b>ATTORNEY(S)</b>	Alexander J. Kemeny, Kemeny, LLC, East Brunswick, NJ
<b>DEFENSE</b>	
<b>ATTORNEY(S)</b>	Thomas E. Stagg (lead), Stagg, Terenzi, Confusione & Wabnik, LLP, Garden City, NY (Menlo Park Mall, Shopping Center Associates, Simon Property Group Inc.) Michael C. Dombrowski, Stagg, Terenzi, Confusione & Wabnik, LLP, Garden City, NY (Menlo Park Mall, Shopping Center Associates, Simon Property Group Inc.) None reported (Menlo Park Associates)

**FACTS & ALLEGATIONS** On Dec. 26, 2014, plaintiff Chettra Bryant, 59, retired, went to the Menlo Park Mall. As she was walking through the parking lot to the entrance, she tripped over a pothole and fell. She injured her left foot and, she claimed, her right knee.

Bryant sued mall-owner Shopping Center Associates, alleging that negligent maintenance created a dangerous condition. Bryant also sued several other entities but they were dismissed.

A civil engineering expert for Bryant testified that the mall should have known about the existence of the pothole, given the hole's size. The pothole was 4 inches deep and 20 inches wide by 28 inches long and had been there for a sufficient time for it to have been noticed and fixed. The expert did not make an exact estimate of how long the pothole had existed.

Counsel for the mall denied having actual or constructive notice of the pothole at the time Bryant fell. Moreover, counsel argued, the pothole was an open and obvious condition and therefore the mall had no duty to warn of it, and Bryant was comparatively negligent, because she was not keeping an adequate lookout while walking in the parking lot.

**INJURIES/DAMAGES** *Baker's cyst; fracture, foot; fracture, metatarsal; medial meniscus, tear; physical therapy*

Bryant's sister took her to JFK Medical Center in Edison, where an X-ray showed she had a fracture of the fifth metatarsal on her left foot. No injury was detected to her right knee.

For the metatarsal fracture, Bryant's foot was fitted with a cast, which she wore for about six weeks. Afterward, she had physical therapy once or twice a week for about six months.

About a year after the accident, Bryant had an MRI of her right knee which showed a partial-thickness tear of the medial meniscus. She also had a popliteal cyst, or Baker's cyst, which had formed behind her knee.

When the meniscal tear was diagnosed, Bryant had five injections of platelet-rich plasma for pain. She also had physical therapy twice a week for about four months. She did not have surgery on her knee.

Bryant testified that she has ongoing knee and foot pain which restricts her daily activities. She sought damages for past and future medical costs and pain and suffering.

An expert orthopedic surgeon, who examined Bryant and her medical records, testified that her fall caused the meniscal tear.

The mall's counsel argued that Bryant's meniscal tear and cyst were not from the fall, pointing out that she was not symptomatic and did not seek treatment until 18 months afterward. An expert orthopedic surgeon for the defense, who examined Bryant and her records, testified that her knee injuries were degenerative.

**RESULT** The jury rendered a defense verdict.

**TRIAL DETAILS** Trial Length: 3 days  
Trial Deliberations: 1 hour

**PLAINTIFF**  
**EXPERT(S)** David I. Weiss, M.D., orthopedic surgery, North Brunswick, NJ  
Charles Witzak, P.E., building codes, Brick, NJ

**DEFENSE**  
**EXPERT(S)** Arnold T. Berman, M.D., orthopedic surgery, Philadelphia, PA

**EDITOR'S NOTE** This report is based on information provided by defense counsel. Plaintiff's counsel declined to contribute.

—Alan Burdziak

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