

State Trial Courts

VERDICT: Defense as to propane dispensing unit & tank supplier, trip & fall, tank guard rock, fractured/dislocated shoulder. \$50,000 settlement from store.

A Red Lodge jury found 9-3 that Heritage Propane was negligent in connection with injuries sustained by Madeline Glenn in 1/97 in Red Lodge, but 8-4 that its negligence was not the cause of her injury.

Glenn and her husband Donald had parked their suburban in the parking lot of AY Supply. She exited on the passenger side carrying her year-old grandson, walked around a pickup parked directly to the right of the suburban, and tripped and fell over a 16"-2' rock which AY owner Dave Buescher had placed, along with others, around a propane dispensing unit owned by Heritage to protect it from vehicle damage.

Glenn, 62, suffered a fractured and dislocated right shoulder. Dr. Schwarten testified that it was a 4-part comminuted fracture with displacement. The only possible repair was through prosthesis. The parties stipulated to \$29,000 medicals. She had severe permanent impairment of her right arm & shoulder in the form of ROM, strength, and nerve damage.

Judge Jones instructed that the City had adopted Uniform Fire Code §8001.9.3, which specifies type, size, and spacing for guard posts. Glenn argued that the Code required Heritage to provide such guard post systems. Fire Chief Ballard testified that the provision was applicable and that the stones were not in compliance, but acknowledged on cross that he had never informed AY or Heritage between installation of the stones in 4/95 and the fall in 1/97 that they were not in compliance. Heritage safety/technical director Lucas testified that in his view the stones complied with all codes.

Plaintiff's experts: orthopedic surgeon James Schwarten, Billings (video); Red Lodge Fire Chief Jerry Ballard.

Defendant's expert: Heritage Propane safety/technical director Jerry Lucas, Sallisaw, Okla.

Demand at settlement conference, \$150,000 of both AY and Heritage; AY subsequently settled for \$50,000 and Heritage made a \$10,000 offer of judgment 3 months prior to trial. Jury request, \$300,000; jury suggestion, \$0.

Jury deliberated 3 hours 2nd day.

Glenn v. AY Supply and Heritage Propane (Northern Energy), Carbon DV 98-31, 8/30/00.

Calvin Stacey (Stacey & Walen), Billings, for Glenn; James Halverson (Herndon, Sweeney & Halverson), Billings, for Defendants (AIG Claim Services).