

Missouri Lawyers WEEKLY

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Woman who fell in hole at fault for nearly half of her injuries



Antoinette Schlappizzi



Craig Schlappizzi

ed up taking over the whole trial with a vengeance, I would say” said Antoinette Schlappizzi, who represented plaintiff Wanda S. Hardin in the case.

Hardin alleged that DirecTV left the hole during the installation of a satellite dish. Hardin sued DirecTV and Hamilton Properties, the landlord of her apartment complex, for damages related to back and ankle problems. Her injuries eventually required surgery.

The jury found \$47,642 in

damages but reduced that amount by allocating 47 percent of the fault to Hardin. Hamilton Properties was saddled with 30 percent of the liability, while DirecTV received the remainder. Hardin received a net judgment of \$25,250.

Schlappizzi said she disagreed with the submission of comparative fault and argued that the jury should have been instructed to consider whether her client kept a careful lookout. She argued that such a

standard implied both the ability to see and to avoid the condition at issue, something she felt was precluded by tall grass and eye impairments claimed by her client, such as macular degeneration.

“It had been there for at least a couple of weeks, and even the other tenants who lived there weren’t able to see it until after she fell in it because of the way the grass had grown,” Schlappizzi said.

Schlappizzi also took issue

\$47,642 Verdict

PREMISES LIABILITY

- **Allocation of fault:** 47 percent to plaintiff Wanda Hardin; 30 percent to defendant Hamilton Properties; 23 percent to defendant DirecTV. Net judgment of \$25,250 (\$14,292 for Hamilton, \$10,958 to DirecTV)
- **Venue:** Franklin County Circuit Court
- **Case Number/Date:** 12AB-CC00123/Apr. 25, 2014
- **Judge:** David Hoven
- **Plaintiff’s experts:** Andrew Youkilis, Chesterfield (neurosurgery, back surgery); Richard Johnson, St. Louis (orthopedic surgery/ankle surgery)
- **Special damages:** \$29,332 gross, \$6,150 paid
- **Last pretrial demand:** \$300,000
- **Last pretrial offer:** \$20,000
- **Insurer:** American Family Insurance Co. (for Hamilton Properties)
- **Caption:** Wanda S. Hardin v. DirecTV LLC and Hamilton Properties Corp.
- **Plaintiff’s attorneys:** Antoinette Schlappizzi and Craig Schlappizzi, Schlappizzi Attorneys at Law, St. Louis
- **Defendants’ attorneys:** Steven P. Kuenzel Jr. and Steven P. Kuenzel Sr., Eckelkamp Kuenzel, Washington (Hamilton Properties); David Simmons, Greensfelder, St. Louis (DirecTV)

By DAVID BAUGHER

Special to Missouri Lawyers Media

A Franklin County jury divided responsibility among a plaintiff and two defendants in a premises liability case by a woman who stumbled over a hole.

“Comparative fault really end-

with a picture of a hole shown during closing arguments.

“For the entire 40 minutes, they had a photograph of a hole that didn’t have any foundation laid for it as to whether that was in fact the hole,” she said.

Opposing counsel, however, said jurors were instructed properly.

“To me, there was no question. It was up to the jury to decide if she kept a careful lookout or not,” said Steven P. Kuenzel Sr. of Eckelkamp Kuenzel, who assisted his son Steven P. Kuenzel Jr. in representing Hamilton Properties.

The plaintiff contended

in court that she had vision troubles but was not allowed to use the term “legally blind.” Kuenzel Sr. said that Hardin did not produce an expert witness to verify her eye condition, and the defense argued that she was able to do everyday activities such as biking or shopping with no trouble.

“Whatever she did in her life, she did without any assistance,” he said. “No cane. No walker. Nothing like that.”

He said that deposition testimony established that the picture showed during closing was of the hole in question and that it was visible.

“There were photos the plaintiff’s daughter had taken shortly after the incident and there wasn’t an issue with tall grass,” he said.

For its part, DirecTV admitted having done work but denied that they had left an open hole.

“We didn’t accuse Hamilton of digging the hole and Hamilton didn’t know either way,” said David Simmons of Greensfelder, which represented the satellite provider.

Simmons said the incident happened a considerable amount of time after the company had completed work.

“I have no reason to believe she did not step into a hole,” he said. “I just don’t think it was ours.”

Hardin’s medical bills totaled \$29,000, but only about \$6,000 was paid. The defense wanted the medical bills submitted into evidence, but the plaintiffs did not, and the judge ultimately excluded the bills at trial.

Schlapprizzi, who was assisted on the case by Craig Schlapprizzi, said no further action was planned.

“We didn’t appeal it because she is sick and needs her money,” she said. **MO**