

Watts v. Havener (verdict)

DISTRICT COURT

VERDICT: Defense, townhouse stairs fall, ACL.

A Billings jury found 12-0 that Terry & Susan Havener (Rose Condos) were not negligent in connection with injuries suffered by Theresa Watts in a fall down stairs at their townhouse.

Watts, 47, moved into the Rose townhomes in 2/08. She alleged that she gave immediate notice that the stair railing was loose the day she looked at the unit to consider renting it, and gave repeated notices thereafter. On 5/4/08 she fell in the staircase and suffered a torn ACL. She alleged that the loose railing failed to support her when she attempted to use it to abort her fall. She sustained additional falls at work 12/17/10, 2/4/11, and 2/28/11, which she alleged were caused by her unstable knee. She underwent surgery for her torn ACL and surgery for her broken ankle in 2011. She had \$65,000 medical specials.

Watts alleged that a railing bracket was improperly installed on the 3rd of 4 brackets, allowing the railing to move or flex when she grabbed it. The 3rd bracket was screwed only into the sheetrock but the other 3 brackets were secured into the studs. She alleged that Rose was negligent for failing to inspect the railing when it purchased the townhomes (built in 2007) or at any time until she fell. After her fall, Rose moved the 3rd bracket and secured it into a stud, and did this in other townhome units as well.

Rose contended that Watts was already in the process of falling from her failure to use ordinary care, and that the minor movement of the railing (up to 1 1/4" with 200 lbs pressure) could not have caused her fall or prevented it. The Rose owners disputed that she had ever mentioned the railing as a problem. The inspection form that she filled out at the beginning of her tenancy listed 22 "problems" but contained no mention of the loose railing. The owners stated that she never mentioned the railing until the day after she fell. They contended that the City had inspected the homes and that failing to know of an improperly installed bracket in new construction was not negligence. They contended that her 2nd, 3rd and 4th falls were unrelated to her fall at the townhome.

Judge Baugh ruled that §70-24-406 requiring a tenant to give written notice of a defect does not apply to a premises liability claim since Montana law states that no notice of defect is required, that the "knew or should have known" standard applies to a premises liability claim, and that a landlord's premises liability is measured by the reasonable man standard, not the reasonable industry standard. He ruled that if a hospital writes off portions of medical bills, the plaintiff cannot seek from the jury the full bill.

Plaintiff's expert: Dean Swanke, Billings (construction, deposed).

Defendant's expert: biophysicist John Jurist, Billings.

No demand in light of response to claim; offer, 0. Jury request, \$135,000; jury suggestion, 0.

Jury deliberated 1 1/2 hours 3rd day.

Watts v. Havener (Rose Condos), Yellowstone DV 10-774, 8/24/11.

Jeff Turner & Stephen Mackey (Towe, Ball, Enright, Mackey & Sommerfeld), Billings, for Watts; Randall Nelson (Nelson & Dahle), Billings, for Haveners (Mountain West Farm Bureau Mutual Ins.).

