



Plaintiff alleged uneven sidewalk caused his fall

Type: Verdict-Plaintiff

Amount: \$2,225,075.00

State: New York

Venue: Bronx County

Court: Bronx Supreme, NY

Injury Type(s):

- *head* - headaches
- *neck* - sprain, cervical
- *brain* - traumatic brain injury
- *other* - laceration; trigger point injection; scar and/or disfigurement
- *sensory/speech* - vision, impairment
- *mental/psychological* - anxiety; depression; cognition, impairment; memory, impairment; post-concussion syndrome

Case Type:

- *Premises Liability* - Sidewalk; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Trip and Fall

Case Name: Bruce R. Desmond v. East Main Street Property Inc. a/k/a East Main Street Property Co. and 401 East Main Street LLC, No. 21234/2019E

Date: February 18, 2025

Plaintiff(s):

- Bruce Desmond, (Male, 61 Years)
- Dorothy Desmond, (Female, 62 Years)

Plaintiff Attorney(s):

- Joseph Stimmel; Varcadipane & Pinnisi, P.C.; New York NY for Bruce Desmond,, Dorothy Desmond

Plaintiff Expert(s):

- Scott M. Silberman P.E.; Safety; New York, NY called by: Joseph Stimmel
- Victor Zelek Ph.D.; Neuropsychology; Rhinebeck, NY called by: Joseph Stimmel

- Defendant(s):**
- 401 East Main Street LLC
 - East Main Street Property Inc.
- Defense Attorney(s):**
- Aaron C. Gross; Sobel Pevzner, LLC; Huntington, NY for East Main Street Property Inc., 401 East Main Street LLC
- Defendant Expert(s):**
- Rene Elkin M.D.; Neurology; New Rochelle, NY called by: for Aaron C. Gross
 - Pierce J. Ferriter M.D.; Orthopedics; New York, NY called by: for Aaron C. Gross
- Insurers:**
- Hanover Insurance Co.

Facts:

On April 17, 2018, plaintiff Bruce Desmond, 62, a marketing and project manager with Eco-Green Solutions, was walking along East Main Street, in Jefferson Valley, when he fell. Desmond claimed he sustained blunt force trauma to his head, resulting in a brain injury and a severe laceration to his head.

Desmond sued the believed property owners and/or maintainers, East Main Street Property Inc. (also known as East Main Street Property Co.) and 401 East Main Street LLC. Desmond alleged the defendants were negligent in their repair and/or maintenance of the premises and in allowing a dangerous condition to exist.

The matter proceeded to trial against East Main Street Property only.

Desmond claimed he tripped and fell over a raised and uneven section of the walkway or sidewalk.

The plaintiff's engineering expert opined that the subject defect was a tripping hazard. Specifically, the expert opined the defect was small enough for someone not to notice it or appreciate its danger, yet large enough to be dangerous and cause someone to trip on it. He also opined that the subject property's exterior walkway or sidewalk was designed in a dangerous and unsafe manner and that it violated numerous safety and construction regulations.

East Main Street Property's owner, Frank Petruzzo, testified at trial that he constructed the subject walkway years before the accident. However, he admitted that he is not an engineer or architect, never consulted with the appropriate professional, never prepared designs or blueprints for the construction, never obtained construction permits, never placed warnings about the walkway's defect and did not know all the safety regulations he might have to follow. Petruzzo also admitted that the section of the walkway where Desmond allegedly fell was indeed a tripping hazard.

East Main Street Property's counsel blamed Desmond for the accident, arguing that Desmond should have seen or known about the alleged defect and, therefore, could have avoided it. Counsel also did not believe Desmond tripped on the defect at issue. Instead, the defense argued that Desmond tripped further down the walkway because of where Desmond's coffee cup landed after he fell. Counsel also argued that Desmond's fall was caused by his history of significant knee problems, which likely caused his knees to fail or give out on him.

Injury:

Desmond claimed he sustained blunt force trauma to his head, resulting in a traumatic brain injury, post-concussive syndrome, and a severe laceration to his forehead and scalp that required over 20 stitches. He also claimed he sustained a cervical sprain and/or strain. Desmond claimed his residual injuries included post-traumatic headaches, dizziness, blurred vision, depression, anxiety, memory issues and scarring to the forehead and scalp.

Desmond has monthly visits with a neurologist and receives monthly trigger-point injections to the occipital region, trapezius muscles and rhomboid muscles for treatment of his headaches and neck issues. He also undergoes therapy and cognitive rehabilitation exercises. In addition, he sees an ophthalmologist for vision issues.

Desmond claimed he lost approximately 60% to 70% of his pre-accident cognitive functions and that his condition causes him to be unable to work or drive.

Desmond sought recovery of past and future medical costs, past and future lost wages, and damages for his past and future pain and suffering. His wife, Dorothy Desmond, brought a derivative claim, seeking recovery for her past and future loss of consortium.

The defense's medical experts opined that any injuries or residual problems Bruce Desmond suffered from the accident were resolved many years ago. The defense's neurology expert also suggested that Bruce Desmond's history of attention deficit hyperactivity disorder, or ADHD, might explain his problems today.

The defense's experts were unaware that four years after their exam of the plaintiff, Bruce Desmond's own treating doctors were still treating him for the very complaints and problems the defense's doctors believed were resolved.

Result:

The jury found East Main Street Property 100% liable. It determined that Bruce Desmond's damages totaled \$1,675,075 and his wife's damages totaled \$550,000. Thus, the jury verdict totaled \$2,225,075.

Dorothy Desmond

\$ 200,000 Past Loss of Consortium

\$ 350,000 Future Loss of Consortium

\$ 550,000 Plaintiff's Total Award

Bruce Desmond

\$ 50,075 Past Medical Cost

\$ 25,000 Future Medical Cost

\$ 500,000 Past Lost Earnings

\$ 400,000 Future Pain Suffering

\$ 700,000 Past Pain Suffering

\$ 1,675,075 Plaintiff's Total Award

Trial Information:

Judge: Alison Tuitt

Demand: \$1 million (policy limits)

Offer: \$50,000

Trial Length: 13 days

**Trial
Deliberations:** 4.5 hours

Jury Vote: 6-0

**Editor's
Comment:** This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

Writer Jason Cohen