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From the April 24, 2006 Michigan Lawyers Weekly.

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Homeowner liability case gets 'no cause'

Plaintiff more intoxicated than he admitted in testimony

The defendant owned a three-unit rental property in Ionia. On the evening of Feb. 28, 2002, the 29-year-old plaintiff came to the premises to visit the upstairs tenant. Upon leaving the apartment, the plaintiff fell down a common area inside the stairway and injured himself.

The plaintiff had been drinking and a preliminary breath test given by paramedics revealed a .08 blood alcohol content. The parties stipulated to the admissibility of the blood alcohol test results.

The plaintiff suffered a very serious injury to his right lower leg when his leg became entangled in the handrail during the fall. The plaintiff was fitted with an external fixture and had numerous surgeries before the lower leg was amputated approximately 8 months after the accident.

The plaintiff claimed that the stairway was defective because it was too steep, lacked an adequate handrail, was not properly lighted and that the door to the apartment swung out over the landing instead of into the apartment, requiring a person exiting the apartment to step off the landing to open and close the door. The plaintiff claimed he fell while attempting to close the door behind him after he stepped off the landing.

The defendant argued that the plaintiff was more than 50 percent negligent and that his claim was barred in its entirety by MCLA 600.2955a.

At trial, the parties agreed that the first question on the verdict form would be whether the plaintiff had an impaired ability to function due to the influence of liquor or a controlled substance, and that the second question would be whether or not the consumption of liquor or a controlled substance was the proximate cause of the accident. The jury answered "yes" to both questions and, therefore, never did consider the question of whether the defendant was also negligent.

The parties stipulated to medical bills in the amount of approximately \$125,000.

Defense counsel told Lawyers Weekly that the plaintiff has agreed not to appeal in exchange for the defendant's agreement not to pursue costs. He added that the key to success in this case was presenting eye-witness testimony to show the plaintiff was more intoxicated than he admitted to in his testimony and than the blood alcohol test results would suggest.

Type of action: Homeowner liability; trip and fall

Type of injuries: Compound fracture of right tibia and fibula with non-union; below the knee amputation eight months post-accident

Name of case: [Werkema v. Rockafellow](#)

Court/case no./date: Ionia County Circuit Court; #03-M-22981-NO; Jan. 13, 2006

Name of judge: Charles H. Miel

Verdict amount: \$0 (no cause for action)

Allocation of fault: Plaintiff was more than 50 percent at fault

Attorney for the plaintiff: Withheld

Attorney for the defendant: Robert B. Aardema

Name/city of most helpful experts: John VerBrugge, M.D., emergency medicine; Dr. David Galluch, orthopedics

Insurance carrier(s): Auto-Owners Insurance Company

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