

Numero Uno Market Not Liable for Injuries Sustained by Fleeing Shoplifter

Frank D'Oro (Senior Partner/Los Angeles Office) continued his winning ways with a defense verdict in Los Angeles. *Holmes v. Numero Uno Market* was tried between April 25, 2006 – May 5, 2006 in LA Superior Court, and resulted in a defense verdict. Plaintiff Clyde Holmes was a 65-year-old shopper at the Numero Uno Market in South Central LA where he alleges he was injured as a result of being knocked down by a shoplifter that store security had negligently allowed to escape. While shopping on a Sunday morning Mr. Holmes observed store security guards take a suspected shoplifter into custody and into a back room. According to plaintiff, the suspect was able to flee after he was told he was going to be prosecuted because he had detained after being taken off the sales floor. The suspect ran out of the back room being chased by several security guards. Mr. Holmes was on the sales floor directly in front of the back room door and alleges he was knocked to the ground in the melee that ensued when the suspect and security guards ran out onto the sales floor. The allegation of negligence was that the standard of care required a shoplifting suspect be detained in a secure environment, separated from the sales floor after apprehension.

As a result of being knocked to the ground, plaintiff alleged that he aggravated a pre-existing degenerative arthritis in his knee. After a course of physical therapy and steroid injections plaintiff underwent arthroscopic surgery without success. His symptoms continued to deteriorate and plaintiff became a candidate for total knee replacement. Plaintiff was retired and he alleged that his quality of life was severely diminished and he was “hobbled” to the point where he was barely able to walk. He asked the jury for an award of \$450,000.

Store personnel disputed plaintiff's version of how the accident happened. However, the defense was hampered by the fact that the video tape for the store surveillance system was lost and many of the employees involved in the incident had since left their employment with Numero Uno Market. There was also a lack of prior medical records indicating prior knee complaints by plaintiff. The defense argued, and ultimately prevailed on the theory that the degenerative joint disease in plaintiff's knee was so advanced at the time of loss that his testimony that he was asymptomatic before the accident was not credible. The jury therefore found that plaintiff was not a credible witness and found for the defense.