

Local News

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Woman gets \$125,000 in Duluth 'bubble trial'

COURTS: A jury finds the city of Duluth at fault for her injuries after she fell into soap suds in Canal Park.

BY MARK STODGHILL
NEWS TRIBUNE STAFF WRITER

Attorney Robert Boedigheimer said he'll always remember it as "the bubble trial." He'll also be able to remember it as a trial he won for an Eveleth woman.

A St. Louis County jury deliberated for more than nine hours Friday before finding the city of Duluth negligent for injuries that Kathy J. Kelly received when she fell into Canal Park's Fountain of Wind on July 7, 2001.

The jury determined that the city was 70 percent negligent and Kelly 30 percent negligent for her leg injury, resulting in an award of \$125,060.86 for the plaintiff.

A prankster had put up to five gallons of dish soap in the fountain, creating a mountain of soap bubbles 8 feet high and hiding the fountain.

Boedigheimer argued at trial that the city was notified of the soap bubbles by a

phone call from a private citizen at 5:41 a.m., and didn't take any action to clean up the hazard before Kelly fell 4½ hours later.

"Generally, my client is elated, pleased," said Boedigheimer of Bloomington, Minn. "The fact that the verdict is favorable somewhat vindicates her."

Kelly could not be reached for comment.

Kelly, 57, a licensed practical nurse, sued the city, claiming it was negligent by failing to provide a safe condition around the fountain and the sidewalks abutting it.

Kelly is a diabetic. She sustained a laceration to her left lower shin and developed a large gangrene infection. Her attorney said Kelly needed skin grafts and was in danger of losing her leg. There is scarring where the injury occurred. Measures taken to

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save Kelly's leg resulted in \$43,000 in medical expenses, her attorney said.

Boedigheimer said the city offered \$8,000 to settle the case short of trial.

"This wasn't just some made-up, trumped-up way to get money from the city," said juror Brian Borich, a retired St. Louis County child protection manager. "This woman was hurt. ... The more I examined the evidence, it was just clear to me. She wasn't going into somebody's yard, she wasn't going someplace she shouldn't be going. She was going to a tourist area. We proudly talk about Canal Park as a tourist area. People shouldn't have to be on their guard when they are taking a step."

Borich said the fact that Kelly was injured hours after the city was told of the haz-

ard was one of the strongest parts of the plaintiff's case.

"Clearly that was the focus of our closing argument," Boedigheimer said. "Not only did we show they had notice of the dangerous conditions of the sidewalk, they had reasonable time to remedy the situation and failed to do that."

Borich thought the city was 90 percent negligent and Kelly 10 percent negligent. He said the lowest he would go in determining the city's negligence was 80 percent, so he abstained from taking part in the final verdict.

Under civil court rules, six of the seven jurors can arrive at a verdict after six hours of deliberations and Borich's fellow jurors arrived at the 70-30 split on the city's and Kelly's negligence.

The jurors determined that Kelly should be awarded \$37,645.68 for past pain, disa-

bility, disfigurement, embarrassment and emotional distress; \$9,443.20 for past wage loss; \$42,000 for past health care expenses; \$74,569.50 for future pain, disability, disfigurement, embarrassment and emotional distress and \$15,000 for future health care expenses.

The total of \$178,658.88 was reduced to \$125,060.86 because of Kelly's own negligence.

The city is self-insured, which means it pays settlements out of its own insurance fund.

City Attorney Bryan Brown declined to comment on the verdict. He said trial attorney Alison Lutterman will make motions for a new trial based on the court's denial of some of the city's requested jury instructions and law that the city believed gave it immunity from the plaintiff's claims. A decision will be made whether to appeal the verdict at a later date, Brown said.