

Slip and Fall - Defense prevails on liability in a fall on an oily spot at a gas station

Tucker v. Childers Oil Co., 99 CI 0077
Plaintiff: Ned Pillersdorf, Pillersdorf
DeRossett & Barrett, Prestonsburg
Defense: Dale Golden & John Walters,
Golden & Walters, Lexington
Verdict: Zero Verdict
Circuit: Floyd (2), J. Caudill,
2-22-00

Lisa Tucker, age 28, pulled into the BP gas station in Martin on 12-9-98. The station is owned by Childers Oil Company. She pumped her gas and went inside to pay for it. As Tucker returned to her car, she stepped over a concrete island, and back to the surface of the parking lot. At that moment, she slipped and fell on an oily spot.

Tucker, a housewife, fell hard sustaining a comminuted wrist fracture. A surgery to set the fracture was performed by Dr. David Jenkinson, Orthopedics, Prestonsburg, who used an external fixator. Despite that surgery, pain symptoms in her hand and fingers continued, with Jenkinson noting the development of an RSD condition. Her medical bills were \$14,200 and she also sought \$200,000 for suffering.

In this action, she sued Childers for negligence, citing the oily hazard in the parking lot. In support, there was proof from her father, who had visited the gas station a few hours earlier. He noted at that time, that there was also oil on the ground, supporting the idea the condition existed long enough for the defendant to be aware of it.

Childers Oil denied negligence and impeached father's version, noting that he identified the oily spot on a different area of the parking lot than where his daughter fell. In his deposition, Dr. Daniel Primm, Orthopedics, Lexington, noted the comminuted fracture was well healed; before doing so, he first described his volunteer work at an orphanage in India.

On cross-examination, Primm was asked whether it was accurate that he had testified in twenty trials in 1998, all for defendants as noted in the *KTCR 1998 Year in Review*. Primm replied that he wasn't sure what a trial lawyers publication like the KTCR had to say, as it is "a biased kind of thing." On further exam, he finally conceded that a majority of his exams are for defendants. See the *KTCR 1999 Year in Review*, page 78, which describes Primm's forty-four IME appearances in 1998 & 1999. Not only were a majority for defendants, each was.

Primm aside, the jury was instructed as to the duties of the oil company. To prevail, plaintiff had to prove (1) she fell because of the slippery substance, (2) the parking lot was not in a reasonably safe condition and (3) it existed long enough that the defendant knew or should have known it. No deviation was found and the panel didn't reach Tucker's duties or apportionment, awarding her nothing. A judgment has been entered for Childers Oil.