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DAILY BUSINESS REVIEW

NEGLIGENCE Law firm found partly liable

\$1.2M awarded to man who tumbled from chair

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The Florida Supreme Court on Thursday reinstated a \$1.2 million negligence award to a man who was injured when he fell out of a law firm's chair during a consultation about filing a car crash lawsuit.

The court split 5-2 in favor of Robert Friedrich, ruling the Fourth District Court of Appeal "impermissibly reweighed" the testimony of expert witnesses. The majority said the Fourth District should not have ordered the trial court to set aside the jury verdict and enter a decision in favor of the defendant.

Friedrich was in the West Palm Beach office of personal injury firm



The victim struck the back of his head on furniture, "saw a flash of light and felt a big bang, like a shock through his body," according to his appellate attorney, Rebecca Mercier Vargas.

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CHAIR: Plaintiffs bar claimed precedents ignored

Fetterman & Associates in 2003 when his chair collapsed as he was reading a retainer contract with an associate.

Friedrich struck the back of his head on furniture, "saw a flash of light and felt a big bang, like a shock through his body," according to a description to the court by his appellate attorney, Rebecca Mercier Vargas of Kreusler-Walsh, Compiani & Vargas in West Palm Beach.

He complained of severe back pain, extremity numbness and other injuries. In 2006, he underwent a four-level spinal fusion surgery, which alleviated most of his symptoms.

At trial, plaintiffs expert Tony Sasso testified that a hands-on inspection should have found the weak joint in the chair. Defense expert Farhad Boeshaghi disagreed.

Several times during trial, Fetterman asked Palm Beach Circuit Judge Timothy McCarthy to render a verdict in the law firm's favor because Friedrich had not proven his case. McCarthy refused.

The jury awarded more than \$2.2 million, but because of the various fault and damages issues, the final judgment against Fetterman was reduced to \$1.2 million, said plaintiffs trial attorney Scott B. Smith of Lytal, Reiter, Smith, Ivey and Fronrath in West Palm Beach.

Brandon Home Furnishings, which sold the chair, was found two-thirds liable. The jury also found the auto accident—Friedrich's vehicle was rear-ended by a dump truck—caused 25 percent of the damages. An out-of-court settlement was reached with the trucking company, Smith said.

"Brandon had gone bankrupt, but in 2003 Florida still had joint and several liability," Smith said. "Because of that, the judge was able to apply a sliding scale and entered \$1.2 million, more like half the total judgment, against Fetterman."

The Florida Justice Association, which represents the plaintiffs bar, submitted a friend of the court brief because the Fourth District opinion was so contrary to established law, Smith said.

"Their concern was the safety and well-being of citizens. They felt the opinion watered down the duty of premises owners to invitees and guests," Smith said.

Justice James E.C. Perry's opinion said the Fourth District could not reweigh the evidence or substitute its judgment about the credibility of witnesses where the experts gave conflicting evidence about causation.

Chief Justice Ricky Polston dissented, with a concurrence from Justice Charles Canady.

Polston noted the plaintiffs witness on cross-examination had no opinion on how quickly the failure in the chair joint occurred.

"The weakened condition could have manifested in a matter of seconds, minutes, hours, days or weeks prior," Polston said. "This expert conceded that the defect may not have been detectable by an inspection until just before the collapse."

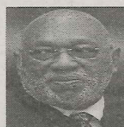
Polston also disagreed with the majority finding that the case directly conflicted with others involving defective chairs. "The circumstances are entirely different because the defect was hidden, a visual inspection would not have revealed the defect," he wrote.

Fetterman's attorney, Elizabeth Russo of the Russo Appellate Firm in Miami, did not respond to a request for comment by deadline.

Friedrich, 48, lives in Port St. Lucie with his wife, Smith said. Before the accident he worked for Florida Rigging

& Hydraulics Inc. in Riviera Beach, assembling sailboat rigging. He has since started a similar business but with limited success.

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Perry



Polston