

**NEGLIGENT MAINTENANCE**

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**Negligent Repair – Slips, Trips & Falls – Trip and Fall – Pothole**

**City ignored reports of pothole, plaintiff claimed**

**VERDICT**                    **\$116,000**  
**ACTUAL**                    **\$52,200**

**CASE**                      Nora Concha v. The City of New York, No.  
   102632/08  
**COURT**                    New York Supreme  
**JUDGE**                    Carol E. Huff  
**DATE**                      2/2/2012

**PLAINTIFF**  
**ATTORNEY(S)**            **Adam Handler**, New York, NY

**DEFENSE**  
**ATTORNEY(S)**            **Tanisha Byron**, Senior Counsel, Michael A.  
   Cardozo, Corporation Counsel, New York, NY

**FACTS & ALLEGATIONS** On Dec. 15, 2006, plaintiff Nora Concha, a 64-year-old unemployed woman, tripped in a crosswalk of the intersection of Ninth Avenue and West 24<sup>th</sup> Street, in Manhattan. She fell, and she claimed that she sustained injuries of the knee and several fingers.

Concha sued the sidewalk’s owner, the city of New York. She alleged that the city was negligent in its maintenance of the sidewalk. She further alleged that the city’s negligence created a dangerous condition.

Concha claimed that she tripped in a pothole. Her counsel contended that the defect was documented by a map that was created by Big Apple Pothole and Sidewalk Protection Corp. He claimed that the map had been delivered to the city in 2003, and, as such, he argued that the city was aware of the defect. He claimed that a citizen reported a pothole’s presence several months prior to Concha’s accident.

Defense counsel contended that a pothole would have been an open, obvious condition that an attentive person would have been able to avoid. She also contended that the city’s records indicated that a work crew had repaired the pothole that the citizen reported, but Concha’s counsel contended that the crew had not repaired the pothole that caused Concha’s fall.

**INJURIES/DAMAGES** *arthritis; avulsion fracture; decreased range of motion; fracture, finger; fracture, phalanx; knee*

Concha was placed in an ambulance, and she was transported to St. Vincent’s Hospital, Manhattan. Doctors observed that she had sustained an avulsion fracture of the volar base of her left,

nondominant hand's middle finger and an avulsion fracture of the distal and medial phalanges of the same hand's fourth finger. She underwent minor treatment.

Concha claimed that she also sustained an injury of her left knee, and she contended that the knee developed trauma-induced arthritis. She underwent about 10 months of constructive treatment that was typically rendered once or twice a week. Concha's expert orthopedist opined that the knee's joint space has been diminished, with an accompanying loss of cartilage, and that arthroscopic surgery may be necessary. Concha claimed that the knee remains painful.

Concha's fractures healed, but she contended that the affected fingers have not regained their full range of motion.

Concha sought recovery of her past and future medical expenses and a total of \$300,000 for her past and future pain and suffering.

The defense's expert orthopedist opined that Concha's left knee's injury was a result of a degenerative condition that was not related to the accident. He also opined that her fractures have healed.

**RESULT** The jury found that the city was negligent, but Concha was assigned 55 percent of the liability. The jury determined that Concha's damages totaled \$116,000, but the comparative-negligence reduction produced a new recovery of \$52,200.

<b>NORA CONCHA</b>	\$26,000 past medical cost
	\$65,000 past pain and suffering
	<u>\$25,000 future pain and suffering</u>
	\$116,000

<b>DEMAND</b>	\$185,000
<b>OFFER</b>	\$15,000

<b>TRIAL DETAILS</b>	Trial Length: 2 weeks
	Trial Deliberations: 3.5 hours
	Jury Vote: 6-0

<b>PLAINTIFF</b>	
<b>EXPERT(S)</b>	<b>Barry M. Katzman, M.D.</b> , orthopedics, Mineola, NY

<b>DEFENSE</b>	
<b>EXPERT(S)</b>	<b>Julio V. Westerband, M.D.</b> , orthopedic surgery, Bronx, NY

**EDITOR'S NOTE** This report is based on court documents, information that was provided by plaintiff's counsel and information that was provided by defense counsel.

*-Max Mitchell*