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rent. Home had a spa in the backyard, covered by a plastic leaf cover. Pntf alleged Dfnt Krasnick advised him she was in the process of obtaining bids to erect a wrought iron fence around the spa, and the fence was to be completed by August 1st, the date of Pntf's expected move in. Pntf also alleged Dfnt Krasnick's promise to build a grate over the spa, drain the spa, and erect a fence around the spa, was noted in the lease agreement. Pntf read portions of his mother's deposition, which indicated she had overheard the conversation, wherein Pntf was promised a grate over the spa. On July 23rd, Pntf paid \$8,000, and alleged he was told he could move into the home. While Pntf was hosing down a portion of the backyard, he stepped backwards, stepped on the plastic leaf cover over the spa, and fell into the spa. (Pntf planned to call a San Diego pool expert, who was prepared to testify the spa violated the 1967 city ordinance, the 1983 City County Pool Code, various uniform building codes, and the Department of Environmental Quality codes. It was the pool expert's opinion the spa became a semi-public pool on the day the lease was signed, because Pntf planned to use the property to care for disabled men. Dfnts argued the lease became effective on August 1st, which was the agreed date on the lease. Dfnts also argued the spa was not subject to any of the codes identified by Pntf's pool expert, because the property was not annexed into the city, until 1988, and was grandfathered in by the 1983 City County Pool Code, and other codes were inapplicable, because they post-dated the building of the spa. Court ruled to exclude Pntf's pool expert, on the grounds inapplicable building codes were used, and the city and county ordinances were not applicable to the spa. Court also ruled Dfnts would be allowed to cross-examine Pntf, on some aspects of his religion, as it related to his earnings, and to his claims of bending spoons, but not about the beliefs of Pntf's religion. Court denied Dfnts' motion to impeach Pntf,

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9/28/01 - Judge JOHN F. KELLY - CV 331874 - ZIMMERMAN (Steven H. Pincus of the Law Offices of Steven H. Pincus, P.C.) v REALTY EXECUTIVES, KRASNICK, and McCABE (David L. Curl of William B. Blaser & Associates) - PERSONAL INJURY - PREMISES LIABILITY - TRIP AND FALL. Pntf, male, self-employed, providing foster care, for adult men, contacted Dfnt Krasnick, an employee of Dfnt Realty Executives, who showed him a home, owned by Dfnt McCabe, that was for

with a ten-year-old conviction for tax evasion.) Pntf alleged he was promised a grate over the spa, in addition to a fence, and that the spa would be drained, and he had been given a key to the premises. Pntf also alleged he was advised all of the work had been done. On cross, Pntf admitted he had previously given a statement that he had obtained the key to the house, from under the mat, and he knew that, if he took the key, there would be no key for the cleaning crew, the fence crew, or the landscaping crew, who were all using the key under the mat. Pntf also admitted the spa looked the same on the day of the injury, as the day he visited, one week before. After one hour on the stand, Pntf asked to be excused, due to severe pain. Dfnt Krasnick denied making the promises Pntf claimed. Dfnt Krasnick testified she and Dfnt McCabe had agreed a fence needed to be erected around the spa, to rent the home, and had actually secured a bid. Dfnt Krasnick also testified she showed Pntf the house on July 15th, prepared the lease on the

July 21st, and Pntf signed the lease on July 23rd. Additionally, Dfnt Krasnick testified that, on July 23rd, she told Pntf he would find a key under the mat, and could measure for furniture. Dfnt Krasnick testified she made notes of significant conversations, which indicated the fence was being priced, before she met with Pntf, but her notes had no mention of a grate. Dfnt McCabe testified the spa was safe, and she had had a neighbor make a plastic leaf cover, to keep dirt and leaves out of the spa. Dfnt McCabe also testified that, if a wrought iron grate had been put over the spa, it would have been clearly visible. Pntf sustained a fractured left leg, and allegedly developed reflex sympathetic dystrophy, pain, and depression. Pntf also alleged he now requires a walker to ambulate. Pntf used the videotape deposition of Laurance Silverman, M.D., a psychiatrist, who was of the opinion all of Pntf's treatment was causally related, reasonable, and necessary. On cross, Dr. Silverman agreed Pntf's erratic behavior was evidence of drug seeking behavior.

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Dr. Silverman also stated he did not know who prescribed Prozac for Pntf, or whether the Prozac was for preexistent problems, nor did he know who prescribed on Butalbital and Promethazine to Pntf. Dr. Silverman agreed Pntf should get off of narcotics. Dr. Silverman also agreed Pntf's examination showed no atrophy, normal reflexes, and normal strength in the leg, that allegedly had reflex sympathetic dystrophy. Additionally, Dr. Silverman agreed there was no physiological explanation for Pntf's complaints of jaw pain, and Pntf evidenced secondary gain syndrome, when he advised one of his treating physicians that the litigation was his prime concern. Dr. Silverman agreed the findings of pain and numbness in both legs, as documented by Nancy E. H. Cross, M.D., a pain control specialist, contraindicated reflex sympathetic dystrophy in one leg. Dr. Silverman also agreed that the finding of bilateral abnormal hair growth, bilateral hypertrophy, and non-existent reflexes bilaterally, also indicated no reflex sympathetic dystrophy in one leg. Additionally, Dr. Silverman agreed nerve blocks, anti-inflammatory medicines, anti-depressant medicines, biofeedback, physical therapy, home exercises, chiropractic manipulations, and hypnosis, have all been unsuccessful for Pntf. Dr. Silverman agreed Pntf's use of ambulances, to take him to the emergency room, for pain shots, was an abuse of the ambulance system; and Pntf's elbow complaints, and the sleep apnea studies performed, were unrelated. Pntf called Steven J. Bupp, M.D., a psychiatrist, who testified he had been treating Pntf for three years, and the anxiety Pntf had evidenced, before the accident, was different than his current anxiety. It was Dr. Bupp's opinion Pntf suffers from depression, secondary to a medical condition, and panic anxiety, due to the accident. Dr. Bupp disputed the diagnosis of manic depression or bipolar disorder, and opined Pntf exhibited no evidence of secondary gain syndrome. On cross, Dr. Bupp testified Pntf's anxiety, depression, and pain were causally

related, even though the medical records he received from Dr. Wadleigh indicated Plntf thought there was a group of lesbians "out to get him", that the government was tapping his telephone, and his anxiety attacks resulted in suicidal ideation. Statements Plntf made on the internet, in his weekly sermons, that he could bend spoons, kill houseplants, and get people to do his bidding by mind power, did not change Dr. Bupp's opinion. Plntf read the deposition of John M. Wadleigh, D.O., a general practitioner, who stated Plntf is suffering from reflex sympathetic dystrophy, and anxiety, and Plntf had never been admitted to a hospital for anxiety, before the accident. Dfnts also used portions of Dr. Wadleigh's deposition, which indicated Plntf had applied for social security disability, for anxiety and depression, prior to the accident, and the records contained reports by Bradley R. Johnson, M.D., a psychiatrist; and John S. LaWall, M.D., a neurologist and psychiatrist; which indicated Plntf complained of seizures, incontinence, anxiety, with suicidal ideation, fainting spells, and a prior history of Prozac for eighteen years, as well as Valium. Plntf called the operator of a group home, who had known Plntf for several years, who testified Plntf's condition worsened, and he appeared to be in a lot of pain. Group home operator also testified Plntf did not use a walker, and was able to provide care for others, in a group home, before the accident. Dfnts called a foster care operator, who testified Plntf did not lose his foster care clients due to his injury, but rather because he called the Governor's office, and used explosive language. Foster care operator also testified that, at the time she visited Plntf, he was walking, without a walker, and did not require any assistance to ambulate. Dfnts also called Lloyd S. Anderson, M.D., a neurosurgeon, who testified Plntf's fracture had healed properly, and neurological tests indicated Plntf has no nerve injury. Additionally, Dfnts called Kevin R. Yeanopolos, C.P.A., who testified that, based upon his calculations, and the statements

by Plntf, the probable loss of income for Plntf was approximately \$950 per month, based on averages in the industry. On cross, Mr. Yeanopolos admitted that, if three foster clients were severely disabled, and paid \$2,000 per person, Plntf could expect to earn approximately \$52,000 per year. Dfnts also pointed out that, in the year prior to the accident, Plntf filed an affidavit, which showed income of \$700 per month, and numerous debts, including a tax lien of \$167,000, attorney's fees of \$35,000, credit card debt of \$21,000, and a fine of \$17,000. Additionally, Dfnts argued Plntf was quoted as receiving \$840 per month, per person, for the care of three adults, but he told one physician that he was only caring for one person. Prayer: Just and reasonable compensatory damages; \$209,000 medical expenses; plus \$500,000 past and future lost earnings. Plntf made a \$150,000 pretrial offer of judgment - Dfnts made a \$7,500 offer of judgment (D). (Carrier: Unknown.) During closing arguments, Plntf's counsel asked

jury to award Plntf his specials, plus \$2 million for pain and suffering. Defense counsel argued liability. Five day trial. Jury out one hour. **FOUND FOR DFNTS. UNANIMOUSLY.** (Post-trial, Dfnts filed an application, per Rule 68, for \$18,000 in costs and expenses.)

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