

# New York Law Journal

## Verdicts & Settlements

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### PREMISES LIABILITY

#### Worker Claimed Freshly Washed Floor Caused Fall

**Verdict: \$1,665,451**

*Michael Bretholz v. Harvard Maintenance, Inc., Lexington Operating Partners, LLC, and CB Richard Ellis, Inc., No. 114861/09*

**Court/Judge:** New York Supreme/  
Shlomo Hagler

**Plaintiffs' Attorney:** John Beatty,  
Kramer, Dillof, Livingston & Moore

**Defense Attorneys:** John Brennan,  
Ryan, Brennan & Donnelly

**Facts & Allegations:** At about 12:30 a.m. on May 19, 2009, tax attorney Michael Bretholz, 28, fell while he was exiting an elevator at his place of business, an office building at 450 Lexington Ave. in Manhattan.

He sued the premises' owner, Lexington Operating Partners LLC; its manager, CB Richard Ellis Group Inc.; and a contractor that maintained the premises, Harvard Maintenance Inc., alleging negligent maintenance.

Bretholz said he slipped on a freshly washed and polished floor immediately after exiting the elevator. He said he had seen Harvard Maintenance workers cleaning and polishing the floor about three hours earlier but did not notice a

wet condition until he fell. He also said workers had not provided a warning about the floor's wet condition.

Defense counsel argued that workers had posted signs recommending caution, but that any wet condition was resolved before the accident. Two Harvard Maintenance workers said the floor was dry in the moments following the accident, and two security guards agreed. One guard photographed the area, and defense counsel said the photograph did not depict a wet or dangerous condition.

Defense counsel suggested Bretholz's fall was caused by his limited mobility. Bretholz had recently had surgery on his left knee, and witnesses said he had been using a crutch and a leg brace during the week preceding the accident.

The defense moved for a directed verdict, but Justice Shlomo Hagler reserved judgment of the motion.

**Injuries/Damages:** Bretholz was taken to his home and went to a hospital several hours later, saying his left knee was painful.

He ultimately claimed that he ruptured his left knee's patellar tendon, which had been surgically repaired 11 weeks prior to the accident. His injury was repaired with a fiber wire suture, but his body rejected the suture. Over the next four years, Bretholz had four follow-up surgeries, including the removal of the rejected suture, drainage of the surgical wound, burring of the left knee's patella, and debridement of

damaged tissue. He also underwent nearly five years of physical therapy.

Bretholz said his left knee has developed permanent arthritic pain and a diminished range of motion, and that he may have to undergo a knee replacement. He said he previously enjoyed bicycling, running and skiing, but that his injury prevents those activities.

He sought recovery of past and future medical expenses and damages for past and future pain and suffering.

The defense's expert orthopedist said Bretholz's injury and residual effects were caused entirely by a bicycling accident 80 days before the accident at work. The defense's expert radiologist said Bretholz suffered long-standing, chronic degeneration of his left knee that predated the work accident.

Defense counsel said Bretholz exaggerated the extent of the ongoing effects. He said Bretholz continues to bicycle, has traveled to other countries and operates a standard-transmission car daily, commuting from Connecticut.

**Result:** The jury found that the defendants were liable for the accident. Harvard Maintenance was assigned 40 percent of the liability, while CB Richard Ellis Group and Lexington Operating Partners each were assigned 30 percent. The jury determined that Bretholz's damages totaled \$1,665,451.

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