

# New Jersey Law Journal

VOL. CLXXII – NO. 1 – INDEX 8

APRIL 7, 2003

ESTABLISHED 1878



## \$467,000 for Theater Injury

**S**kutnik v. Irwin Seating Co.: A Fanwood woman agreed on March 20 to accept \$467,000 for a foot injury at a theater.

Mary Jo Skutnik was injured on Jan. 9, 1999, at the Brick Plaza Cinemas just before the start of "You've Got Mail," when the chair in front of her came down on her instep. Her bruised foot was bandaged and iced at the scene. She then watched the rest of the movie.

Her attorney, **Francis Smith**, a solo practitioner in Westfield, says that Skutnik continued to suffer pain. Her primary care doctor sent her to a podiatrist, who referred her to an orthopedist, who tried tarsal tunnel relief to no effect. An anesthesiologist injected nerve blocks, which also failed to stop the pain. She also saw a neurologist who did an electromyography that showed reflex sympathetic dystrophy.

Now 57, Skutnik suffers from reflex

sympathetic dystrophy (RSD), a permanent pain disorder, says Smith. Skutnik has chronic pain, for which she takes over-the-counter medication, and depression, for which she has seen a psychologist. The pain has limited her movement and interfered with her married life but she continues her job as director of religious studies at a Catholic school.

Skutnik and her husband Janek sued the theater and its owner, Loews Cineplex Entertainment, and Irwin Seating Co. of Michigan, maker of the Celebrity Rocker model theater chair that fell on her. Irwin claimed that since the mid-1980s it sold hundreds of thousands of the chairs, which move backward and down into a reclining position, without such an accident.

Irwin's expert engineer, Richard Clyde, Ph.D., of Maryland, claimed that Skutnik was sitting in an abnormal position,

but Smith says she was sitting normally with her feet in front of her. Smith adds that Clyde said on cross-examination that the company did not consider the height differential between the floor and the feet in the reclining position. He says the company contended that the lack of similar accidents justified the lack of attention.

Skutnik's engineering expert, Mark Marpet, Ph.D., of Chester, said the chair's improper design allowed its back to lower to three to four inches from the floor and did not allow for various soles and insteps.

Livingston neurologist Abbot Krieger, a defense expert, said RSD was not proved, says Smith.

Settlement was reached during private mediation with former Superior Court Judge **Edward Seaman**. Irwin agreed to pay \$450,000 under its \$1 million primary policy with Crum & Forster. Loews' share was \$17,000 under its \$1 million policy with Great American Insurance.

Loews' lawyer, **Michael Dolan**, a partner with **Hoagland, Longo, Moran, Dunst & Doukas** in New Brunswick, confirms the settlement. Irwin's lawyer, **Patrick Clare**, a partner with **Hardin, Kundla, McKeon, Poletto & Polifroni** in Springfield, did not return a call seeking comment.

— *By Mary P. Gallagher*