

THE NATIONAL
LAW JOURNAL
Presents
THURSDAY, DECEMBER 13
Registration begins at 8:30 a.m.

**NEW YORK PATENT LITIGATION
BREAKFAST**

Join NLJ for a discussion covering a myriad of factors
in NY Patent Litigation.
Registration Fee: \$65 | CLE credits in NY and NJ

REGISTER



Connecticut **LawTribune**

An **ALM** Website

ALM Properties, Inc.

Page printed from: [Connecticut Law Tribune](#)

[Back to Article](#)

Wheelchair User Wins \$243,000 In Wrongful Termination Case Against Planet Fitness

CHRISTIAN NOLAN

The Connecticut Law Tribune

11-16-2012

Rebecca Smith v. PFS Fitness LLC: A fitness center worker who claimed she was wrongfully terminated after a foot injury landed her in a wheelchair was recently awarded nearly \$243,000 by a jury.

In the spring of 2008, Rebecca Smith, 30, of Milford, was diagnosed with a severe case of plantar fasciitis, an inflammation of the tissue on the bottom of the foot that connects the heel bone to the toes and creates the arch of the foot.

According to her lawyer, Robert A. Richardson, of New Haven's Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, Smith's condition worsened over a period of a few months. Her doctor recommended she use a wheelchair to take pressure off her feet.

Her employer, Planet Fitness on Courtland Avenue in Stamford, "didn't react positively to it, to put it lightly," said Richardson. Gym co-workers began calling Smith, who worked at the front desk, "old ironsides" because she was in a wheelchair. Her bosses said it "didn't look good" for a person with a high-profile job within the fitness facility to be in a wheelchair.

Prior to the injury, the gym's co-owners would regularly talk to Smith, Richardson said. After the injury, they barely acknowledged her. Her past performance evaluations were positive. "In the days after the wheelchair, she got this terrible evaluation that basically ranked her in the bottom level of each category," said Richardson. "It was an incredible drop-off in her performance in a matter of days."

A couple months later, the ill will towards Smith boiled over following an incident at the gym while Smith was in charge. A diabetic patron began feeling faint. Smith, still in a wheelchair, stayed at the front desk and had two other workers check on the man's condition and report back to her. Eventually, the gym member's condition worsened and the staffers called 911.

Richardson said the only company policy relating to this type of situation was that managers should use their best judgment. Smith thought the best approach was to have two more mobile co-workers tend to the patron and update her.

"Planet Fitness claims to have done an investigation into the incident and they concluded that she did not use common sense and that her description of what she did that day contradicted the description the two workers had given," said Richardson. "So they fired her [supposedly] for not handling the situation appropriately and being dishonest in the investigation. The real reason was her disability."

Smith later hired Richardson, who filed a wrongful discharge lawsuit in Stamford Superior Court. The lawsuit did not seek to get Smith's old job back.

Planet Fitness's defense lawyer, David A. Ryan Jr., of Ryan & Ryan in New Haven, argued that there wasn't sufficient evidence that Smith even suffered from a disability. Ryan did not return calls last week seeking comment.

Specifically, Ryan claimed that there was no medical testimony explaining the condition Smith suffered from or any medical documentation showing that the wheelchair was even necessary. Ryan further argued that Planet Fitness had a legitimate basis for firing Smith, namely that she lied during an investigation.

Richardson countered that the defense never hired a doctor to conduct an exam to refute Smith's injury claims. Richardson, in arguing a post-trial motion, also cited case law establishing that a plaintiff is allowed to establish a disability through his or her own testimony.

During the four-day trial before Judge Robert Genuario, a videotape of the woozy gym patron incident became a key piece of evidence. Would the tape show a version of events closer to Smith's story or that of her co-workers? Adding to the intrigue was that the gym owner who fired Smith had not even bothered to watch the videotape first.

"Two desk workers claimed that during the entire incident they were doing all the work and Smith was just sitting at the desk having a social conversation with" another gym patron, said Richardson. The attorney noted that the two other desk workers were dating each other and that both were resentful that they had their workload increased — or so they believed — because of Smith's immobility.

The co-workers described the incident "as a panicked situation" with a lot of running back and forth between the front desk and gym before the eventual 911 call. In Smith's version, she was unaware the situation was very serious, as the co-workers walked to get the man water and Gatorade. Smith also claimed that she halted her conversation with the gym patron when she became aware of what was going on.

Richardson said the tape revealed no running or panicking. The tape also showed Smith ending her conversation with the gym member.

"I think that's what made life easier for us; if you really looked at the videotape, it was pretty clear the tape contradicted the two stories the desk workers had given," said Richardson.

After deliberating more than three hours, the jury awarded Smith \$242,641. Of that amount, \$172,641 was for economic damages and \$70,000 for non-economic damages.

Post-trial efforts by the defense to set aside or reduce the jury award were unsuccessful. The defense argued that it was troublesome public policy to allow a plaintiff to prevail against an employer without medical evidence.

"The jury, however, chose to believe the plaintiff and there was certainly evidence from which it reasonably could have concluded plaintiff needed a wheelchair and/or other appliance for a long duration and that the plaintiff proved that her termination was the result of a discriminatory action," Judge Genuario wrote in his ruling on the post-trial motions "It would be inappropriate for this court to disturb the jury's verdict."

The case remains in court, however. Judge Genuario is being asked to determine appropriate attorney fees, since state statute allows such an allocation in a state discrimination claim.

Richardson, meanwhile, said his client's condition has improved since she was fired from Planet Fitness. "It was a progressive condition that got worse and slowly got better as well," he said. "It lasted somewhere in the range of six months' time at its most severe point, then moved to crutches, then to a cane, and now back to normal." •

The Legal Intelligencer ALM
Introducing the...
**DELAWARE
BUSINESS
COURT INSIDER**
Click Here for More Information.
News and analysis on the most important
developments in the Delaware Business Courts

Copyright 2012. ALM Media Properties, LLC. All rights reserved.