

HOTEL/RESTAURANT**Negligence****Breakers Hotel guest suffered thumb infection after manicure****VERDICT (P)** \$847,267

CASE Julie Lofink and Walter Lofink v. The Breakers Resort, No. 02-CV-80588
COURT U.S. District Court, Southern District, FL
JUDGE William Dimitrouleas
DATE 10/9/2003

PLAINTIFF
ATTORNEY(S) Marc L. Brumer, Brumer & Brumer, Miami, FL

DEFENSE
ATTORNEY(S) Kathryn L. Tignor, Adams, Coogler, Watson, Merkel, Barry & Kellner, West Palm Beach, FL

FACTS & ALLEGATIONS In September 2001, plaintiff Julie Lofink, 63, and her husband were guests at The Breakers Hotel, a historic Palm Beach, Fla., luxury resort. There, Lofink went for a manicure that was part of the golf package they had pur-

chased. She claimed that, during the treatment at the hotel spa, the manicurist pushed the cuticle on her right thumb in too far, causing her to scream. After returning home to Aiken, S.C., the pain increased and she sought medical treatment.

Despite an initial diagnosis of arthritis, swelling and continued pain indicated an infection. The thumb was lanced and drained but the condition went unabated over the following months despite a regime of antibiotics. In April 2002, she underwent outpatient surgery.

Lofink and her husband sued the hotel for negligence, alleging that its spa staff failed to sanitize the manicuring instruments and caused Lofink's injuries. The complaint was later amended to add a negligent performance count, alleging that the hotel beautician had punctured Lofink's skin.

During the trial, Lofink argued that the manicurist violated the standard procedure of keeping sterilized tools inside a plastic bag. The manicurist, she claimed, did not use sanitized tools and kept them inside a drawer and not in a plastic bag.

Lofink also had expert witnesses testify that she had no history of nail biting, which would be one of the only other ways she could have contracted the infection.

The hotel maintained that its spa is sanitary, and that Lofink did not contract the infection from the manicure.

INJURIES/DAMAGES *osteomyelitis; paronychia; staph infection; swelling*

Lofink sustained a staph infection and paronychia in her right thumb. (Her right hand is dominant.) She developed osteomyelitis and required two surgeries, one of which required the extraction of bone. She required an eight-day hospitalization, and had medical bills totaling \$29,267. Lofink is a retired nurse, so there was no wage loss claim. She also claimed pain and suffering.

Her husband claimed loss of consortium.

RESULT The jury found the hotel liable for negligence and awarded the plaintiffs \$847,267. Kristy Kay, the hotel's director of legal services, said The Breakers was "shocked" by the verdict and "fully intends" to appeal. "We have an award-winning spa," she said. "This is a perfect example of how illogical and unpredictable a jury can be."

Plaintiff attorney Marc Brumer said he believed that contradictory testimony concerning the level of sanitation elicited during cross-examinations of the manicurist and the hotel's spa manager convinced the jury of the plaintiffs' claims.

JULIE LOFINK \$29,267 past medical cost
\$768,000 pain and suffering
 \$797,267

WALTER LOFINK \$50,000 past loss of consortium

TRIAL DETAILS Trial Length: 3 days
 Jury Deliberations: 2 hours
 Jury Poll: 8-0
 Jury Composition: 6 female, 2 male