

The defense argued that Perez and his friends could have avoided the fight. It argued that there was adequate security in the parking lot and property, including security guards and off-duty police officers. It argued that Perez and his friends caused and contributed to the fight in the parking lot.

Cafe Iguana contended that it properly handled the brief verbal exchange between Perez's friends and the other group of patrons. In his deposition, Perez admitted that the brief verbal exchange was "nothing big," "not a problem" and did not even describe what occurred as "an incident." The club argued that Perez remained in the club with his friends, felt safe and had the "time of his life."

Cafe Iguana filed a motion for summary judgment on the negligent hiring, training and retention claim. It also filed a motion for summary judgment on the issue of liability for the parking lot incident, arguing that the lot was not controlled or leased by it. It argued that under Florida law, because the landlord of the commercial property retained the sole responsibility under the lease to maintain the common areas, including the parking lot, the obligation of keeping the parking lot safe against criminal attacks by third parties was imposed on the owner, not the tenant.

INJURIES/DAMAGES *fracture, orbit; screws; tooth loss*

Perez suffered a significant orbital fracture requiring 14 screws and reconstructive surgery. Two of his front teeth were knocked out.

He had approximately \$23,000 in medical bills stemming from his hospitalization and surgery after the fight. The screws in his face to reconstruct the fractured orbit and cheekbone are permanent.

He claimed past and future pain and suffering. He claimed that embarrassment and pain and suffering are still ongoing mostly as a result of not having his two front teeth.

Perez was working for himself at the time of the incident and no lost-wage claim was made. Since the attack, he finished barber school and is able to work.

RESULT Before oral argument on the summary judgment motions, the parties settled for \$200,000.

The club paid \$100,000 and Rouse and WRC paid \$100,000.

INSURER(S) Zurich Insurance Company for the club
Royal Insurance Company of America for WRC and Rouse

PLAINTIFF EXPERT(S) Lance R. Foster, C.P.P., C.F.E., security procedures, Tampa, FL
Richard Souviron, D.D.S., dentistry/odontology, Coral Gables, FL

DEFENSE EXPERT(S) None reported

EDITOR'S NOTE Counsel for Rouse Management and WRC Properties did not respond to a faxed draft of this report or a phone call.

-Jeff Skruck

NEGLIGENT INSTALLATION

Motor Vehicle — Parking Lot

Woman on golf cart whacked in face by arm of exit gate

VERDICT (P) \$2,100,000
NET \$500,000

CASE Vickie Holliday v. Royce Parking Control Systems, Inc., No. 01-29182 CA 04
COURT Miami-Dade County Circuit Court, 11th, FL
JUDGE Ellen Leesfield
DATE 10/22/2004

PLAINTIFF ATTORNEY(S) Paul A. McKenna, McKenna & Obront, Miami, FL
Curt D. Obront, McKenna & Obront, Miami, FL

DEFENSE ATTORNEY(S) Christienne H. Sherouse, Gaebe, Mullen, Antonelli, Esco & DiMatteo, Fort Lauderdale, FL

FACTS & ALLEGATIONS In 1999, plaintiff Vickie Holliday, 30, was a cashier working in the parking garage facilities of Jackson Memorial Hospital in Miami. She regularly used a company golf cart to get around the sprawling downtown facilities. She would drive the cart to collect receipts from different locations. She claimed that she was exiting one garage through a gated exit. The gate consisted of an arm that lifted once it was triggered by the size of the vehicle waiting to exit. The gate was sold to Jackson Memorial Hospital and Apcoa a/k/a Standard Parking and installed by Royce Parking Control Systems Inc.

Holliday claimed she waited for the arm to lift and drove through the exit. The arm came down on the top cover of her golf cart, snapped forward and the remaining part of the arm swung inside the cart and struck her square in the face. She suffered serious facial injuries which required surgery.

She sued Royce for negligent installation, claiming that it was negligent for failing to warn that golf carts were not meant to use the exits because the triggering system was not built to recognize the size of golf carts, but rather only automobiles.

Holliday contended that the only posted warning for the gate was "Automobiles only. No pedestrians, motorcycles or bicycles." She argued that Royce knew that the gate was potentially

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dangerous if used by golf carts and that the company had a duty to warn the employees of the hospital who regularly used golf carts at the facility.

The defense argued that the gate came with a posted warning; that it had no control over the use of the gate; and that her employer had greater knowledge with respect to how the gate would be used and therefore had the duty to warn her.

The defense also contended that the arm on the gate was altered so that it was no longer wood, but rather plastic PVC piping. It contended that there was a warning not to use any type of plastic as an arm on the gate. Claiming that the gate was altered from its original design, Royce argued that it was not responsible for the accident.

Holliday contended that the arm was wooden at the time of the accident.

The defense expert on accident reconstruction, Ken Bynum, testified that the accident could not have occurred the way that Holliday claimed. The defense argued that she was not exiting through the exit gate at the time of the accident. (There were no witnesses.) Bynum testified that the accident could have only happened if Holliday was entering the lot through the exit gate. The defense contended that it could not be responsible for the accident because Holliday was negligently entering through the exit gate.

The defense also contended that the hospital and Apcoa were comparatively negligent for not warning Royce that it could potentially be used by golf carts.

INJURIES/DAMAGES *facial; headaches; insomnia; plate; vision impairment*

Holliday suffered facial injuries which required the insertion of five metal plates in one surgery. She underwent a second surgery to remove one of the plates because she claimed that it was causing her too much pain. She claimed future medical expenses of \$700,000.

She claimed that she is no longer able to work. After recovering from her injury, she took a job at a dry cleaning service. The constant pain, which includes headaches, dizziness, blurred vision and especially insomnia, made her realize that she cannot function during a normal workday. She no longer drives. She earned about \$17,000 annually as a cashier at the hospital. She claimed past lost wages of \$100,000 and future lost wages of \$600,000.

She also claimed past and future pain and suffering.

Plaintiff expert Dr. Craig Lichtblau testified that she suffers from immense pain and will continue to suffer from it. He testified that the plates were put in very sensitive areas, making contact with bundles of nerves. Holliday claimed that she suffers from insomnia because she is often awakened at night when she rolls onto her face, which presses against the plates and created sharp pain.

Defense expert Dr. Carl Melzer testified that he has done hundreds of maxillofacial surgeries with metal plates and that he doubts her complaints of pain. The defense contended that Holliday has made a very strong recovery from her injury.

RESULT The jury found Royce 100% negligent and awarded Holliday \$2.1 million. However, during jury selection, the parties had entered into a high/low agreement of \$500,000/\$100,000.

VICKI HOLLIDAY \$700,000 future medical cost
\$100,000 past lost earnings
\$600,000 future lost earnings
\$105,000 past pain and suffering
\$595,000 future pain and suffering
\$2,100,000

DEMAND \$2,100,000
OFFER \$15,000

INSURER(S) Travelers

TRIAL DETAILS Trial Length: 1 week
Jury Deliberations: 2 hours
Jury Poll: 5-0
Jury Composition: 3 male, 2 female; 2 black males, 1 Hispanic male; 2 white females

PLAINTIFF
EXPERT(S) **Craig Lichtblau, M.D.**, physical medicine, West Palm Beach, FL
Gene Litwin, mechanical, Buffalo Grove, IL
Bernard Jr. Pettingill, Ph.D., economics, Palm Beach Gardens, FL

DEFENSE
EXPERT(S) **Ken Bynum, P.E.**, accident investigation & reconstruction/ failure analysis/product liability,
Carl J. Melzer, D.D.S., maxillofacial surgery, Miami, FL

POST-TRIAL The defense did not appeal the verdict and paid the judgment. Including attorney fees and costs, Holliday received \$529,389.53.

—Jeff Skruck

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