

# TRIALS DIGEST®

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**SETTLEMENT RESULT: \$116,000**

## NEGLIGENCE

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### SETTLEMENT—Party guest struck in head by stick used for pinata

#### NEGLIGENCE-OTHER

#### No COURT/UNFILED SETTLEMENT

*Berman v. Salviejo*. Settlement date: 10/6/1999.

**SETTLEMENT RESULT: \$116,000**

#### COUNSEL

Plaintiff: Scott J. Corwin, Law Offices of Scott J. Corwin, Los Angeles.

Defendant: None.

#### FACTS/CONTENTIONS

According to plaintiff: On July 6, 1999, plaintiff Berman, a 28-year-old graduate student, was attending a birthday party for the five-year-old daughter of a casual acquaintance. The party was held at the home of the neighbor of the birthday girl. One of the activities involved a piñata. The children were using a broom handle that had been provided by the homeowner, Gmeiner. Plaintiff was standing approximately 15 feet from the piñata. Another child, who was about 10-years-old, swung the stick. It flew out of his hands and struck plaintiff in the face.

Plaintiff alleged that the homeowner defendants, defendants parents of the birthday girl, and defendants parents of the child who lost his grip on the stick were negligent. Plaintiff alleged that they should not have used a broom handle, as it had no grip, and that a baseball bat or something with a grip and tapered end would have been more appropriate.

Defendants disputed liability and claimed that the accident was not the result of anyone's negligence. They contended that plaintiff assumed the risk of injury by attending the party.

#### CLAIMED INJURIES

According to plaintiff: Paramedics were called to the scene, and plaintiff was transported to Los Robles Hospital, where she was treated in the emergency room and released. Plaintiff sustained a laceration to her upper lip, a concussion, and post-concussive syndrome. Plaintiff had a two-inch scar on her upper lip, requiring plastic surgery. Plaintiff, an attractive woman, was left with some residual scarring.

#### CLAIMED DAMAGES

According to plaintiff: \$7,803 past medical; \$8,000 future medical; \$851 past loss of earnings; \$2,563, future loss of earnings.

#### SETTLEMENT DISCUSSIONS

According to plaintiff: Plaintiff settled with defendants as follows: \$100,000 (policy limits) from homeowner defendants; \$10,000 from parents of the child who threw the stick; \$6,000 from parents of the birthday girl.

#### EXPERTS

None.

#### COMMENTS

According to plaintiff: The insurance carriers were Allstate and State Farm.