

TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

JULY 24, 2006

Vol. 9, No. 30

SETTLEMENT RESULT: \$1,000,000

PRODUCTS LIABILITY

30 TD 9th 17

SETTLEMENT—Rider injured on Ferris wheel when struck in head by seat rack

PRODUCTS LIABILITY

Toys/Sports/Recreational

PREMISES LIABILITY

Sports/Amusement Facilities : Theme Park

LOS ANGELES COUNTY SUPERIOR COURT

Mark v. James Productions Inc., No. SC063759, Santa Monica. Settlement date: 2/7/2002.

SETTLEMENT RESULT: \$1,000,000

COUNSEL

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

Defendant: Michael L. Amaro, Prindle, Decker & Amaro, Long Beach. Haleh R. Jenkins, Prindle, Decker & Amaro, Long Beach.

FACTS/CONTENTIONS

According to plaintiff: On October 30, 1999, plaintiff Joel Mark, a 42-year-old real estate investor, his wife, and his four-year-old son were riding on a Ferris wheel at an elementary school Halloween festival operated by the defendant James Productions Inc., a ride operating company. The operator of the ride had placed a large (approximately 8' long) metal bar "seat rack" too close to the moving parts of the Ferris wheel, causing the seat rack to catch on the bottom of the Ferris wheel seat. The seat rack also caught on a portion of the base of the Ferris wheel. The Ferris wheel was brought to a stop due to this failure, and, when sufficient torque and force built up, the seat rack came loose from the base of the Ferris wheel and "boomeranged," striking plaintiff in his head and shoulders.

According to defendant, while the ride was in operation, one of the seats on the wheel came into contact with a seat rack, causing the rack to be lifted up from the deck of the ride. As the rack released, it struck plaintiff in his head and shoulder.

Plaintiff advanced the theory of *res ipsa loquitur* to establish proof of defendant's negligence. Plaintiff further claimed that the blow to his head resulted in mild traumatic brain injury and impaired him from returning to his pre-accident occupation as a real estate investor.

Defendant disputed liability and claimed that a manufacturing defect caused the incident and cross-complained against the product manufacturer, an Indiana corporation. Defendant also contended that if the seat back caused the injury, it had been altered without defendant's knowledge by a prior owner of the Ferris wheel, located in Hawaii.

Defendant contended that its use of the Ferris wheel was consistent with the designer's intentions and that the Ferris wheel had operated problem-free for millions of passengers previously. Defendant disputed the nature and extent of plaintiff's claimed injuries and disputed the need for future shoulder and neck surgery. Defendant further disputed plaintiff's claim of traumatic brain injury. Defendant's neuropsychological expert opined that, while plaintiff's symptoms were real, they were not the result of organic brain injury, but rather temporary residual psychological effects from the incident, exacerbated by a family history of mental illness.

CLAIMED INJURIES

According to plaintiff: Plaintiff was transported to UCLA Medical Center and released from the hospital the same day. Plaintiff alleged he sustained closed-head trauma, mild traumatic brain injury, resulting in mild cognitive and executive functioning deficits, requiring cognitive therapy. Plaintiff also sustained a displaced mid-shaft left clavicle fracture, left scapular body fracture, and a 3-4 mm C4-C5 left paracentral disk bulge, requiring physical therapy. Future surgeries were contemplated due to chronic neck and shoulder complaints.

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30 TD 9th 17 (continued)

CLAIMED DAMAGES

According to plaintiff: \$50,729 past medical; \$65,000 future medical; diminished earning capacity.

SETTLEMENT DISCUSSIONS

According to plaintiff: Plaintiff demanded defendant's \$1 million policy limits. For over one year, defendant refused to make any offer, as it considered that the fault for the accident lay with the design of the Ferris wheel. At mediation, defendant offered \$500,000.

EXPERTS

Plaintiff: Peter Formuzis, Ph.D., economist, Formuzis, Pickersgill & Hunt Inc., Santa Ana (714) 542-8853. Ted M. Kobayashi, accident reconstructionist, Boster, Kobayashi & Associates, Livermore (925) 447-6495. Alfredo Sadun, neuro-ophthalmologist, USC, Los Angeles (323) 442-6417. Edwin C. Amos, III, M.D., neurologist, Neurological Associates of West Los Angeles, Santa Monica (310) 829-5968. Stephen P. Kay, M.D., orthopedic surgeon, Los Angeles (310) 553-2882. Kenneth R. Martin, amusement ride safety, Richmond, VA (804) 342-1808. Ronald L. Huston, Ph.D., accident reconstructionist, Cincinnati, OH (513) 542-1921. Robert Brook, Ph.D., neuropsychologist, Los Angeles.

Defendant: Thomas J. Szabo, biomechanical engineer, Biomechanical Research & Testing, Long Beach (562) 494-4407. Robert W. Chandler, M.D., orthopedic surgeon, Kerlan-Jobe Orthopedic Clinic, Los Angeles (310) 665-7255. Jeffrey A. Schaeffer, Ph.D., neuropsychologist, Neuroscience Associates Inc., Los Angeles (310) 855-1265. John Aust, appraiser/real estate standard of care expert, Town & Country Real Estate, Beaufort, SC (843) 525-1100. Ronald K. Siegel, Ph.D., toxicologist, Los Angeles.

COMMENTS

According to plaintiff: Defendant brought a motion to continue the trial and add another defendant, the prior owner of the Ferris wheel. The court denied the motion as being untimely. Shortly after the denial of the motion, approximately four weeks before the trial, defendant tendered the \$1 million policy limits.

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