

32 TD 12TH 17

SETTLEMENT — Tenant shot by intruder blames faulty security gate

PREMISES LIABILITY

Negligent Repair/Maintenance/Residential Property

LOS ANGELES COUNTY SUPERIOR COURT

Confidential v. Confidential, Trial type: Settlement.
Settlement date: 4/16/2009.

SETTLEMENT: \$1,850,000

Property Management Company: \$1 million policy limits; the insurance carrier for the Property Repair and Maintenance Company initially denied a defense for its insured and filed an action in federal court for declaratory relief and rescission; it subsequently accepted the defense under a reservation of rights and paid \$800,000 of its \$1 million policy; the Property Owner had insurance, but with an assault and battery exclusion; it paid \$50,000 out of pocket.

COUNSEL

Plaintiff: Tyler J. Barnett, Yuhl Stoner Carr, Los Angeles.
James P. Carr, Yuhl Stoner Carr, Los Angeles.

Defendant: Confidential.

FACTS/CONTENTIONS

According to plaintiff: On February 10, 2008, at approximately 5:30 a.m., an assailant gained entry to an apartment building through a security gate that was not locking properly and shot plaintiff in the head through his apartment unit door. The security gate, which served as the only point of entry to the apartment building, was designed to keep assailants and other trespassers off site in an area that was known to be gang territory. The security gate had a history of repairs, and there was a history of problems with the self-locking mechanism.

Plaintiff alleged that, on the date of the shooting, one could open the security gate without a key. The gate had not been locking properly from approximately November 2007 through May 2008. Plaintiff alleged that defendants Property Management Company, Property Repair and Maintenance Company, and Property Owner were liable for negligently repairing and maintaining the security gate's self-locking mechanism and allowing it to remain in a state of disrepair for a prolonged period of time.

The assailant was never identified or apprehended.

CLAIMED INJURIES

According to plaintiff: Plaintiff survived despite a depressed fracture of the right occipitoparietal skull bone, with hematoma and right temporofrontal and parietal lobe subarachnoid hemorrhage. Bullet fragments were present in the occipital regions and within the posterior skull. Plaintiff was taken by ambulance to the hospital with a neurogenic bowel and bladder and inability to move his left upper and left lower extremities. Two days later, he underwent a craniotomy with debridement. The surgeries were successful, and, after being hospitalized for approximately five weeks, plaintiff's residual injuries included minor left-sided hemiparesis and visual field damage. Plaintiff later underwent a second surgery to remove a missile fragment from his head, which was done on an outpatient basis.

CLAIMED DAMAGES

According to plaintiff: \$200,000 past medical. Although he was not receiving any continuous care and was living independently, plaintiff argued that he would benefit from an adaptive and assisted-living environment, as well as additional treatment consisting of cognitive rehabilitation and physical therapy. Plaintiff had been working for a manufacturing plant as a machine worker's helper. Because of his injuries, he was unable to return to gainful employment. \$23,000 past loss of earnings as of the date of settlement.

SETTLEMENT DISCUSSIONS

Not reported.

EXPERTS

Plaintiff: Robert W. Johnson, M.B.A., economist, Robert W. Johnson & Associates, Los Altos (800) 541-7435. Sandra Schneider, M.S., vocational rehabilitation consultant, Sandra Schneider & Associates, Los Angeles (310) 820-8675. Lester M. Zackler, M.D., neuropsychiatrist, Lester M. Zackler Inc., Sherman Oaks (818) 789-8495. Barry I. Ludwig, M.D., neurologist, Neurology & Rehabilitation Medical Group, Los Angeles (310) 794-1500. Jeffrey A. Schaeffer, Ph.D., neuropsychologist, Neuroscience Associates Inc., Los Angeles (310) 855-1265. Sharon K. Kawai, M.D., life care planner, St. Jude Medical Center, Fullerton (760) 931-5430. Carlos F. Saucedo, Ph.D., neuropsychologist, Neuroscience Associates Inc., Los Angeles (310) 855-1265.

Defendant: Not reported.