

Elida Lopez Oliver v. Long Island Owners Association, Inc.

Cause No.: 2005-06-3148-E

The Honorable Leonel Alejandro

This case was tried in Cameron County, Texas which is located in the Rio Grande Valley. The Rio Grande Valley was ranked as the second worst “judicial hellhole” in the country by the American Tort Reform Association as of December 2007. After the trial, jurors commented that the defense attorneys’ cross examinations were “blistering” and “highly effective.” The jury sided with the defense as soon as the defense attorneys began cross examining the plaintiff’s witnesses. Judge Alejandro said that the defendant’s closing argument was the best he had ever seen.

Total Award: Not Guilty

Date of Verdict: January 29, 2008

Length of Trial: January 14, 2008 – January 29, 2008

Defendant’s Attorneys:

Cray Huber Horstman Heil & VanAusdal LLC
303 West Madison Street, Suite 2200
Chicago, IL 60606
(312) 332-8450

Trial attorneys - Stephen W. Heil, David E. Kravitz

Jury Deliberation Time: 8.5 hours

Post Trial Motion(s): The plaintiff’s attorneys claim they will file post-trial motions and/or appeal.

Has Notice of Appeal Been Filed: No.

Date, Time and Place of Accident or Occurrence: July 5, 2004, 7:00 p.m., Port Isabel, Texas

Age and Occupation of Plaintiff: 44 years old, unemployed

Description of Case:

What happened: Plaintiff, Elida Oliver, age 44, was riding her bicycle in Port Isabel, Texas and intended to cross a bridge to enter a private island community, Long Island, where she lived. The bridge she intended to cross was owned and operated by the defendant and is one of the only privately operated swing bridges in the country. As she approached the bridge she alleges that the bridge warning arm, that descends to stop traffic from crossing the bridge while it is open, rapidly dropped upon her head knocking her off her bicycle, causing her to fall off and strike her head upon the pavement.

Plaintiff contended: The plaintiff claimed that the bridge operator was negligent in failing to make sure that the plaintiff was not in close proximity to the bridge arm before he lowered it on her. The bridge had no audible warning system and the plaintiff claimed that this was in violation of the Texas Manual on Uniform Traffic Control Devices (TMUTCD) because it did not audibly warn her that the warning arm was about to descend upon her and did not have the required lighting system. The warning arm went from a full upright position to horizontal in approximately six seconds and the plaintiff claimed that this did not give her the chance to avoid being struck by the arm. Finally, the plaintiff claimed that warning lights upon the arm were too small and could not be seen in daylight. The plaintiff presented evidence that the bridge warning arm had hit motorists in the past and presented the testimony of a woman who was involved in an almost identical occurrence in February 2007 while she was on her motorcycle and was hit in the helmet by the same warning arm.

Defense contended: The defense claimed that the plaintiff had crossed the bridge numerous times in the past and was familiar with the bridge warning system, that the plaintiff was not paying attention as she attempted to cross the bridge and that neither TMUTCD nor any other statute required an audible warning system.

Plaintiff's Injuries, Treatment and Residuals:

The plaintiff claimed to have been knocked unconscious, sustained a traumatic brain injury and a herniated disc in her cervical spine that had to be surgically repaired. Radiological films taken after the accident showed that the plaintiff sustained trauma to her bilateral temporal lobes, dilated perivascular spaces, trauma to the corpus collosum and trauma to the corpus collosum fiber tracks. Her past medical bills were claimed to be approximately \$83,000. The plaintiff's treating neurologist testified that her brain injury left her in a permanent childlike state and that she needed to be placed in an inpatient cognitive rehabilitation facility for the remainder of her life. The plaintiff's neuropsychologist testified that she had very little cognitive ability due to the accident, was likely rendered incompetent for the rest of her life and would need round the clock live-in care or would have to be placed in an inpatient cognitive rehabilitation facility for the rest of her life. The future life care plans for the plaintiff ranged from \$3.9 million to \$5.9 million.

The defense claimed that although some MRI films had findings as were claimed by the plaintiff's treating physicians, those conditions were not causally related to the accident. The defense also claimed that the plaintiff's neurologist and radiologist failed to rule out other potential causes for the MRI findings which included Alzheimer's disease and multiple sclerosis which would explain her post-occurrence behavior. The defense further claimed that the findings on the plaintiff's radiological films may have been caused post-occurrence.

Specials: \$83,000

Amount Asked of Jury: \$9.6 million

Demand: \$4.75 million

Offer: \$150,000 structured to approximately \$1 million and \$50,000 cash