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## From the Courts: Jury Verdicts & Settlements

Jury rejects tourists' claims that lifeguard attacked them

November 13, 2006

By: Review staff & VerdictSearch



Barry Balmuth, seated, and  
Leon St. John III

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Case: Cosimo Cinque and Pia Cinque vs. Christopher Buchanan and Palm Beach County

Case no.: 502001CA011583XXXMB, Palm Beach Circuit Court

Description: Negligence and assault and battery

Filing date: Nov. 8, 2001

Trial date: Oct. 23, 2006

Judge: Edward Fine

Plaintiff lawyers: Peter M.P. Vujin and Denise Garno, Miami solo practitioners

Defense lawyers: Barry Balmuth of Barry S. Balmuth P.A., for Buchanan, and Leon St. John, senior assistant attorney for Palm Beach County.

Details: During a November 1997 vacation to South Florida from New Jersey, Cosimo and Pia Cinque, who then were both around 50, noticed two birds tangled in fishing line in the water at Lake Worth Municipal Beach. According to the amended complaint, the Cinques, who are originally from Italy, saw Palm Beach County lifeguard Christopher Buchanan, then 34, walking toward the tangled pelicans with a floatation buoy and scissors.

The Cinques approached Buchanan and asked him to free the birds, when he allegedly swore at them. The complaint alleges that Buchanan then punched both plaintiffs several times and cut them with the scissors in his hands. Cosimo claims he lost

three teeth, and Pia said her neck was injured.

Four years later, just before the statute of limitations expired, the plaintiffs sued Buchanan for assault and battery and negligence. The plaintiffs also sued Palm Beach County for negligent hiring, employing and training. Their suit also alleged that Palm Beach County failed to warn visitors of a dangerous condition created by the lifeguard.

In June, Judge Fine granted a partial summary judgment in favor of the defendants. He ruled in favor of Buchanan regarding the Cinques' claim of negligence, and ruled in favor of the county regarding the Cinques' claims of negligent hiring and failure to warn of a dangerous condition.

The trial proceeded on the Cinques' claim against Buchanan for assault and battery and their claim against the county for negligent training.

Plaintiff case: The plaintiff attorneys did not return calls for comment. But according to Balmuth, the plaintiffs alleged in court that Buchanan pushed Pia Cinque and then swore at the couple. Balmuth said the plaintiffs claimed that Cosimo Cinque then tapped Buchanan on the shoulder to protest his language, and Buchanan, in response, punched him in the face. The plaintiffs placed an attorney on the stand who said he witnessed Buchanan punching the Cinques. The plaintiffs also claimed that they were injured from the tussle, according to Balmuth.

Defense case: Buchanan admitted that he punched both Pia and Cosimo Cinque, but said he did it in self-defense. He testified the plaintiffs kept getting in his way while he was trying to free the pelicans. He then asked them to stay back and asked them if they spoke English. According to attorney Balmuth, that's when Cosimo shoved him twice.

Balmuth said after Buchanan punched Cosimo to defend himself, Pia jumped him. Balmuth said Buchanan then punched Pia in the face to prevent her from attacking him.

Balmuth said Buchanan's story was backed up by a number of eyewitnesses, including his lifeguard partner in the water, who also was attempting to rescue the pelicans.

Balmuth argued that the Cinques' eyewitness did not see the beginning of the argument.

Palm Beach County attorney Leon St. John said the county supported Buchanan "100 percent" and that Buchanan had a clean employment record.

Outcome: After a four-day trial, the jury deliberated for only 30 minutes before deciding in favor of the defendants. According to the two verdict sheets — one for Cosimo Cinque and one for Pia Cinque — the jury rejected the claim that Buchanan assaulted and battered the plaintiffs.

Comments: "Their story didn't make sense," Balmuth said. "If someone shoves someone's wife, the typical reaction isn't to correct their language. And if a fit lifeguard punches someone forcefully with scissors in their hand, he would have more than a little cut."

Post verdict: According to Balmuth, the plaintiffs had filed a motion for a new trial.

— Jordana Mishory

***Barry Balmuth, seated, and Leon St. John III photo by Melanie Bell***

## **Medical malpractice**

Miami-Dade Circuit Court

Woman who received nerve damage in her arm gets \$1.75 million

A jury awarded \$1.75 million to a woman who had nerve damage in an arm after undergoing surgery to relieve compartment syndrome.

Marie Rivette, 52, can no longer open and close her left hand because of significant muscle damage. Her lawyer argued vascular surgeon Abelardo Vargas should not have waited two days to perform the procedure, and that once he did the surgery, he botched it, resulting in a complete fasciectomy performed the next day by a hand surgeon.

Vargas countered he had to delay surgery to wait and determine the cause of the coagulopathy. Vargas argued he was erring on the side of caution and thought it better to lose the limb than risk Rivette's life.

Case: Rivette v. Inphynet Contracting Services Inc.

Case no.: 01-6352 CA 32

Plaintiff lawyers: Gary Alan Friedman and John S. Seligman, Friedman and Friedman, Miami

Defense lawyers: Addison J. Meyers and Barbara Sheila Diamond, Mintzer Sarowitz Zeris Ledva & Meyers, Coral Gables

## **Premises liability**

An elderly woman recovered \$750,000 after she tripped over a bump in a doorway at Greenwich Studios in Miami, fracturing her left tibia and humerus.

Lillian Reynolds, 73, sought about \$1.6 for medical expenses, her life care plan, and her pain and suffering.

Greenwich admitted liability, but argued she was comparatively at fault because the bump was noticeable and she'd been there numerous times.

A jury awarded \$1.9 million, which was reduced to \$1.6 million because it found her 16 percent liable. Prior to the verdict the parties agreed to a high of \$750,000 and a low of \$200,000.

Case: Reynolds v. Greenwich Studio Inc.

Case no.: 05-010421-CA-01

Plaintiff lawyer: Dan Cytryn, Cytryn & Santana, Tamarac

Defense lawyer: Scott D. Kirschbaum, Mintzer Sarowitz Zeris Ledva & Meyers, Coral Gables

### **Motor vehicle**

Miami-Dade Circuit Court

Company pays pedestrian struck by delivery truck at mall

Miami Provisions Inc. settled for \$990,000 with a woman who was struck by one of its trucks as she walked in front of it. Evelyn Delson, an 81-year-old retiree, sustained a crushed left foot and eventually had her leg amputated below the knee.

Her lawyers argued that she had almost walked past the Boar's Head truck when it pulled away from a shopping mall exit stop sign and ran over her leg.

The defense contended that Delson crossed in front of the large truck in such a manner that the driver might not have been able to see her.

Case: Delson v. Miami Provisions Inc.

Case no.: 06-04453 CA 11

Plaintiff lawyers: David W. Lipcon and Mitchell J. Lipcon, Lipcon & Lipcon, Miami

Defense lawyer: Joseph R. Giaramita, Hankin & Giaramita, Hollywood

Palm Beach Circuit Court

Jury finds bus driver not liable for woman's alleged fall

A jury rejected a woman's claim that she fell on a county bus because the driver didn't wait for her to sit before pulling away.

Mary Dixon, in her 60s, claimed she injured both knees, which aggravated her arthritis. She claimed that she was about to sit down when the bus suddenly took off. The county bus driver testified that she watched Dixon in her rearview mirror until she could no longer see her. Then, assuming that Dixon had sat, she slowly pulled away from the curb. She added that the bus had only traveled a few feet when she heard Dixon fall.

Case: Dixon v. Palm Beach County

Case no.: 502005CA004557

Plaintiff lawyer: Carlos A. Bodden, Ellis & Jed, Boca Raton

Defense lawyer: Leon St. John III, Palm Beach County attorney's office, West Palm Beach

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