

TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

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Notable Cases in This Week's Issue...

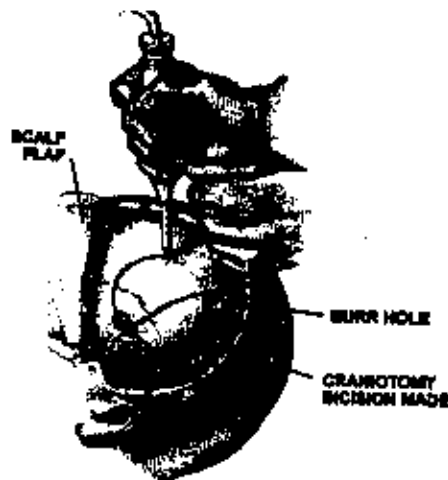
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Patron trampled by crowd when lights in circus tent fall

PREMISES LIABILITY

Slip/Trip & Fall: Miscellaneous

SAN DIEGO COUNTY SUPERIOR COURT

Light v. Sterling & Reid Brothers Circus, No. GIC797364,
Central. Thomas O. LaVoy. Jury trial. Verdict/judgment:
2/10/2005.

VERDICT/JUDGMENT: DEFENSE

The jury returned a unanimous special verdict in favor of defendant. It found that the circus had not been negligent, and it, therefore, did not need to decide whether any negligence of the circus had caused any harm to plaintiff.

Vote: 12-0. Deliberations: 2 hours.

TRIAL COUNSEL

Plaintiff: Robert J. Reynolds, Phillips & Pelly, La Jolla.

Defendant: Roger W. Clark, Clark & Goldberg,
Santa Monica.

FACTS/CONTENTIONS

According to defendant: Plaintiff William R. Light attended defendant Sterling & Reid Brothers Circus at Mission Valley in San Diego on October 12, 2001. The circus had a big-top tent with inside lighting provided by a diesel-powered generator. There was portable bleacher-style seating inside the big top.

Plaintiff arrived a few minutes late. The bleachers were full, and he sat on the floor with his wife and children. Several minutes later, the power went off unexpectedly when the generator failed. The big top became pitch black inside. The horses performing at the time became spooked and ran towards an exit. Their hooves made a hollow sound on the wood flooring that was described as sounding like gunshots or firecrackers going off. The patrons inside panicked and rushed toward the exits. Plaintiff was pushed down in the ensuing melee and trampled, suffering extensive bruises to his legs and back. He suffered serious injuries and aggravated pre-existing orthopedic injuries to his knees, back, and shoulders.

Plaintiff alleged that the big top tent was overcrowded, in violation of the fire code. The big top was permitted to hold only 1650 patrons, and the circus admitted that more than 1800 people attended the circus on the night of the incident. Allowing the circus to become filled to overcapacity was negligence as a matter of law. If the big top had not been overcrowded, plaintiff would not have been pushed down and trampled. Plaintiff claimed that under the *res ipsa loquitur* doctrine, defendant had the burden of proving that the generator failed for reasons other than the negligence of defendant. Plaintiff claimed that when the big top became pitch black there was insufficient emergency lighting to allow patrons to make a safe exit.

Plaintiff alleged that he was pushed down from behind and trampled by fleeing patrons who had been panicked by the sudden loss of light and the searing sound of guns or firecrackers going off. He suffered serious and significant aggravation of old injuries to both knees, both shoulders, and back. He admitted that he had suffered serious injuries to his shoulders, knees, and back before the circus incident and that he had undergone prior surgeries to these body areas, but he claimed that because of these prior orthopedic problems he was especially susceptible to re-injury.

Defendant contended that it had bought a new, bigger tent during the eight weeks after it had applied for the permit with the smaller tent, and that it was the bigger tent with a capacity of 2300 that was in use on the night of the incident. There had been no prior failures of the generator before this night, and the sudden stoppage could not reasonably have been anticipated. The generator was re-started after several minutes; the performance resumed after a period of time and was completed. There were no further problems with the generator.

Defendant contended that plaintiff did not suffer any injury or aggravation of prior injuries on the night of the incident. Plaintiff had been complaining of pain and problems with his knees, shoulders, and back during the months before the incident. Defendant contended that plaintiff was not a reliable historian. He had deceived several doctors to obtain duplicate prescriptions of Oxycontin, a controlled narcotic pain medication, both before and after the circus incident. Plaintiff was willing to exaggerate, if not fabricate, his injuries to justify the claimed need for continued prescriptions of Oxycontin. Although plaintiff's treating physicians supported through their trial testimony that plaintiff had been seriously injured at the circus and that all of the surgeries and treatments were necessary because of the incident, the testimony of the treating physicians was suspect to the extent that it relied upon the history given by plaintiff.

CLAIMED INJURIES

According to defendant: Plaintiff claimed that he suffered traumatic injuries to both knees, both shoulders, and his lower back. Following the circus incident, he had two surgeries to each knee, one surgery to each shoulder, and one surgery to his lower back.

CLAIMED DAMAGES

According to defendant: \$205,000 medical.

SETTLEMENT DISCUSSIONS

According to defendant: Demand: None. Offer: \$50,001 (CCP § 998).

TRIAL EXPERTS

Plaintiff: Paul Murphy, orthopedic surgeon, Oasis Sports Medical Group, San Diego (619) 571-0606. Bruce Van Dam, orthopedic surgeon, La Jolla (858) 587-0700.

Defendant: William P. Curran, Jr., orthopedic surgeon, Orthopedic Group of San Diego, San Diego (619) 268-2224. Martin M. Balaban, Ph.D., safety engineer, AR TECH Forensic Experts Inc., Encino (818) 344-2700.

EXPERT TESTIMONY

According to defendant: Plaintiff's treating physicians, Van Dam and Murphy, both testified that all treatment and surgeries were reasonable and necessary because of the incident at the circus.

COMMENTS

According to defendant: The court gave the negligence per se instruction requested by plaintiff on the alleged overcrowding of the big top tent. The jury was instructed to find the circus negligent if the jury found the big top over capacity, as testified to by plaintiff and his family and friends.

The court refused to instruct the jury on the comparative fault of plaintiff, finding that there was insufficient evidence of fault on the part of plaintiff. The court allowed into evidence the September 2003 plea by plaintiff to a misdemeanor of obtaining narcotic pain medications by concealment of a material fact, in violation of Health & Safety Code § 11173(a).

The court also allowed into evidence the testimony of a claims representative from plaintiff's prior workers' compensation proceeding that plaintiff had a poor reputation as a reliable historian.

The failure of plaintiff to secure a result more favorable than the statutory offer will allow defendant to seek recoverable expert costs that are expected to run into tens of thousands of dollars.