CASE INFORMATION SHEET
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COUNTY AND COURT: CIRCUIT COURT, HILLSBOROUGH COUNTY, Tampa, Florida

NAME OF CASE:

DYLAN RIVERA, a minor, by and
Through his legal guardian,
MICHAEL RIVERA, and DAVID
MITCHELL HOSLER, individually,
and JOANIE L. ROBINSON,
individually

Plaintiffs,

v.

CONCORD MANAGEMENT, LTD. And
BRANDON CROSSING PARTNERS, LTD.,
a Florida corporation.

Defendants

CASE DOCKET NO.: 07-CA-002153 **JUDGE:** William P. Levens

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

R. Stanley Gipe, Esquire
Papa & Gipe, P.A.
1724 Gulf to Bay Boulevard
Clearwater, FL 33755

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

RICHARD B. MANGAN, JR., ESQUIRE
R. CLIFTON ACORD, II, ESQUIRE
Rissman, Barrett, Hurt,
Donahue & McLain, P.A.
1 N. Dale Mabry Hwy
11th Floor
Tampa, FL 33609

AGE/SEX/OCCUPATION OF PLAINTIFF:

Dylan Rivera was 2 years, 7 months old at the time of the incident.

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

June 20, 2006.

CAUSE OF INJURY:

On June 20, 2006 Dylan Rivera was playing on the playground at the Brandon Crossing apartment complex which was owned and operated by the defendants. The child was injured when he fell six feet from the top of a spiral slide to the ground striking his head on either an exposed PVC pipe or hard packed earth. There was essentially no ground cover in the area of the fall. He fractured his skull and developed a life threatening subdural hematoma requiring an emergency craniotomy and evacuation of the hematoma the same day.

At the time of trial, the child was nine years old and was still being treated for residual brain deficits, attention deficit disorder and lack of impulse control.

The child was being cared for by his father's girlfriend at the time of the incident. Neither he nor his caretaker lived at the apartment complex. His caretaker alleged that she was invited onto the premises by a friend and was waiting for her to return home. She took the child to the playground while they waited.

Plaintiff claimed that as an invitee (or because the child was lured by an attractive nuisance) that ordinary negligence was the standard by which to judge the defendants' conduct. Plaintiff claimed the playground had inadequate and/or non-existent ground cover. Plaintiff "claimed 9-12" inches of mulch was required to comply with industry standards for safety. Photos taken near the time of the incident showed essentially no mulch in place. Defendants' employees admitted the amount of mulch was inadequate.

The defense claimed the child and his caretaker were trespassers to the playground. As such, the only duty owed was one to avoid intentional misconduct. There was no evidence supporting intentional misconduct.

The trial was bifurcated upon Plaintiff's motion and tried on the issue of liability only. The jury deliberated for 50 minutes before returning a defense verdict finding the minor was not an invitee nor was he lured on the premises as a result of an attractive nuisance.

NATURE OF INJURY:

Subdural hematoma, craniotomy, seizures, lack of impulse control and ADHD.

PLAINTIFF'S EXPERT WITNESS:

Leonard Lucenko, Ph.D., ACFEI, ASSE, LLC
Sport and Recreation Liability Expert
Lake Ariel, Pennsylvania

DEFENDANT'S EXPERT WITNESS:

John O. Spengler, Ph.D.
Sport & Recreation Administration
Dept. of Tourism, Recreation & Sport Management
University of Florida
Gainesville, Florida

VERDICT:

For Defendants.

DATE OF VERDICT:

April 24, 2013.

DATE OF FINAL JUDGMENT:

Pending.

DEFENDANT'S OFFER:

$150,000

PLAINTIFF'S DEMAND:

$600,000 (Plaintiff's final settlement demand before trial)

ATTORNEY'S COMMENTS:

Surprisingly, Plaintiff filed a Motion to Bifurcate the issues of liability and damages approximately one week prior to trial, which the trial court granted. The result of this ruling was that Plaintiff was precluded from entering into evidence any favorable medical evidence of the severe and potentially life threatening injuries sustained by the child.

Plaintiff's counsel, over defense objections, was permitted to pursue theories that the child was *either* an invitee or a trespasser who was lured onto the playground claiming the playground was an attractive nuisance. Either way, Plaintiff argued, the standard of care required was one of reasonable care in maintaining the playground.

The defense argued that theories of liability based upon invitee status and an attractive nuisance were mutually exclusive theories and that Plaintiff should have been required to choose which theory upon which he would proceed at trial. The defense also contended that a playground cannot be an attractive nuisance when the child is brought there by an adult caretaker. The trial court reserved ruling on defendants' motion for directed verdict on the alternative theories and allowed both theories to go to the jury.

The parties have recently reached an agreement that the defense will waive costs in exchange for Plaintiff agreeing not to file post-trial motions.

Submitted By: **Richard B. Mangan, Jr., Esq.** **Date: May 24, 2013**
R. Clifton Acord Esq.

Firm: **Rissman, Barrett, Hurt,**
Donahue & McLain, P.A.

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