

December 23, 2019

Broward Lawyers Land \$6.5M Verdict Over Child's Christmas Carnival Ride Fall

Bryan Hofeld, David Silverman and Zane Berg represented Elizabeth Frank, who was 11 when she fractured her skull and broke both legs on board a ride called the "Psycho Swing," which the lawyers alleged was operated with reckless disregard for safety.

By **Raychel Lean** | December 23, 2019 at 12:49 PM



L-R: Bryan Hofeld, David Silverman and Zane Berg of Schlesinger Law Offices in Fort Lauderdale. Courtesy photos.

Bryan Hofeld, David Silverman and Zane Berg of Fort Lauderdale's Schlesinger Law Offices secured a \$6.5 million jury verdict for a 19-year-old woman who was severely injured on a Broward carnival ride as a child.

Elizabeth Frank was 11 in December 2011 when she went on a family trip to the Seminole Indian Reservation's annual Christmas carnival. But festivities came to an abrupt end after Frank fractured her skull and broke both legs on board a ride called the "Psycho Swing," which swings participants in high-speed, 360-degree loops.

In 2015, Frank and her family sued South Florida entertainment company The Celebration Source Inc., which had rented the ride, alleging it had operated the ride without knowing enough about it, or obtaining proper instructions and necessary safety equipment.

Armed with a summary judgment from Broward Circuit Judge Nicholas Lopane that said the defendants were at least partially negligent, the plaintiff's team had to convince jurors that the defendant was grossly negligent and deserving of punitive damages.

'Holding on for dear life'

Frank's lawsuit alleged the ride was being operated without the safety harnesses mandated by its manufacturer. Not unlike rock-climbing harnesses, they were meant to fit through a rider's legs and midsection, connecting them to the machine.

"That keeps you secure and it would prevent exactly this type of accident," Hofeld said.

But Frank didn't have one. Nor did she have wrist straps, according to the lawsuit, even though they came attached to the ride. Hofeld, Berg and

Silverman argued the defendant hadn't used the straps because they hadn't properly researched the ride and didn't know what they were for.

That meant the only thing securing Frank on the ride were a pair of foot clamps, according to Hofeld, which attached to her ankles to keep her feet planted.

"Without the safety harness and the wrist straps, that actually makes it more dangerous because, if somebody gets thrown or falls out of the ride, they can't just have a clean fall. They're still connected to the ride if it's doing loops," Hofeld said. "In [Frank's] case, she was literally holding on for dear life to two vertical handlebars."

Frank lost her grip on the handlebars and fell partway through the ride, hitting her head on a metal toolbox on a trailer platform below. But because she was still attached to the foot clamps, she was dragged as the swing continued to move.

Frank suffered a depressed skull fracture, meaning the bone broke inward toward her brain. She also fractured both legs and three ribs, suffered a bruised lung, a head laceration and a concussion.

Eight years on, Hofeld said his client has ongoing headaches, issues with memory, learning and processing, and has pain in her ankles that worsens with activity.

"These are things that are going to follow her," Hofeld said. "And it's all stuff she shouldn't have to be dealing with but for the negligence of this defendant."

The plaintiff brought amusement ride safety expert William Avery to the stand, who testified that the defendant hadn't operated the ride safely. Jurors also watched a 3-D animation that Hofeld, Berg and Silverman used

to contrast how the ride was supposed to operate—using the harness, wrist straps and foot clamps—with Frank’s experience of being ejected.

Counsel to Celebration Source—Anthony Dieguez of Dieguez & Associates in Miami Lakes, Steven Adamsky of Mitrani Rynor, Adamsky & Toland in Weston, and David Cooney of Cooney Trybus Kwavnick Peets in Fort Lauderdale—did not respond to a request for comment by deadline.

The company initially denied any liability or negligence, claiming the accident was due to circumstances beyond its control. It also pointed to a nonemployee who put Frank in the ride and temporarily operated it while an employee went to the bathroom, but the plaintiff highlighted Frank’s accident happened after the employee returned.

A ‘formative event’

At trial, Celebration Source alleged Frank wasn’t as severely injured as her lawsuit claimed. So the plaintiff’s biggest obstacle was demonstrating to jurors the severity and permanence of her injuries.

“Now, eight years later, when you’re looking at her, she looks OK,” Hofeld said. “She looks like a normal 19-year-old girl. You can’t see that she’s injured or in pain.”

Testimony from Frank and her family revealed that she became less social, outgoing and physically active after the accident.

“This was a very formative event for her,” Hofeld said. “It really sort of changed her personality in certain ways.”

Frank's treating orthopedic surgeon told jurors that the tibia and fibula bones in Frank's right leg have since fused together, and that she was diagnosed with traumatic arthritis at 17.

"No 19-year-old girl has any business having arthritis, but unfortunately she does as an outgrowth of this accident," Hofeld said.

The plaintiff hired an orthopedic surgeon to testify about future medical care, which could include surgery on one or both legs. They also retained a pediatric neurologist, who testified that Frank's cognitive issues and depression are likely to be permanent.

Given that experts estimated Frank's life expectancy at about 63 more years, Hofeld attempted to put that length of time into perspective for jurors.

"In 2080, if she lives out an average life expectancy for a girl her age, she's going to be alive and she's going to be suffering pain and problems from this accident that happened to her when she was 11 years old," Hofeld said. "So I went back and I looked at the 63 years prior to today, and talked about all the things that have happened since 1956 up to now."

Hofeld's recap of the time frame referenced the building of the U.S. interstate highway system, the assassination of President John F. Kennedy, the 1960s civil rights movement, the Vietnam War and the 9/11 terrorist attacks.

Jurors found the defendant's conduct was grossly negligent, awarding \$225,000 in punitive damages, almost \$5.5 million for past and future pain and suffering, \$473,000 in economic damages and more than \$350,000 for medical expenses.

Celebration Source has moved for a new trial, labeling the verdict excessive as it surpassed what the plaintiff requested by more than \$3 million. The defense has also moved to set off the damages, claiming the punitive verdict will put it out of business and arguing it “does not make sense” that the amount for past damages dwarfed future damages.

Lopane has not yet ruled on that motion.

Case: Elizabeth Frank v. The Celebration Source

Case no.: CACE15007393

Description: Products liability

Filing date: April 24, 2015

Verdict date: Dec. 6, 2019

Judge: Broward Circuit Judge Nicholas Lopane

Plaintiffs attorneys: Bryan Hofeld, David Silverman and Zane Berg, Schlesinger Law Offices, Fort Lauderdale

Defense attorneys: Anthony Dieguez, Dieguez & Associates, Miami Lakes; Steven Adamsky, Mitrani Rynor, Adamsky & Toland, Weston; David Cooney, Cooney Trybus Kwavnick Peets, Fort Lauderdale

Verdict amount: \$6.525 million