

Subject:**From:** "Nick Lichtenberg" <Nick.Lichtenberg@incisivemedia.com>**Date:** 8/17/2009 2:21 PM**To:** <liabilityexpert@cox.net>

DRAFT

C A L I F O R N I A

L O S A N G E L E S C O U N T Y

PREMISES LIABILITY

Inadequate or Negligent Security — Negligence — Negligent Security**Allegedly drunk concert-goer punched and kicked plaintiff****Verdict (P)** \$1,050,000**Net** \$770,000**Case** Merridy Cress v. Bethalia Verle Jones a/k/a Marcia Cooper & Neederlander-Greek Inc., No. BC362775**Court** Superior Court of Los Angeles County, Central**Judge** Aurelio Munoz**Date** 3/4/2009**Plaintiff****Attorney(s)**

P. Paul Aghabala, Law Office of P. Paul Aghabala, Woodland Hills, CA

Defense**Attorney(s)**

Howard A. Slavin, Lewis Brisbois Bisgaard & Smith LLP, Los Angeles, CA

Facts & Allegations

On Oct. 1, 2005, plaintiff Merridy Cress, 60s, retired due to disability, was assaulted during a concert at the Greek Theatre in Los Angeles.

Cress attended the concert with her fiance. Another concert-goer, Marcia Cooper, appeared to be inebriated while David Benoit was performing and obstructed the views of other concert-goers by standing up in front of them. Other concert-goers yelled at her to sit down, but she refused.

After Benoit's performance, Cooper left briefly and returned with a half-liter bottle of wine and three empty glasses for herself and her two companions. Cooper continued to stand up and obstruct the view of others while Kenny G was performing. When Cress's fiance asked Cooper's fiance to sit down, Cooper turned around and began yelling profanities at him and Cress. Cress's fiance complained to an usher, who said that there was nothing they could do about Cooper's behavior.

Cooper continued to verbally and physically threaten Cress and her fiance. When they changed seats, Cooper followed them. Two ushers spoke to Cooper at that point, but did not eject her from the concert. Cress and her fiance decided to leave the concert early; Cooper followed them and punched Cress in the left temple, causing her to fall, and then kicked her. At that point, ushers and security intervened.

Cress wanted to press charges against Cooper, but somebody convinced her not to press charges by telling her that she would also be charged. The police then mistakenly took down the information for Cooper's friend, and not Cooper. Cooper was never charged criminally because of the error by the police or the Greek Theatre staff.

The grounds for ejecting a patron from a concert included interfering with others' enjoyment of the concert, making threats, or being inconsiderate. Two other people besides Cress's fiance had complained about Cooper's behavior during the concert, but she was never ejected.

There were 15 off-duty police officers present at the concert, but they were mostly outside of the venue and were not near Section C, where Cress and Cooper were sitting. The captain in charge of Section C had left her post while the incident was occurring.

Furthermore, only captains and two of the 15 off-duty officers had walkie-talkies for purposes of communicating with each other.

Cress sued Neederlander-Greek Inc., the operator of the Greek Theatre, for premises liability and negligence. She also sued Cooper, but Cooper could not be found for purposes of civil litigation.

Cress alleged that Neederlander-Greek provided negligent and inadequate security, because the ushers did not have adequate training to deal with intoxicated people and the defendant did not follow its own policies regarding ejection.

The plaintiff liability expert testified that the ushers did not have adequate training to deal with intoxicated or belligerent people; it was inadequate and negligent that only captains and two off-duty officers had walkie-talkies; Section C had basically no security at the time of the incident; and the defendant was negligent for not following its own rules regarding ejection. Neederlander-Greek argued that it provided adequate security, and that this was a random act of violence, which it could not have foreseen.

The defense liability expert testified that the defendant provided security that was customary for the type of venue.

Injuries/Damages

emotional distress; aggravation of preexisting condition; eye; agoraphobia; post-traumatic stress disorder; depression; neck; psychiatric impairment

Cress sustained posterior vitreous detachment as a result of the punch. She sees flashes and floaters, and the eye damage is permanent. She also went to an emergency room a couple of times because of neck pain.

Cress alleged emotional distress, including agoraphobia, post-traumatic stress disorder and depression. She was a three-time cancer survivor who had experienced a heart attack about one year before the incident and had high blood pressure. Stress related to the incident aggravated her heart problems and high blood pressure, and caused her to fear the recurrence of cancer.

Cress underwent several therapy sessions, and was hospitalized at a psychiatric ward for a few days because of the incident. She will need future psychiatric treatment.

The plaintiff ophthalmology expert testified that Cress sustained posterior vitreous detachment as a result of the punch, that she sees flashes and floaters, and that her symptoms are permanent.

The plaintiff psychiatry expert testified that she would never recover from the incident without major treatment; she developed post-traumatic stress disorder and became suicidal, and it affected her relationship with her fiance to the point that they broke up.

The plaintiff internal medicine expert testified that stress from the incident aggravated her high blood pressure and heart problems, caused her to be hospitalized, and caused her to develop post-traumatic stress disorder.

Cress sought approximately \$100,000 for past medical expenses, \$1 million for future medical expenses, \$1 million for past pain and suffering, and \$2 million for future pain and suffering.

The defense orthopedics expert testified that Cress did not have orthopedic injuries, and that her neck problems were caused by age and degenerative conditions; she developed a sprain or strain that should have resolved, and needed no future treatment.

The defense psychiatry expert testified that Cress's breakup with her fiance caused her emotional problems, and that the incident with Cooper did not lead to the breakup. A domestic violence incident occurred prior to the breakup.

Result

The jury found for Cress, and awarded her \$1.05 million.

The jury found that Neederlander-Greek was 60 percent liable, and that Cooper was 40 percent liable.

After certain considerations, the judgment was \$770,000.

Plaintiff(s)

Merridy Cress

\$100,000 past medical cost

\$250,000 future medical cost

\$300,000 past pain and suffering

\$400,000 future pain and suffering

\$1,050,000 plaintiff's total award

Demand \$999,099 (CCP 998)

Offer \$100,000 (CCP 998)

Insurer(s)

Arch Insurance Group Inc. for Neederlander-Greek

Trial Details

Trial Length: None reported

Jury Deliberations: 3.5 Hours

Jury Poll: None reported

Jury Composition: None reported

Plaintiff

Expert(s)

Charles Aronberg, M.D., ophthalmology, Beverly Hills, CA (P. Paul Aghabala)

Fred DelMarva, security procedures, Glendale, AZ (P. Paul Aghabala)

Carol Lieberman, M.D., psychiatry, Beverly Hills, CA (P. Paul Aghabala)
Cecelia T. Madrid, M.D., internal medicine, North Hollywood, CA (P. Paul Aghabala)

Defense

Expert(s)

Anthony Davis, security procedures, Unknown, CA (Howard A. Slavin)
John Ira Hochman, M.D., psychiatry, Los Angeles, CA (Howard A. Slavin)
Jacob E. Tauber, M.D., orthopedic surgery, Beverly Hills, CA (Howard A. Slavin)

Post-Trial

The defense is seeking reduction of Cress's past medical expenses, pursuant to Hanif.

Editor's Note

This report is based on information that was provided by plaintiff's counsel and defense counsel.

Plaintiff(s)

Demographics

Merridy Cress

Age: 60 s

Occupation: retired due to disability

Gender: Female

Married: No

Children: None reported

Children Description: injured party

Written By –Joseph Falso

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