

Vehicle crashed into donut shop, fatally injuring customer

Amount: \$220,000

Type: Settlement

State: Texas

Venue: Harris County

Injury Type(s): brain-coma
chest-fracture; rib
other-death
other-septic shock
other-organ failure
other-spleen; laceration
pelvis-fracture; pelvis
abdomen-abdomen
shoulder-fracture(fracture, scapula); shoulder(fracture, scapula)
pulmonary/respiratory-pneumonia
pulmonary/respiratory-pneumothorax
pulmonary/respiratory-contusion; pulmonary
pulmonary/respiratory-respiratory distress
gastrointestinal/digestive-liver
gastrointestinal/digestive-pancreas

Case Type: Premises Liability - Dangerous Condition
Motor Vehicle - Pedestrian
Wrongful Death - Survival Damages

Case Name: Linda Sue Works, as Independent Executrix of The Estate of Marc Fite, Deceased v. Shipley Leasing Corp., L&S Management Inc., Shipley Holding Corp., Shipley Properties Inc., Cheang Lee, d/b/a Shipley Donuts (8802 Stella Link), Heang Lim, d/b/a Shipley Donuts, and Madhavan K. Pillai, Sumangalamma Pillai, and Henry Fiszler

Date: November 19, 2012

Parties

Plaintiff(s): Linda Sue Works (Male),estate of Marc Fite (Male, 77 Years)

Plaintiff Attorney(s): Edward C. Burwell; Law Offices of Edward C. Burwell; Houston, TX, for Linda Sue Works, estate of Marc Fite Scott J. Davenport; Davenport Law Firm P.C.; Houston, TX, for Linda Sue Works, estate of Marc Fite

Plaintiff Expert(s): Rob Reiter ; Safe Parking; Pomona, CA called by: Linda Sue Works, estate of Marc Fite David Steitle P.E.; Traffic; San Antonio, TX called by: Linda Sue Works, estate of Marc Fite

Defendant(s): Heang Lim, Cheang Lee, Henry Fiszer, Madhavan K. Pillai, L&S Management Inc.,

Sumangalamma Pillai, Shipley Holding Corp., Shipley Leasing Corp., Shipley Properties Inc.

Defense Attorney(s): James A. Newsom; Sprott, Rigby, Newsom, Robbins & Lunceford, P.C.; Houston, TX, for Heang Lim, Cheang Lee, Henry Fiszer, Madhavan K. Pillai, L&S Management Inc., Sumangalamma Pillai, Shipley Holding Corp., Shipley Leasing Corp., Shipley Properties Inc. R. Kyle Hawes; Chamberlain, Hrdlicka, White, Williams & Aughtry P.C.; Houston, TX, for Heang Lim, Cheang Lee, Henry Fiszer, Madhavan K. Pillai, L&S Management Inc., Sumangalamma Pillai, Shipley Holding Corp., Shipley Leasing Corp., Shipley Properties Inc. Britton B. Harris; Harris, Hilburn & Sherer, LLP; Houston, TX, for Heang Lim, Cheang Lee, Henry Fiszer, Madhavan K. Pillai, L&S Management Inc., Sumangalamma Pillai, Shipley Holding Corp., Shipley Leasing Corp., Shipley Properties Inc. Jeff C. Wigginton Jr.; Chamberlain, Hrdlicka, White, Williams & Aughtry P.C.; Houston, TX, for Heang Lim, Cheang Lee, Henry Fiszer, Madhavan K. Pillai, L&S Management Inc., Sumangalamma Pillai, Shipley Holding Corp., Shipley Leasing Corp., Shipley Properties Inc.

Defendent Expert(s): Jerry Marcus Safe Parking; The Woodlands, TX for Heang Lim, Cheang Lee, Henry Fiszer, Madhavan K. Pillai, L&S Management Inc., Sumangalamma Pillai, Shipley Holding Corp., Shipley Leasing Corp., Shipley Properties Inc.

Insurer(s): State Farm

Facts:

On June 23, 2008, plaintiff's decedent Marc Fite, 77, was sitting inside a Shipley donut shop on Stella Link in Houston. Henry Fiszer, 85, entered the parking lot and was attempting to park in a designated parking space directly in front of the shop. Fiszer stepped on the accelerator instead of the brake, ran over a 2-inch curb, crashed through the plate-glass windows, and struck Fite, pinning him against debris. Fite sustained fatal injuries.

Fite's estate sued Fiszer for negligently operating the vehicle and sued franchisee Heang Lim; property owners Madhavan K. Pillai and Sumangalamma Pillai; and Shipley Leasing Corp., Shipley Holding Corp.,

ShIPLEY Properties Inc., and L&S Management Inc. (which handles administration for ShIPLEY and its franchises) for premises liability, alleging that the lack of poles or bollards around the shop was an unreasonably dangerous condition. Bollards are short, vertical posts intended to block motor vehicles.

Four days after this accident, a similar incident occurred at the same store. In this second accident, a woman mistook the gas for the brake and slammed into the donut shop as she was pulling into a storefront parking space.

The plaintiffs noted that ShIPLEY headquarters was surrounded by poles or bollards and that ShIPLEY maintenance workers had installed bollards at a few ShIPLEY donut shops, including two operated by Lim.

After the second accident, Lim decided to have poles or bollards installed at this store, as well.

The plaintiffs called Rob Reiter as a bollard expert. Reiter opined that storefront crashes are very common and foreseeable; that storefronts where the vehicles pull in straight toward storefronts and sidewalks are particularly vulnerable to such accidents; that pedal-misapplication errors are very common in parking lots; and that ShIPLEY invites patrons to park in front, where customers are walking and sitting, and should therefore have bollards or some other kind of protection for those customers.

The plaintiffs' traffic expert testified that the lack of bollards was a dangerous condition for ShIPLEY patrons and that, had bollards been present, the Fitzer vehicle would not have penetrated the shop and struck Fite.

The defendants denied liability, arguing that no building codes, city codes, or anything else require poles or bollards to be installed for head-in parking at any type of store.

The defense expert testified that the accident was not foreseeable and that these kinds of storefront accidents are not common or known to reasonable retailers.

The defense also argued that no similar incident had ever happened at any of the more than 125 ShIPLEY donut shops.

The Pillais moved for summary judgment on the grounds that they did not retain control over the premises at the time of the incident. The plaintiffs' counsel reported that the motion was unopposed, but ShIPLEY's counsel said it was opposed and that the plaintiffs filed a response. The court granted the motion on Nov. 1, 2012.

The ShIPLEY defendants' counsel reported that Reiter is a bollard salesman and that it was disputed whether Reiter has expert credentials. Plaintiffs' counsel reported that Reiter is not a salesman.

Injury:

Fite was extricated from the debris and taken to the hospital. His injuries included fractures of left ribs 2 through 9, left pulmonary contusion, left pneumothorax, left scapula fracture, grade V splenic laceration, left iliac wing fracture, right iliac non-occlusion fracture, multi-organ failure syndrome, septic shock, liver cirrhosis, acute respiratory distress syndrome, pneumonia, and a pancreas injury.

He was placed in a medically-induced coma the day after the accident. He underwent multiple abdominal surgeries but was not in stable enough condition to undergo orthopedic surgery.

He was kept in a coma until his death on July 4. He left no survivors. His estate claimed \$15,000 in funeral

and burial bills and unspecified damages for conscious pain and suffering.

The medical bills were paid by Medicare.

Result:

The case settled for \$220,000.

Of the settlement, \$50,000 was paid by Fiszer's insurance carrier, which had a \$50,000 policy limit. The remaining \$170,000 was paid by the carrier for both Lim and the Shipley entities.

Trial Information:

Judge: Christine Butts

Editor's Comment:

This report is based on information that was provided by plaintiffs' counsel, the Shipley defendants' counsel, and the Pillais' counsel. Lim's Counsel declined to contribute.