

DAILY REPORT

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Surprise deal ends theater trial

PLAINTIFF SHOT IN PARKING LOT accepts \$50K offer after jury is seated; her attorney had called it ‘an eight-figure case’

MARK NIESSE | mniesse@alm.com

WHEN IT CAME time to seek big money for a shooting in a movie theater parking lot, a plaintiff with a bullet lodged in her gut instead settled with Regal Cinemas for \$50,000 just after a jury was seated Monday.

The trial—if it had gone forward—was set up to be a high-stakes rematch of a 2010 premises liability trial over the same incident. Plaintiffs attorney Don Keenan asked a jury for a \$7 million verdict against Regal and its security company, Perfections Management, for the gang shooting death of Jesus Silencio, but the jury found for the defense.

This time, Keenan and co-counsel Timothy Cavanagh of Chicago represented Silencio’s sister, Claudia, who was shot in the abdomen by a stray bullet after she saw the fight and ran outside and screamed for help.

Cavanagh announced his acceptance of the defense’s settlement offer in court before opening statements in DeKalb County State Court. Keenan wasn’t present in

court and didn’t return messages seeking comment.

Defense attorneys Matthew Moffett and W. Winston Briggs said they were surprised the case settled because their offer had been pending for two years, and there was such a large gap between the sides’ valuations of the case. Moffett said Keenan had called it an “eight-figure case” in a pretrial hearing.

“I think they realized they had too much to overcome,” said Moffett, of Gray, Rust, St. Amand, Moffett and Brieske. “Maybe he thought, ‘I’m not going to do any better in this case [than in the 2010 trial], so I might as well settle it.’”

Claudia Silencio, an innocent bystander with no role in the gang violence, was expected to have a better chance to recover damages than the family of her late brother, who Briggs said had instigated the fight.

But the plaintiffs decided to end the case, which was filed 4½ years ago. “Given the result of the case last time, we thought it was in the best interest of



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The last trial drew many lawyers to watch Keenan in action and prompted attention to what he calls



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plaintiffs attorney

the “reptile strategy,” in which he asks jurors to levy significant verdicts against defendants whose negligent behavior created a threat to the community. In the book he co-wrote with jury consultant David Ball on the strategy, *Reptile: The 2009 Manual of the Plaintiff’s Revolution*, the authors describe how plaintiffs lawyers can appeal to the “reptilian” parts of humans’ brains by demonstrating how defendants pose a broad danger.

Both defense attorneys said they were disappointed they weren’t able to match wits with Keenan.

“It’s a letdown. You can either be slain by the reptile or be a reptile slayer, and who wouldn’t want to be a reptile slayer?” Moffett said.

Keenan’s website claims the reptile strategy has won more than \$4.4 billion in verdicts and settlements. He hosts seminars about how to use the strategy, including one that starts on Friday in Atlanta. Moffett noted that the schedule may indicate that Keenan didn’t expect to go to trial all along because he would have had a conflict with the Silencio trial, which was expected to last a week.

“I would have preferred to try the case. I was interested to see what the jury thought of Keenan’s strategy,” Briggs said.

Cavanagh initially told the defense Monday morning that he planned to dismiss and refile the case, but after

jury selection he accepted the settlement offer, Moffett said. The jury consisted of eight women and four men. By race, there appeared to be six white jurors, three black jurors, two Asian jurors and one Hispanic juror.

The composition of a jury may have little to do with the decision to settle at trial, said Trisha Renaud of Trial Advantage, an Atlanta trial and jury consulting service. Renaud, who used to write for the *Daily Report*, said she was speaking generally and didn’t know the particulars of this case.

“They’re not always sitting there and saying, ‘Oh my God, we’ve got an awful jury.’ Sometimes it just takes getting into a courtroom for people to settle,” Renaud said. “Sometimes the reality hits them, and they decide they don’t want to throw the dice.”

The plaintiffs argued in the first trial in 2010 that the movie theater should have provided better security because its customers were at risk from frequent crimes in the parking lot, including armed robberies, auto thefts, fights and property thefts.

Perfections Management had three security officers on duty at the time of the shooting, one of whom was patrolling the parking lot, Moffett said. The others were in the security office and inside the theater.

During voir dire on Monday, Cavanagh’s questioning focused on the importance of safety precautions, and Moffett was looking for a jury that recognized crime occurs despite reasonable security efforts.

Cavanagh asked jurors whether the public should be informed about criminal activity in an area, whether crime in parking lots is getting worse and whether business licensing was important for safety reasons. Keenan contended at the previous trial that Perfections Management, the

security company, wasn’t adequately licensed with the state.

Briggs and Moffett asked whether private businesses have a duty to prevent criminals from coming onto their property, and whether all crime is preventable.

Moffett said the plaintiffs may have decided to settle because a loss would have been a strike against the reptile strategy.

“There was too much at risk for them. If Keenan wants to promote this reptile strategy, he can’t afford to have a reptile trial come up and then show up and not have it go this way,” Moffett said.

The shooting occurred Sept. 29, 2006, in the parking lot of the Regal Hollywood 24 movie theater on Interstate 85.

As 21-year-old Jesus Silencio was being attacked by members of a Hispanic gang, then-18-year-old Claudia Silencio ran from the ticket lobby into the parking lot. The fight escalated, and shots were fired that killed Jesus Silencio and injured Claudia Silencio.

If the trial had gone forward, the defense would have asked the jury to either issue a defense verdict or apportion fault to the attackers rather than the theater and its security company. Three criminal defendants pleaded guilty to aggravated assault and related charges, but they weren’t named as defendants in the civil case.

Both cases were overseen by DeKalb County State Court Judge Alvin Wong.

The case settled Monday was Silencio v. Regal, No. 08A95494.