



And The Defense Wins

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Recently, DRI members [Matthew G. Moffett](#) and [Wayne S. Melnick](#), partners at **Gray, Rust, St. Amand, Moffett & Brieske, LLP** in Atlanta, obtained a very defense-favorable resolution to a shooting injury case in which plaintiff's counsel sought an eight-figure verdict. In this case, the plaintiff was a young woman who was shot and injured when she and her family were visiting a multiplex movie theatre. The plaintiff and most of her family were inside the theatre when a gang-related fight erupted in the parking lot. The plaintiff knew her older brother was in the parking lot and went outside to check on him. When the plaintiff went outside, she was shot with a stray bullet fired by one of the fight participants. The plaintiff's brother, who was not a gang member but had been mistakenly involved in the fight, was also shot and died at the scene.

Moffett and Melnick represented the security company hired by the movie theatre chain. During discovery, plaintiffs' counsel, the author of *The Reptile: The 2009 Manual of the Plaintiff's Revolution*, discovered that the security company had only three officers on duty on the night of the shooting and at the time of the actual fight, none of those officers were actually walking patrol in the parking lot. This was because the one officer that was supposed to walk patrol in the parking lot had gone inside to change the dead battery on his radio and had not gotten any other officer to cover his patrol for him. It was also discovered that there had been previous gang-related activity at the movie theatre, as well as various prior crimes involving firearms.

Prior to trial, two of the gang members involved in the fight, including the shooter, had been caught and were serving time in Georgia State Prison. Plaintiffs' counsel took evidentiary depositions of each of the gang members and both witnesses testified that they did not see security in the parking lot that night. Each of the gang members also testified that had the security officers been present or intervened when the fight first began, then the fight never would have taken place and certainly would never have escalated into a shooting.

Additionally, the plaintiffs focused a significant amount of their pretrial energies on the fact that the plaintiff still had the bullet inside her body, that it was located too dangerously close to her spine to be removed, and that she was suffering from continued emotional injuries as a result of this condition.

The case proceeded to trial and the jury was selected. Following jury selection, plaintiffs' counsel announced that they were not going to proceed to trial and instead opted to accept the five-figure offer that had been made by the insurer of the movie theatre chain on behalf of all defendants. As a result, the

case was resolved with Moffett and Melnick's client, whose insurer had previously denied coverage based on a policy exclusion, not paying any money to the plaintiff to resolve the case.

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