

INJURY BOARD

THE NATION'S SAFETY MAGAZINE

28 / INJURY BOARD / SPRING 2010

spring BREAK

RULING IN BAHAMAS RESORT CASE AN IMPORTANT VICTORY FOR U.S. RESIDENTS

By Robert Parks and Gabrielle Lyn D'Alemberte

Every year, hundreds of U.S. residents suffer negligence-related injuries or death while vacationing in resorts in the Caribbean area. Traditionally, the victims and family members have faced a number of difficult challenges when seeking fair compensation for their losses. For instance, The Bahamas does not allow contingency fee contracts, so a plaintiff would have to engage a local attorney at a fee of up to \$600 an hour, and post a sizeable security deposit for litigation costs before filing a suit. Then, it might take two or three years for a case to be heard by a judge rather than have the case presented to a jury. That is why a recent U.S. appellate court ruling, on behalf of the estate of Daisy Scott Emory, is so important to vacationers' rights. The court ruled that a U.S. courtroom was the proper forum for a resort negligence case. After all, the personal representative of Emory's estate, her daughter Rene Wilson, is a Florida resident. All of the fact witnesses concerning damages, including family members, friends, doctors and Emory's employer, are U.S. residents. In addition, Emory's family lacked the financial means necessary to file an action in The Bahamas. An affidavit from the plaintiff stated in part, "Should the Estate be forced to post a bond or hire hourly legal representation, we could not afford to continue to prosecute this matter and we would be shut out of any recovery for the death of our mother."

Prior to the appellate court's decision a U.S. District Court in Miami granted the defendants' motion to dismiss the Emory case, finding that the balance of conveniences strongly favored dismissal and that The Bahamas was the proper forum for the plaintiff's claims. That ruling was appealed with the argument that the district court failed to use the proper standard to evaluate the forum non conveniens motion. In De-

ember, the 11th Circuit Court of Appeals ruled that the district court had erred in dismissing the Emory suit on forum non conveniens grounds. By reversing and remanding the lower court's decision, the appeals court allowed a wrongful death case to move forward in a U.S. jurisdiction - a major victory for Emory's family, who have been waiting four years to present their case in court.

Back in 2006, Daisy Scott Emory, a 48-year-old Orlando resident, purchased a discounted vacation package at the Island Palm Resort on Grand Bahama Island. The vacation package required her to tour the Island Palm's sister hotel, the Island Seas, and attend a timeshare presentation. Emory traveled to the Bahamian resort with her daughter, sister and two cousins. While at the Island Seas, Emory and her party purchased tickets for a banana boat ride from Paradise Watersports, LLC, a vendor that operated a kiosk near the front desk. Paradise Watersports leased the kiosk space at the Island Seas in order to market its services directly to guests and visitors of the resort. Emory notified George Douglas, a Paradise Watersports employee in charge of towing the banana boats, that she and another member of her party could not swim. Douglas then gave Emory a life vest that was worn and too small, but assured her that it would keep her afloat if necessary. However, the boat capsized while carrying Emory and three of her family members, and Emory fell into the water and drowned. Now, thanks to the appellate court ruling, Daisy Scott Emory's family will have an opportunity to achieve justice - in a U.S. courtroom.

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