

FILE

*Rivera v. Baldisari
Amusement Parks, Inc.*

Smith, Taylor & Isely
Attorneys at Law

MEMORANDUM

To: Applicant
From: Thomas Isely
Subject: *Rivera v. Baldisari Amusement Parks, Inc.*
Date: February 24, 2004

We represent Cara Rivera, who was injured when she fell from the Ferris wheel at Wild Wonder World ("WWW"), an amusement park owned and operated by Baldisari Amusement Parks, Inc. ("Baldisari") here in Great Bend. The trial is set to begin in 60 days, and I need your help in getting the trial exhibits ready for use at trial.

Counsel for Baldisari has said that she will not stipulate to the authenticity of several items of evidence we intend to introduce at trial. She may end up waiving her objections once we get to court, but because she might not, we need to be prepared.

I have prepared a list entitled Items of Evidence which describes the only items I'm concerned about and identifies individuals connected with the evidence we want to authenticate. Assume that all the evidence is admissible if properly authenticated and do not concern yourself with potential hearsay issues. All I am concerned about at this stage is that we satisfy the procedural steps necessary for producing the items in court and can establish that they are authentic. We want to do this *by the most direct and efficient method*, so if there is a way of shortcutting the procedures to avoid wasting courtroom time with the live testimony of a parade of record custodians and sponsoring witnesses, we should opt for the shortcut.

Please draft a memorandum in which you answer the following questions for each item of evidence:

- What steps must we take to ensure that the evidence is available in court?
- What must we do to establish the authenticity of each item of evidence?

In answering these questions, in addition to citing the applicable rules and code sections, be sure to discuss narratively how the governing section(s) of the Franklin Rules of Evidence and/or the Franklin Code of Civil Procedure enable us to produce each of the items of evidence in court and establish its authenticity.

Organize your memorandum along the following lines, as to each item of evidence:

- A heading specifying the item of evidence, and under each heading:
 - a. the steps necessary for getting the item to court, and
 - b. what needs to be done to authenticate the item.

Items of Evidence

Opposing counsel will not stipulate to the authenticity of the following items of evidence:

1. Frank Electronics, Inc.'s Personnel File on Cara Rivera: Ms. Rivera is employed by Frank Electronics, Inc. She has been off work for the past 18 months as a result of the accident. Just before she was injured, she had been promoted to the position of Vice President of Manufacturing at a substantially higher salary than her previous position. Because of her extended absence, Frank filled the position with another person. Frank's personnel file on Ms. Rivera contains the documentation that shows the details of the promotion and its subsequent rescission. Nancy Sanders, Frank's Director of Human Resources, is the custodian of those records.

2. WWW's Personnel File on Brady Spitz: Spitz, the employee who was operating the Ferris wheel at the time of the accident, quit his job at WWW after the incident. We have been unable to find and depose him, so we must assume he will be unavailable to testify at the trial. In pretrial discovery, we learned that WWW maintained a personnel file on Spitz and that the file contains his last known address and shows he was repeatedly disciplined for drinking on the job.

3. State Safety Inspection Report: About a year before the accident, the Franklin Department of Public Safety conducted an inspection and cited Baldisari for a number of deficiencies in the maintenance and operation of the WWW Ferris wheel, including a defect that caused the wheel to surge forward at times. In its report, the Department required Baldisari to repair the defect and recommended that Baldisari install automatic seat-guard locks. Baldisari did not retain a copy of the report in its files.

4. Baldisari's Maintenance Records: Baldisari has a maintenance department, which retains records of all maintenance performed on its equipment, including the Ferris wheel. Among those records is correspondence showing that Baldisari declined to purchase automatic seat-guard locks for the Ferris wheel.

5. Hospital and Medical Records: Ms. Rivera was taken from the scene of the accident to Franklin General Hospital. The hospital's records include bills, charts, x-rays, test results, etc., relating to her emergency room treatment, surgery, and hospitalization until she was released one month later to return home.

Ripka Investigations

1216 Meade Street
Redding, Franklin 33754
(555) 554-7108
ripka@srch.com

June 23, 2003

Thomas Isely, Esq.
Smith, Taylor & Isely
One Court Center, Suite 1805
Great Bend, FR 33706

Re: *Rivera v. Baldisari Amusement Parks, Inc.*

Dear Tom:

I have completed the investigation you asked me to make in connection with the *Rivera* case, and here is what I have found:

1. Police Officer: I spoke with Officer Arnold Hurlbet of the Great Bend PD, who responded to the scene. He interviewed Brady Spitz, the Ferris wheel operator. Spitz admitted to Officer Hurlbet that he drank "a lot" of muscatel wine in the hours before the accident and that he (Spitz) "guesses" he had neglected to engage Ms. Rivera's seat lock so that she was ejected from her seat on the Ferris wheel when it for some reason surged violently.

2. U.C.C. Filings: In the office of the Secretary of State, I found a recent U.C.C. 1 showing Upland Bank as the secured party and Baldisari Amusement Parks, Inc., as the debtor on the Ferris wheel located at Baldisari's Wild Wonder World facility in Great Bend. The U.C.C. 1 indicates that Baldisari is the owner.

3. Department of Public Safety: The Department's records show that Baldisari has a long record of citations for safety violations relating to the operation of Wild Wonder World park. Specifically, with respect to the Ferris wheel, there is an inspection report dated January 29, 2003, showing that the Department issued a safety violation citation to Wild Wonder World relating to a mechanical defect that caused the Ferris wheel to surge at odd times. The Department also recommended installation of automatic seat-guard locks. A copy of the record is enclosed. The inspector who made the report is David Steele. The head of the Department's Bureau of Records is Marta Jones.

4. Television Reporter: I also interviewed Jake Meerstein, a news reporter from WGVP. He told me he covered the accident and interviewed a woman who was waiting in line to ride the Ferris wheel. She told him that she had told the operator that Ms. Rivera's seat-locking device was not locked. The woman said that she could smell alcohol on the operator's breath and that he told her to mind her

own business. Mr. Meerstein told me that he would make sure the tape was preserved and that he would check his notes to find out her name.

5. Brady Spitz: I have been unable to locate Mr. Spitz. The night manager at the Bay View Residence Hotel at 423 Carlton Street, Great Bend, FR 33706, which was Spitz's last known address, says he "checked out a long time ago and didn't leave a forwarding address." None of the other hotel residents I spoke to had any idea where Spitz is.

Please let me know if there is anything further you need.

Very truly yours,

A handwritten signature in cursive script, appearing to read "JP Ripka".

John Paul Ripka