

**IN THE SUPREME COURT OF FLORIDA**

TROY ANDERSON,

Petitioner,

v.

Case No.: SC15-124

L.T. No.: 5D13-2442, 5D13-2553

HILTON HOTELS CORP. et al.,

Respondents.

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**ON REVIEW FROM THE DISTRICT COURT OF APPEAL,  
FIFTH DISTRICT, STATE OF FLORIDA**

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**APPENDIX TO INITIAL BRIEF OF PETITIONER**

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Key to Record Citations

The second line of each entry indicates the date of filing followed by the citation to the record before this Court using the following abbreviations:

DCA – Record of papers filed in the district court of appeal (e.g., the briefs and opinion below) filed in this Court on September 4, 2015.

R – Record of trial court filings filed in the district court of appeal as part of the original record for Case Nos. 5D13-2552 and 5D13-2553 filed in this Court on September 5, 2015.

SR:T1 – The transcript from the first trial in this case, which is included in the supplemental record filed on October 27, 2015.

SR:T2 – The transcript from the second trial in this case, which is included in the supplemental record filed on October 27, 2015.

\* – Filings from the record in Case No. 5D13-1722 that the district court ruled would also be considered part of the record in Case Nos. 5D13-2552 and 5D13-2553, but that the district court clerk failed to transmit to this Court. Petitioner is concurrently moving to supplement the record so the Court will have the official copies.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing document has been furnished to the following counsel by email on November 12, 2015:

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Inc.*

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Attorney

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

/s/ John S. Mills  
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IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN AND  
FOR ORANGE COUNTY, FLORIDA

TROY ANDERSON and PAULA  
ANDERSON, his wife,

CASE NO: 2009-CA-040473-O

Plaintiffs,

v.

HILTON HOTELS CORPORATION, a foreign  
corporation, doing business as EMBASSY  
SUITES ORLANDO AT INTERNATIONAL  
DRIVE AND JAMAICAN COURT, also doing  
business as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign  
corporation, a/k/a SECUREAMERICA LLC,  
W2007 EQUITY INNS REALTY, LLC, a  
foreign corporation, and INTERSTATE  
MANAGEMENT COMPANY, LLC, a foreign  
corporation,

Defendants.

**SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs, Troy Anderson and Paula Anderson, his wife, hereby amend their Amended  
Complaint previously filed and sue Defendants, HILTON HOTELS CORPORATION also doing  
business as HILTON WORLDWIDE (hereinafter also referred to as “Hilton,” or “Embassy  
Suites,”), SECURAMERICA, LLC (hereinafter also referred to as “SECURAMERICA”),  
W2007 EQUITY INNS REALTY, LLC (hereinafter also referred to as “W2007”) and  
INTERSTATE MANAGEMENT COMPANY, LLC, a foreign corporation, (hereinafter also  
referred to as “IMC”), for damages and allege:

**ALLEGATIONS AS TO ALL CLAIMS ESTABLISHING JURISDICTION AND VENUE**

1. This is an action for damages in excess of \$15,000.00, exclusive of interest and costs.
2. At all times material hereto, Plaintiff, Troy Anderson, was and is a resident of Orlando, Orange County, Florida.
3. At all times material hereto, Plaintiff, Paula Anderson, was and is a resident of Orlando, Orange County, Florida, and the wife of Plaintiff, Troy Anderson.
4. That at all times material hereto, Defendant, HILTON HOTELS CORPORATION, was and is a foreign corporation, with its current principal headquarters located in McLean, Virginia.
5. Defendant, HILTON HOTELS CORPORATION, functions as the parent company to multiple subsidiaries, including the chain of hotels it operates known as Embassy Suites Hotels, a chain that is part of the "Hilton Family."
6. Defendant, HILTON HOTELS CORPORATION, is the lessor of the franchise license for the Embassy Suites Orlando at International Drive and Jamaican Court Hotel, located at 8250 Jamaican Court, Orlando, Florida 32819.
7. That at all times material hereto, Defendant, HILTON HOTELS CORPORATION, and its subsidiaries, owned and operated the Embassy Suites Orlando at International Drive and Jamaican Court Hotel, located at 8250 Jamaican Court, Orlando, Florida 32819. Said hotel was first established in 1984, renovated in 2007 by Defendant, and consists of 246 rooms and eight floors. Though a false statement, Defendant has consistently promoted that it provided on September 26, 2008, and allegedly provides today, "24 hour security," intending to mislead the consuming public to believe that security is provided around the clock. That attached hereto, marked as Exhibit "A," and incorporated herein, are promotional materials of Defendant, HILTON HOTELS CORPORATION, alleging "24 hour security," which existed at the time of

the alleged incident.

8. That at all times material hereto, Defendant, HILTON HOTELS CORPORATION, has been continuously doing business in Orlando, Orange County, Florida, since the opening of the hotel known as the Embassy Suites Orlando at International Drive and Jamaican Court Hotel.

9. Though Defendant, HILTON HOTELS CORPORATION, has not properly registered as a fictitious name, the Embassy Suites Orlando at International Drive and Jamaican Court Hotel, as required by Florida Statutes, it has nonetheless continuously operated said hotel in Orlando since its inception and did operate said hotel at all times material hereto, including on or about September 26, 2008.

10. At all times material hereto, Defendant, HILTON HOTELS CORPORATION, subjected itself to personal jurisdiction of this Court as follows:

a. HILTON HOTELS CORPORATION, either personally or through an agent, e.g., Embassy Suites Orlando at International Drive and Jamaican Court Hotel, operated, conducted, engaged in or carried on a business or business venture in Florida.

b. HILTON HOTELS CORPORATION has an office or agency in Florida, to wit: 8250 Jamaican Court, Orlando, Orange County, Florida, and therefore, jurisdiction exists pursuant to Fla. Stat. § 48.193(1)(a).

c. HILTON HOTELS CORPORATION is and was at all times material hereto engaged in substantial and not isolated interstate and intrastate activity in Florida, and, therefore, is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(2).

d. HILTON HOTELS CORPORATION purchases, sells and/or leases tangible and intangible personal property through brokers, jobbers, wholesalers or distributors to

persons, firms and corporations in Florida and, therefore, is conclusively presumed to be both engaged in substantial and not isolated activities in Florida and operating, conducting, engaging in, or carrying on a business or business venture in Florida pursuant to Fla. Stat. § 48.181(3).

11. That at all times material hereto, Defendant, HILTON HOTELS CORPORATION, dictates the standards and practices for the operation of the Embassy Suites Orlando at International Drive and Jamaican Court Hotel, and said Defendant monitors and oversees the implementation of these standards of operation. That though Defendant, HILTON, might try to claim the involved hotel is an independent hotel or franchise, it is, in fact, an agent of the principal, HILTON, and there is a direct and proximate link between the Embassy Suites involved herein and the parent, HILTON.

12. Defendants, HILTON HOTELS CORPORATION, has bank accounts in the State of Florida in its name and from which the direct employees of Embassy Suites Orlando at International Drive and Jamaican Court Hotel are able to make deposits and write checks against and in payment of various vendors in Florida for items purchased for use at the Embassy Suites Orlando at International Drive and Jamaican Court Hotel.

13. That at all times material hereto, Defendant, SECURAMERICA, LLC, was and is a foreign corporation, authorized to and conducting business in Florida, with its current principal headquarters located in Atlanta, Georgia.

14. That at all times material hereto, Defendant, SECURAMERICA, LLC, was and is operating an actual physical branch office located at 6250 Hazeltine National Drive, C-102, Orlando, Florida 32822.

15. That at all times material hereto, Defendant, SECURAMERICA, by and through its agents, employees and/or servants, was acting as the agent and/or employee of HILTON HOTELS CORPORATION and any and all wrongful or negligent acts of Defendant, SECURAMERICA, were committed individually, as well as on behalf of HILTON HOTELS CORPORATION, and were committed in the course and scope of the agency or employment.

16. Prior to and including September 26, 2008, Defendant, SECURAMERICA, contracted with HILTON HOTELS CORPORATION to provide security personnel on the premises of the Embassy Suites owned by HILTON for the security of the business invitees and to control and guard against prospective criminal activity, which had been occurring at or in the immediate vicinity of the premises and which Defendant, HILTON, was well aware of. SECURAMERICA thereby assumed a duty to business invitees to provide reasonable security at the premises.

17. At all times material hereto, Defendant, SECURAMERICA, LLC, subjected itself to personal jurisdiction of this Court as follows:

a. SECURAMERICA, LLC, either personally or through an agent, e.g., the branch office located at 6250 Hazeltine National Drive in Orlando, Florida, operated, conducted, engaged in or carried on a business or business venture in Florida. The security allegedly provided at the time of the subject incident was provided from and by the Orlando, Florida, location of Defendant, SECURAMERICA.

b. SECURAMERICA, LLC has a branch office or agent in Florida, to wit: 6250 Hazeltine National Drive, Orlando, Orange County, Florida, and therefore, jurisdiction exists pursuant to Fla. Stat. § 48.193(1)(a).

c. SECURAMERICA, LLC is and was at all times material hereto engaged in substantial and not isolated intrastate activity in Florida, and, therefore, is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(2).

18. Defendant, W2007 EQUITY INNS REALTY, LLC, is a franchise owner of the Embassy Suites located at 8250 Jamaican Court, Orlando, Florida, who is involved with the operation, management, and supervision of Embassy Suites.

19. Defendant, W2007, was and is a foreign corporation, authorized to and conducting business in Florida, with its current principal headquarters located in Irving, Texas.

20. At all times material hereto, Defendant, W2007, subjected itself to personal jurisdiction of this Court as follows:

a. W2007 has a branch office or agent in Florida, to wit: CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324, and therefore, jurisdiction exists pursuant to Fla. Stat. § 48.193(1)(a).

b. W2007 is and was at all times material hereto engaged in substantial and not isolated intrastate activity in Florida, and, therefore, is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(2).

21. Defendant, INTERSTATE MANAGEMENT COMPANY, LLC, operates, manages and/or supervises the Embassy Suites located at 8250 Jamaican Court, Orlando, Florida.

22. Defendant, IMC, was and is a foreign corporation, authorized to and conducting business in Florida, with its current principal headquarters located in Arlington, Virginia.

23. At all times material hereto, Defendant, IMC, subjected itself to personal jurisdiction of this Court as follows:

a. IMC has a branch office or agent in Florida, to wit: CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324, and therefore, jurisdiction exists pursuant to Fla. Stat. § 48.193(1)(a).

b. IMC is and was at all times material hereto engaged in substantial and not isolated intrastate activity in Florida, and, therefore, is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(2).

24. IMC is the agent of or contractor with Hilton and/or W2007 under their contract arrangements, to provide management services for the Embassy Suites located at 8250 Jamaican Court, Orlando, Florida. Hereinafter, inasmuch as Defendants, HILTON, W2007, and IMC, owed similar duties to the public and, specifically, to the Plaintiff, Troy Anderson, they may collectively be referred to as HILTON and/or Embassy Suites.

25. Venue is proper in the Orange County, Florida because the incident that gives rise to this cause of action occurred in Orlando, Orange County, Florida, and the Defendants herein owned and/or operated businesses in Orange County, Florida, as identified. Moreover, as alleged, Defendant, SECURAMERICA, proved alleged security personnel from its Orlando, Florida, office.

**BACKGROUND FACTS AND ALLEGATIONS APPLICABLE TO DEFENDANTS,  
HILTON, W2007, IMC, AND SECURAMERICA**

26. On or about September 26, 2008, Plaintiff, Troy Anderson, was lawfully on the premises of the Embassy Suites Orlando at International Drive and Jamaican Court Hotel, which is owned, managed, and controlled by Defendant, HILTON HOTELS CORPORATION, when, at approximately 11:30 p.m., he was assailed by three unknown criminals, who had been allowed to roam the premises of the Embassy Suites at or near the entrance due to a lack of adequate

security. That, in fact, the unknown criminals had been witnessed loitering in the parking lot for a considerable amount of time prior to the attack with no sign of alleged security present and no steps taken to prevent such loitering.

27. That on or about September 26, 2008, at approximately 11:30 p.m., after having been assailed and assaulted by the three unknown criminals, Plaintiff, Troy Anderson, was shot twice in the abdomen. One bullet entered his side and exited his back and the other bullet entered the abdomen, penetrated the pelvic region, and exited through his anus.

28. That on or about September 26, 2008, Plaintiff, Troy Anderson, was an invitee on the premises of the Embassy Suites Orlando at International Drive and Jamaican Court Hotel.

That, specifically:

- a. Troy Anderson arrived at the Embassy Suites Hotel shortly before 11:30 p.m. driving a Chevrolet SSR, nearly new, eye-catching, pickup truck.
- b. Troy Anderson entered the Embassy Suites and paid the clerk at the desk \$111.00 for one night's stay.
- c. Troy Anderson specifically inquired of the clerk: "Am I safe parking my truck in the parking lot?"
- d. The clerk informed Troy Anderson he should "park on the loop ... you won't get a ticket."
- e. The clerk specifically pointed Troy Anderson to the specific location where he should park his vehicle, assured him it was "safe," and Troy Anderson followed his instruction. The clerk failed to warn him that thugs and criminals were loitering in the parking lot. Nor did the clerk warn Troy Anderson that security allegedly present was woefully

inadequate.

f. The clerk further failed to warn Troy Anderson that only two weeks prior there had been a smash and grab type robbery in the same parking lot, and that said parking lot had been the scene of several such crimes.

g. After parking specifically where instructed, as Troy Anderson was attempting to remove his luggage from his vehicle, and within a matter of seconds after parking, he was assailed by three individuals, who had been seen previously loitering in the parking lot, and Troy Anderson was then assaulted, and shot twice, and his vehicle, with all its belongings, was then car-jacked by the three unknown criminals.

h. That located in the vehicle at the time it was car-jacked was a substantial amount of cash, contained in a leather bag belonging to Troy Anderson, along with his clothing, shoes, and jewelry. Additional jewelry possessions and clothing, other than the cash and his wedding ring, amounted to approximately \$2,500.00 in value. His wedding ring was also contained in the leather bag, which was stolen, and which carried a value of approximately \$14,000.00. Additionally, his new golf clubs, which were located in the bed of the truck, were also stolen, but ultimately recovered.

29. The "loop" where Troy Anderson was instructed to park by the employee, agent and/or servant of Defendant provided a clear "opportunity" for the unknown criminals to assail, assault, and shoot Troy Anderson. He had no reason to suspect that unknown criminals would engage in such conduct, specifically, having been instructed to park in the location by the clerk, who was the employee and/or agent of the Embassy Suites. Troy Anderson was, thus, not prepared for a confrontation and certainly not prepared to be shot twice and car-jacked.

30. Unbeknownst to Troy Anderson, the area where he was assaulted and shot was one where the foliage was significant and said heavily foliated area gave those who assaulted Troy Anderson additional comfort and “cover” to commit a crime; the location of the Embassy Suites is in an area of high criminal activity, which Defendants were aware of, but Plaintiff, Troy Anderson, was not; there had been a number of robberies and “car smash and grabs” prior to September 26, 2008, including in the two weeks prior in the same parking lot, known to the Embassy Suites and Defendants, but not known to Troy Anderson; the Embassy Suites is located near an on-ramp for Interstate 4, which provides a means for criminals allowed to loiter to foster an escape route; and, the area of the incident, the “I-Drive Corridor,” had criminal activity present sufficient to make application for and receive a “grant” directly and proximately due to the criminal activity in the area, all of which was known to Embassy Suites and Defendants, but unknown to Plaintiff, Troy Anderson.

31. That at the time of the shooting on September 26, 2008, the Embassy Suites did allegedly have a surveillance camera, the operational state of which remains in question, that provided surveillance for the entrance/exit door to the hotel, but which did not provide surveillance only a few feet away for the location where Troy Anderson was instructed to park. Nor did the Embassy Suites have surveillance in the parking lot where the thugs and criminals had been observed loitering prior to attacking and robbing Troy Anderson, a tool that certainly would have been valuable in trying to apprehend the criminals, who remain at large. Alternatively, if the Defendant had in place any additional surveillance, it was not functioning, not maintained properly, the clerk and employees were not competent to utilize it or monitor it, and it was, thus, effectively useless.

32. That at the time of the shooting, the Embassy Suites claimed to have had a security guard on premises from the security company known as SECURAMERICA.

33. Embassy Suites claimed in its promotional literature and online in its website that it provided on September 26, 2008, “24 hour security” for the benefit of its invitees, including Troy Anderson, a completely false statement, but which was intended to give prospective patrons and invitees a false sense of security.

34. The aforementioned alleged security guard was not present when Troy Anderson was shot twice. Said security guard never appeared at the scene and never rendered any assistance, and never provided a “presence” sufficient to deter the thugs allowed to loiter in the parking lot prior to the assault and shooting.

35. The aforementioned alleged security guard either did not observe the thugs and criminals loitering in the parking lot before Troy Anderson was shot because he created no presence of security or, if he did so, he took no steps whatsoever to address the potential risk presented by thugs and criminals loitering in the parking lot.

36. The aforementioned alleged security guard did not respond to the scene at all after Troy Anderson was shot twice.

37. The aforementioned alleged security guard never came to the aid of Troy Anderson subsequent to Troy Anderson being shot.

38. The aforementioned alleged security guard never was interviewed by the police and was never mentioned in any reports about the incident because, despite his alleged presence on the premises to provide security, he never made himself available to anyone, including police authorities.

39. That as a result of being shot twice, Troy Anderson suffered the following injuries:
- a. Fracture of the superior pubic symphysis from the bullet that entered his abdomen, penetrated his pelvic region fracturing the attendant bony structure and damaging the soft tissues, organs, and nerves in the area, along with a severe rectum injury, related to the bullet exiting the anus.
  - b. Lacerated liver from the bullet and created bone fragments.
  - c. Large, multiple, bilateral pulmonary emboli, which surfaced almost immediately and which required significant medical intervention to prevent death, including the administration of Heparin and Coumadin, and which thus made recovery from his injuries and multiple surgeries far more difficult and dangerous.
  - d. Necrosis (death) of portions of the large intestines requiring surgical intervention and placement of a diverting colostomy bag.
  - e. Posterior to anterior neuropathy in the lower back area extending to the abdominal area as a result of nerve damage caused by one of the bullets, and which has left Troy Anderson with residual numbness, pain, and tingling that makes it very difficult to be touched or hugged and which makes taking a shower and putting on or removing clothing extremely difficult.
  - f. Residual, unanticipated, and uncontrolled perspiration, which surfaces without warning, as a result of permanent damage to the autonomic nervous system, which specifically regulates the bodily function of perspiration, and which renders Troy Anderson incapable of functioning properly, and which further impacts his ability to

work and to enjoy life.

g. Significant and serious difficulty controlling bowel movements, which make it difficult to function in a personal or business setting, and which are extremely embarrassing, particularly, in a business setting, where the constant fear of having an “accident” looms.

h. Significant residual pain and numbness in the area of the colostomy site subsequent to the reversal of the colostomy, which was carried out on February 17, 2009, after having been placed emergently on September 27, 2008.

i. In addition to the diverting colostomy with exploratory laparotomy, Troy Anderson also underwent an anoscopy (exploration of the anus) and rigid sigmoid endoscopy due to the internal damage suffered.

j. Troy Anderson was hospitalized from September 26, 2008, through October 15, 2008, under an "alias," so as to protect his identity in the event the assailants returned to try to render additional harm and finish the job of killing him, since they had possession of his wallet and identification. While hospitalized, he developed dangerous pulmonary emboli, which made his recovery very difficult, and which necessitated anticoagulant treatment to prevent death.

k. Troy Anderson was then hospitalized again from February 17, 2009, through February 23, 2009, for the reversal of the colostomy and related procedures. While hospitalized, he once again developed dangerous pulmonary emboli, which made his recovery further difficult, and which necessitated anticoagulant treatment to prevent death.

40. That as a result of being shot twice, hospitalized for a significant period of time, and suffering serious, debilitating injuries, Troy Anderson incurred substantial medical expenses, lost wages and additional out-of-pocket expenses.

41. The subject Embassy Suites Hotel, as Defendant, HILTON, and Defendants, W2007 and IMC, were well aware, is situated in an area that is notorious for high levels of crime, including numerous burglaries, armed robberies, assaults, rapes, thefts, stolen vehicles, trespassing, vandalism, prostitution, assaults, strong armed and armed robberies, murder, car-jacking, and other criminal misconduct, including numerous occurrences of criminal activity on its specific premises, including smash and grab robberies that occurred in the same parking lot in the two weeks prior to the incident of September 26, 2008.

42. The specific crime “grid” for the area in question, Sector V, as Defendant, HILTON, was well aware, and as an example of the notice upon which Defendant was placed, reflected, for example, 631 "calls for service" to the Orlando Police Department during the 23-month period (October 2006 to September 2008) prior to the shooting of Troy Anderson on September 26, 2008. Said information was readily at the disposal of Defendant and available as notice since the 631 calls were directly attributable to conduct that occurred on Defendant’s premises, including similar occurrences within the two weeks prior to the subject incident. That ignoring said readily available notice was reckless on the part of Defendant, Hilton, and the other Defendants involved in the ownership and operation of the Embassy Suites Hotel.

43. Defendant, HILTON, doing business as Embassy Suites, and/or Defendants, W2007 and IMC, hired a company known as “SECURAMERICA” under the guise they were providing “security” to the public and the Plaintiff herein. Hiring two security guards, one man and one

woman, who never worked together, but rather worked individually in limited alternating shifts from 11:00 pm until 7:00 am, in light of the numerous criminal incidents on the premises and in the proximate area, was not only negligent, but reckless. The 631 calls for service to the Orlando Police Department during the preceding 23 months factually support that the inadequate attempt to provide security by Defendants was unsuccessful, illogical and reckless, particularly, as concerns similar activity that occurred in the two weeks prior to the incident in question.

44. Though a false statement, Defendant, Embassy Suites, has consistently promoted, as noted previously, that it provided on September 26, 2008, and allegedly provides today, “24 hour security,” intending to mislead the consuming public to believe that security is provided around the clock. The most Defendant has actually provided is, as noted, a singular individual to patrol the entirety of the property, including on its busiest and most dangerous nights, such as the night this incident occurred, a Friday night.

45. Despite the notice of the significant crime levels, specifically, located at and around the Defendant, HILTON, doing business as Embassy Suites Hotel, one of the highest crime levels in Central Florida, Embassy Suites, i.e., HILTON, W2007, and IMC, failed to provide appropriate security measures for the property:

- a. Embassy Suites failed to provide adequate security, and allowed crime to “flourish” at its hotel.
- b. The rampant crime that Embassy Suites tolerated and allowed at its hotel led to the "crime-of-opportunity" strong armed robbery, car-jacking and shooting that nearly led to the death of Troy Anderson.
- c. Embassy Suites could have and should have prevented the incident of September 26,

2008, and it was feasible, both economically and reasonably, to provide appropriate and adequate security in terms of staff and personnel.

d. There is no evidence the shooter or other criminals knew Troy Anderson prior to the attack or that Troy Anderson knew them. Troy Anderson did not know any of his attackers before they targeted him for the robbery that led to his serious injuries.

e. Troy Anderson was targeted due to the nature of the rampant and flourishing crime allowed at the Embassy Suites' premises located at 8250 Jamaican Court, Orlando, Orange County, Florida, where the criminals very likely knew they could engage in such conduct as there was inadequate security present to prevent it, particularly, in that this Embassy Suites hired such inadequate security to patrol a complex of this size. The thugs and criminals, who committed this crime, were actually loitering in the parking lot of the Embassy Suites for an extended period of time prior to the attack on Troy Anderson and were obviously not dissuaded by any alleged security present.

f. Defendant was specifically on notice that an unreasonable amount of crime occurred on its premises, and there was more of a need for police or additional security services, on high-crime nights and weekends, specifically, including Friday night, September 26, 2008, at approximately 11:30 p.m. Having one security guard on the premises, with a very predictable schedule of walking the premises in a very predictable manner, utilizing a GPS type monitor to check in as he or she walked the premises and checked "doors," on a high-crime night, such as a Friday night, was negligent and reckless.

g. Embassy Suites had a non-delegable duty to make reasonable provisions for the safe common areas where its customers parked their vehicles, but failed to make reasonable

provisions on September 26, 2008, resulting in Troy Anderson being shot twice. Embassy Suites cannot escape its non-delegable duty and responsibility by trying to divert it to the security company it employed, particularly, in a setting where it employed inadequate security and the security company, Defendant, SECURAMERICA, had no control over the number of security personnel that it could place on the property. It served at the discretion of the Embassy Suites and had no authority to dictate the number of security needed. Alternatively, SECURAMERICA, if afforded an opportunity to provide additional security personnel, failed to do so or further failed to properly assess the security needs of the Embassy Suites and, as a result, provided inadequate security in number, failed to properly train the security it did provide, and failed to otherwise take reasonable steps to prevent the shooting and robbery that occurred on September 26, 2008.

h. Any veiled attempt by Embassy Suites to provide “security” actually contributed to the likelihood of Troy Anderson being assailed, assaulted, attacked, car-jacked, and shot as the security was so inadequate as to render its presence useless.

i. The proof the alleged “security” provided by Embassy Suites was inadequate on September 26, 2008, is supported by the fact the security individual on duty never appeared on the scene after Troy Anderson was shot. The Orlando Police Department arrived on the scene and located Troy Anderson, who was bleeding profusely and struggling to breathe, but the security personnel never appeared. The security personnel provided no first aid, and no assistance. A busload of Christian women from Alabama were there to try to render assistance while Troy Anderson struggled and waited for the

police and medical assistance, but the alleged security guard never appeared to render any assistance.

j. The inadequate procedure implemented by Embassy Suites related to the alleged security employed is further evidenced by what transpired shortly before Troy Anderson was shot. The entire busload of women in Orlando for a Baptist Women's Convention arrived at the Embassy Suites and no security personnel of any kind was present to be sure these women invitees arrived were able to check in safely. A reasonable proprietor would make plans to watch for the arrival of a busload of Christian women, but this proprietor failed to take any steps whatsoever for their safety. The singular security guard, if present at all, was on the other side of the premises when the women arrived and when Troy Anderson was shot

46. Embassy Suites, i.e., HILTON, W2007, and IMC, were further negligent, and said negligence was a proximate cause of injury to Plaintiff, in that they failed to warn Plaintiff of the dangers present on the premises due to a lack of adequate security and the presence of criminal activity. Unbeknownst to Troy Anderson, the area where he was assaulted and shot was one where the foliage was significant and said heavily foliated area gave those who assaulted Troy Anderson additional comfort and "cover" to commit a crime and he was not warned of the dangers of same; the location of the Embassy Suites is in an area of high criminal activity, which Defendants were aware of, but Plaintiff, Troy Anderson, was not and was not warned of; there had been a number of robberies and "car smash and grabs" prior to September 26, 2008, including in the two weeks prior in the same parking lot, known to the Embassy Suites and Defendants, but not known to Troy Anderson and he was not warned of; the Embassy Suites is

located near an on-ramp for Interstate 4, which provides a means for criminals allowed to loiter to foster an escape route and he was not made aware of the significance of same and no deterrent was in place from Defendants; and, the area of the incident, the “I-Drive Corridor,” had criminal activity present sufficient to make application for and receive a “grant” directly and proximately due to the criminal activity in the area, all of which was known to Embassy Suites and Defendants, but unknown to Plaintiff, Troy Anderson, and he was not informed of same by Defendants.

47. Despite the crime that flourished on its premises and in the proximate area, Embassy Suites and Defendants, HILTON, W2007, and IMC, as well as SECURAMERICA, to the extent it had control over the type and quantity of security or security measures that could be provided or implemented:

- a. Did not employ or provide adequate security guards to protect the area where Troy Anderson was shot on September 26, 2008.
- b. Failed to employ a police officer to stand guard on the premises.
- c. Failed to install adequate security cameras and surveillance to prevent and/or deter crime, particularly, in the parking areas.
- d. Failed to install any locked gates to control access to the property, and failed to implement a procedure whereby non-guests would not be prevented from loitering or roaming the premises, such as the thugs and criminals, who accosted Troy Anderson, were allowed to do.
- e. Failed to install security alarms to safeguard its customers.
- f. Failed to control the foliage on the property in the vicinity of the incident, which

provided further “cover” for prospective thugs and robbers.

g. Failed to employ adequate security or take adequate security measures, despite recognizing that Friday night was a high-crime night.

h. The shooting and robbery of Troy Anderson was, therefore, not only foreseeable, but predictable.

48. That at all times material hereto, Defendants, HILTON HOTELS CORPORATION, W2007, and IMC, dictated the standards and practices for the operation of the Embassy Suites Orlando at International Drive and Jamaican Court Hotel, and said Defendants monitored and oversaw the implementation of these standards of operation, including controlling the issues of: security; how they promoted having “24 hour security” falsely to the public; their interactions with SECURAMERICA and how many security personnel they contracted for SECURAMERICA to provide; the level of “warning” they provided to patrons and invitees; the level of information about crime they chose to keep from patrons and invitees; how they would decide to spend or not spend the money necessary to provide adequate security, despite clearly having the financial ability to provide adequate security; and, how they chose to endanger or try not to endanger their patrons and invitees. The involved hotel, Embassy Suites, is an agent of the principal, HILTON, and there is a direct and proximate link between the Embassy Suites involved herein and the parent, HILTON, and the parent HILTON further and additionally dictated how the standards of operation, including the issues of security, were implemented.

49. Embassy Suites utilized the slogan in September 2008: “We go above and then we go beyond,” but the facts as present on September 26, 2008, and well-before, indicate that Embassy Suites (collectively including Defendants, HILTON, W2007, and IMC) did not provide the

minimum in terms of protection for its customers and invitees, such as Troy Anderson, and failed to meet the minimum standards in the industry:

a. Defendant's knowledge of prior crimes against both persons and property, which was well-documented, placed Defendant on notice that an incident such as occurred on September 26, 2008 could occur, and was, in fact, foreseeable and likely to occur.

Despite said knowledge base, Defendant took no reasonable steps to prevent the incident of September 26, 2008. Employing a singular security guard to allegedly patrol the premises of a hotel this size was woefully inadequate.

b. Embassy Suites owed Troy Anderson, as a business invitee, a duty of reasonable care for his safety, which it breached on September 26, 2008.

c. Embassy Suites knew that the security allegedly employed was inadequate and, at best, a veiled attempt to protect its guests and invitees.

d. Defendant advertised and promoted on September 26, 2008, which it continues to do to this day, that it provided then and provides now "24 hour security," which is false.

Defendant provided only the veiled attempt at security by providing a singular individual to patrol the large, eight floors, and 246 room complex with the responsibility to "secure" the entirety of the complex and common areas, a woefully inadequate for the size of the complex in light of the history of criminal activity.

50. That all conditions precedent to the bringing of this action have been complied with by Plaintiffs and/or waived by Defendants.

**COUNT I**  
**NEGLIGENCE OF HILTON, d/b/a EMBASSY SUITES**

51. Plaintiff, Troy Anderson, adopts and realleges Paragraphs 1 through 50, above, and states

further as follows:

52. At all times material hereto, Defendant, HILTON HOTELS CORPORATION, personally or through its subsidiaries and agents, including, Defendants, W2007 and IMC, controlled, owned, operated, and managed the Embassy Suites Orlando at International Drive and Jamaican Court Hotel in Orlando, Orange County, Florida.

53. Defendant, HILTON HOTELS CORPORATION, allowed its name, trademark, and reputation to be associated with the Embassy Suites Orlando at International Drive and Jamaican Court Hotel, thereby representing to the world and the general public, including the Plaintiff, Troy Anderson, that the Embassy Suites Orlando at International Drive and Jamaican Court Hotel's operation and management complied with Defendant, HILTON HOTELS CORPORATION'S self-lauded and self-promoted high standards of quality and care.

54. That at all times material hereto, Defendant, HILTON HOTELS CORPORATION, did promote this particular Embassy Suites as being a member of the "Hilton Family."

55. That at all times material hereto, Defendant, HILTON HOTELS CORPORATION, owed Plaintiff a duty to maintain the entire premises known as the Embassy Suites Orlando at International Drive and Jamaican Court Hotel, in a reasonably safe condition for invitees lawfully on its premises.

56. That at all times material hereto, Defendant, HILTON HOTELS CORPORATION, owed a duty to Plaintiff to take such precautions as were reasonably necessary to protect lawful invitees from foreseeable acts of harm on or about the Embassy Suites premises, and to warn lawful invitees of any dangers of which Defendant knew or should have known.

57. Despite Defendant, HILTON HOTELS CORPORATION'S, duty to maintain its premises

in a reasonably safe condition and its duty to warn guests of dangerous conditions thereon, Defendant failed to take reasonable precautions for the safety of invitees lawfully on its premises and negligently breached its duties to this class of persons, including Plaintiff, in one or more of the following ways:

- a. Failing to take reasonable steps to eliminate illegal, criminal and dangerous activities from occurring on its premises of which Defendant knew or should have known. Such steps include, but are not limited to: the frequent patrol and watch of the grounds and common areas with an adequate number and visible presence of security personnel, as well as the frequent patrol and watch of the closed areas of the building; providing adequate lighting; controlling foliage; utilizing and properly maintaining surveillance cameras; utilizing off-duty or on-duty police officers; and, specifically, taking appropriate steps on high-crime nights to prevent crime from occurring, including nights such as Friday night, September 26, 2008;
- b. Failing to provide adequate security devices for invitees lawfully on its premises, including: the absence of closed-circuit surveillance cameras; insufficient manpower to patrol the premises; failure to specifically monitor the parking areas; failure to install and/or upgrade existing lighting to better illuminate the premises;
- c. Allowing non-employees access to dark, as well as remote areas of the hotel and hotel grounds, including the bushes and shrubbery, the front street entrance area, the parking lot, and the parking "loop," where there is insufficient or inadequate security patrol to deter criminal activity; allowing non-employees to loiter in or about the grounds, including the parking lot area and the "loop" where Plaintiff was shot;

- d. Failing to warn invitees of the likelihood of physical harm from intentional and/or criminal acts of unlawful intruders allowed to roam about the property by Defendant, as well as unidentified persons permitted on the hotel grounds despite having inadequate security or security checks employed in a manner in which to identify those who do not belong on the property;
- e. Failing to take reasonable steps to prevent and deter foreseeable criminal acts on its premises; and failing to implement, implement properly, and/or establish reasonable and adequate security procedures and programs, to protect invitees on its premises from the acts of third parties;
- f. Failing to provide adequate security on the premises for criminal assaults and acts of violence such as had previously occurred and were known, or should have been known, to Defendant, HILTON HOTELS CORPORATION, including, but not limited to, implementing a security check-in procedure for all unknown persons, who wished access to the hotel grounds;
- g. Failing to maintain surveillance equipment in place, for example, that which was located at the entry/exit front door of the Embassy Suites, but which did not surveil or provide security for the location where Troy Anderson was shot, i.e., the location where he was specifically instructed to park by the employee, clerk, agent, and/or servant of Defendant, and further failing to have and maintain surveillance in the parking lot where the assailants were seen to be “loitering” prior to attacking and shooting Troy Anderson;
- h. Failing to provide adequate number of security on the premises despite the number of crimes over the prior two-year period, the substantial crime rate in the area, and despite

the fact it had been specifically warned about the seriousness of the crime rate and its lack of adequate security procedures.

58. The direct and proximate result of the breach of the duty owed to Plaintiff by HILTON and the Embassy Suites resulted in Troy Anderson suffering substantial and serious physical injuries, as previously described, and further caused him to suffer substantial medical expenses, loss of income and loss of the ability to enjoy life.

59. As a result of the breach of duty owed and the negligence of HILTON HOTELS CORPORATION, the Plaintiff, Troy Anderson, suffered in the past and will suffer in the future, loss, injury and damages, including bodily injury and the pain and suffering resulting therefrom; extreme mental anguish; disfigurement; disability; loss of earning capacity; loss of capacity for the enjoyment of life; and costs and expenses for medical care and treatment, including physicians' care, hospital care, therapeutic care, and medications.

60. That as a direct and proximate result of the negligence of Defendant, HILTON, Troy Anderson has been substantially damaged for which he has the right to recover from Defendant, HILTON HOTELS CORPORATION, doing business as Embassy Suites Orlando at International Drive and Jamaican Court.

**WHEREFORE**, Plaintiff, Troy Anderson, demands judgment against Defendant, HILTON, for compensatory damages, interest, costs, and such other relief as this Court deems appropriates under the circumstances and further demands trial by jury of all issues triable as of right.

**COUNT II**  
**NEGLIGENCE OF SECURAMERICA, LLC**

Plaintiff, Troy Anderson, adopts and realleges paragraphs 1 through 50 above, and states

further as follows:

61. At some time prior to September 26, 2008, Defendant, SECURAMERICA, was retained by Defendants, HILTON HOTELS CORPORATION and/or W2007 and/or IMC, to provide security for the Embassy Suites located at Embassy Suites Orlando at International Drive and Jamaican Court Hotel, located at 8250 Jamaican Court, Orlando, Florida 32819.

62. That on September 26, 2008, Defendant, SECURAMERICA, was specifically retained to provide security for the Embassy Suites located at 8250 Jamaican Court, Orlando, Florida 32819.

63. That Defendant, SECURAMERICA, was provided valuable consideration to perform said work.

64. That in so doing, Defendant, SECURAMERICA, owed a duty to perform competently and with reasonable care for the benefit of Defendant, HILTON HOTELS CORPORATION, its employees, and the consuming public including, but not limited to, invitees on the premises such as Troy Anderson.

65. That Defendant, SECURAMERICA, owed a non-delegable duty to fulfill its contractual obligation to perform competent and thorough security for the premises.

66. That prior to September 26, 2008, Defendant, SECURAMERICA, by and through its agents, employees and/or servants, had actual or constructive knowledge of a history of criminal activity on and/or in the vicinity of the premises and knew or should have known that there was a propensity for criminal conduct by third persons, in general, which unreasonably exposed business invitees, such as Troy Anderson, to an unreasonably dangerous condition on the premises, which unreasonably dangerous condition was likely to cause harm to the business invitees, such as Troy Anderson. As previously alleged, said Defendant assumed a duty to Troy

Anderson to provide reasonable security against said criminal conduct.

67. That on or about September 26, 2008, Troy Anderson, while lawfully on the premises as a business invitee, was assaulted and seriously injured when he was robbed and shot twice by three unknown assailants.

68. That Defendant, SECURAMERICA, failed to competently provide security in that its agent or employee did not even learn about Troy Anderson being shot until after Troy Anderson had already been transported to the emergency room as said security had no real presence on the premises sufficient to have a grasp of what was occurring.

69. That Defendant, SECURAMERICA, by and through its agents, employees and/or servants, breached its duties owed to Troy Anderson by committing one or more of following negligent acts of commission or omission:

- a. Failing to provide adequate security personnel or security service on the premises when it knew or should have known that business invitees such as Troy Anderson were exposed to a risk of harm from criminal activity occurring on or in the immediate vicinity of the premises;
- b. Failing to prevent the reasonably foreseeable attack on Plaintiff from occurring;
- c. Failing to recognize the high likelihood of criminal activity by third persons which might endanger the safety of business invitees on the premises such as Troy Anderson;
- d. Failing to properly patrol the premises;
- e. Failing to take such other measures which were necessary and reasonable to protect and safeguard the persons and lives of people lawfully on the premises, such as Troy Anderson, including recommending safety and security procedures to make the property

safer;

f. Failing to ascertain that the thugs and criminals who assailed, robbed, and shot Troy Anderson were “loitering” on the premises for a substantial amount of time prior to the attack.

70. That the breach of duty on the part of Defendant, SECURAMERICA, caused or contributed to cause serious injury to Troy Anderson on September 26<sup>th</sup>, 2008, when he was shot in front of the Embassy Suites by three still unidentified criminals and/or gunmen, who were seen loitering on the property prior to the incident.

71. That had the Defendant, SECURAMERICA, provided competent security, the three unknown criminals and/or gunmen would not have been allowed to loiter in the parking lot of the Embassy Suites.

72. That Defendant, SECURAMERICA, was not present on the scene at any relevant time before, during, or after the shooting.

73. That Defendant, SECURAMERICA, was to serve as a deterrent to criminal activity.

74. That as a direct and proximate result of the negligence of Defendant, SECURAMERICA, the three unknown criminals and/or gunmen were able to rob, shoot, and carjack Troy Anderson without fear of reprisal.

75. That as a direct and proximate result of the negligence of Defendant, SECURAMERICA, the three unknown criminals and/or gunmen were given unfettered access to the parking lot of the Embassy Suites as well as all the business invitees located therein as Defendant did not serve as any form of deterrent.

76. The direct and proximate result of the breach of the duty owed to Plaintiff by

SECURAMERICA, Troy Anderson suffered substantial and serious physical injuries, as previously described, and further caused him to suffer substantial medical expenses, loss of income and loss of the ability to enjoy life.

77. That as a direct and proximate result of the negligence as described herein, Troy Anderson was caused to suffer significant bodily injury and resulting pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, and loss of ability to earn money. Troy Anderson's injuries and losses are permanent and continuing in nature and Troy Anderson will suffer these injuries and losses in the future.

78. That as a direct and proximate result of the negligence of Defendant, SECURAMERICA, Troy Anderson has been substantially damaged for which he has the right to recover from Defendant, SECURAMERICA.

**WHEREFORE**, Plaintiff, Troy Anderson, demands judgment against Defendant, SECURAMERICA, for compensatory damages, interest, costs, and such other relief as this Court deems appropriate under the circumstances and further demands trial by jury of all issues triable as of right.

**COUNT III**  
**NEGLIGENCE OF W2007 EQUITY INNS REALTY, LLC**

Plaintiff, Troy Anderson, adopts and realleges paragraphs 1 through 50 above, and states further as follows:

79. Defendant, W2007 EQUITY INNS REALTY, LLC, is now, and at all times mentioned was, a limited liability corporation organized and existing under the laws of Florida, and was engaged in the business of operating franchises that operated and managed hotels under the

registered trademark and name of HILTON.

80. Defendant, W2007 EQUITY INNS REALTY, LLC, was an agent of Defendant, HILTON HOTELS CORPORATION, as a franchisee, and W2007 was therefore vicariously liable for the negligence of HILTON HOTELS CORPORATION and HILTON was liable vicariously for the negligence of W2007 in that W2007 was its agent. Defendant represented to the public that it could find a certain level of service at this hotel establishment, and Plaintiff relied to his detriment on this representation.

81. That at all times material hereto, Defendant, W2007, owed Plaintiff a duty to maintain the entire premises known as the Embassy Suites Orlando at International Drive and Jamaican Court Hotel in a reasonably safe condition for invitees lawfully on its premises.

82. That at all times material hereto, Defendant, W2007, owed a duty to Plaintiff to take such precautions as were reasonably necessary to protect lawful invitees from foreseeable acts of harm on or about the Embassy Suites premises, and to warn lawful invitees of any dangers of which Defendant knew or should have known.

83. Despite Defendant, W2007's, duty to maintain its premises in a reasonably safe condition and its duty to warn guests of dangerous conditions thereon, Defendant failed to take reasonable precautions for the safety of invitees lawfully on its premises and negligently breached its duties to this class of persons, including Plaintiff, in one or more of the following ways:

- a. Failing to take reasonable steps to eliminate illegal, criminal and dangerous activities from occurring on its premises of which Defendant knew or should have known. Such steps include, but are not limited to: the frequent patrol and watch of the grounds and common areas with an adequate number and visible presence of security personnel, as

well as the frequent patrol and watch of the closed areas of the building; providing adequate lighting; controlling foliage; utilizing surveillance cameras; utilizing off-duty or on-duty police officers; and, specifically, taking appropriate steps on high-crime nights to prevent crime from occurring, including nights such as Friday night, September 26, 2008;

b. Failing to provide adequate security devices for invitees lawfully on its premises, including: the absence of closed-circuit surveillance cameras; insufficient manpower to patrol the premises; failure to specifically monitor the parking areas; failure to install and/or upgrade existing lighting to better illuminate the premises;

c. Allowing non-employees access to dark, as well as remote areas of the hotel and hotel grounds, including the bushes and shrubbery, the front street entrance area, the parking lot, and the parking "loop," where there is insufficient or inadequate security patrol to deter criminal activity; allowing non-employees to loiter in or about the grounds, including the parking lot area and the "loop" where Plaintiff was shot;

d. Failing to warn invitees of the likelihood of physical harm from intentional and/or criminal acts of unlawful intruders allowed to roam about the property by Defendant, as well as unidentified persons permitted on the hotel grounds despite having inadequate security or security checks employed in a manner in which to identify those who do not belong on the property;

e. Failing to take reasonable steps to prevent and deter foreseeable criminal acts on its premises; and failing to implement, implement properly, and/or establish reasonable and adequate security procedures and programs, to protect invitees on its premises from the acts of third parties;

- f. Failing to provide adequate security on the premises for criminal assaults and acts of violence such as had previously occurred and were known, or should have been known, to Defendant, W2007, including, but not limited to, implementing a security check-in procedure for all unknown persons, who wished access to the hotel grounds;
- g. Failing to maintain surveillance equipment in place, for example, that which was located at the entry/exit front door of the Embassy Suites, but which did not surveil or provide security for the location where Troy Anderson was shot, i.e., the location where he was specifically instructed to park by the employee, clerk, agent, and/or servant of Defendant, and further failing to have and maintain surveillance in the parking lot where the assailants were seen to be “loitering” prior to attacking and shooting Troy Anderson;
- h. Failing to provide adequate number of security on the premises despite the number of crimes over the prior two-year period, the substantial crime rate in the area, and despite the fact it had been specifically warned about the seriousness of the crime rate and its lack of adequate security procedures.

84. That as a direct and proximate result of the breach of duty owed to Plaintiff by Defendants, W2007 and Embassy Suites, Troy Anderson suffered substantial and serious physical injuries, as previously described, and said breach further caused him to suffer substantial medical expenses, loss of income and loss of the ability to enjoy life.

85. As a result of the breach of duty owed and the negligence of Defendant, W2007, the Plaintiff, Troy Anderson, suffered in the past and will suffer in the future, loss, injury and damages, including bodily injury and the pain and suffering resulting therefrom; extreme mental anguish; disfigurement; disability; loss of earning capacity; loss of capacity for the enjoyment of

life; and costs and expenses for medical care and treatment, including physicians' care, hospital care, therapeutic care, and medications.

86. That as a direct and proximate result of the negligence of Defendant, W2007, Troy Anderson has been substantially damaged for which he has the right to recover from Defendant, W2007, doing business as Embassy Suites Orlando at International Drive and Jamaican Court.

**WHEREFORE**, Plaintiff, Troy Anderson, demands judgment against Defendant, W2007, for compensatory damages, interest, costs, and such other relief as this Court deems appropriates under the circumstances and further demands trial by jury of all issues triable as of right.

**COUNT IV**  
**NEGLIGENT FAILURE OF IMC TO PROVIDE SAFE PREMISES**

87. Plaintiff, Troy Anderson, adopts and realleges paragraphs 1 through 50 above, and states further as follows:

88. Defendant, INTERSTATE MANAGEMENT COMPANY, LLC, (“IMC”), owed Plaintiff a common law duty to provide premises reasonably safe for Plaintiff’s person and property.

89. Plaintiff was a member of the class to whom the duty was owed, as an invitee, because a portion of the charges paid by Plaintiff and other invitees and guests was paid to the security company, SECURAMERICA, which Defendant, IMC hired for security on the premises.

90. Safe premises include a hotel room together with a street entrance, parking area, parking lot, recreation areas, commons areas and facilities, and building entrance and sidewalks.

91. It was reasonably foreseeable by the Defendant, IMC, that invitees of the Embassy Suites would be the victims of violent crime.

92. Defendant, IMC, owed Plaintiff and other invitees the duty to take reasonable steps to

protect invitees and guests from violent crime.

93. Defendant, IMC, breached this duty of care.

94. Defendants, IMC's, breach of duty directly and proximately caused Plaintiff's injuries and damages as stated herein.

95. That the breach of the duty owed to Plaintiff, Troy Anderson, by Defendant resulted in Troy Anderson suffering substantial and serious physical injuries, as previously described, and further caused him to suffer substantial medical expenses, loss of income and loss of the ability to enjoy life.

96. As a result of the breach of duty owed by Defendant, IMC, the Plaintiff, Troy Anderson, suffered in the past and will suffer in the future, loss, injury and damages, including bodily injury and the pain and suffering resulting therefrom; extreme mental anguish; disfigurement; disability; loss of earning capacity; loss of capacity for the enjoyment of life; and costs and expenses for medical care and treatment, including physicians' care, hospital care, therapeutic care, and medications.

**WHEREFORE**, Plaintiff, Troy Anderson, demands judgment against Defendant, IMC, for compensatory damages, interest, costs, and such other relief as this Court deems appropriate under the circumstances.

**COUNT V**  
**FAILURE OF IMC TO WARN OF KNOWN DANGER**

Plaintiff, Troy Anderson, adopts and realleges paragraphs 1 through 50 above, and states further as follows:

97. Defendant, IMC, hired a company known as "SECURAMERICA" under the veiled guise it was providing "security" to the public and the Plaintiff herein. Hiring two security guards,

one man and one woman, who never worked together, but rather worked individually in limited alternating shifts from 11:00 pm until 7:00 am, in light of the numerous criminal incidents on the premises and in the proximate area, was not only negligent, but reckless. The 631 calls for service to the Orlando Police Department during the preceding 23 months factually support that the inadequate attempt to provide security by Defendant was unsuccessful, illogical, and reckless.

98. Defendant, IMC, knew or should have known that the premises, specifically, the parking lot of the Embassy Suites was unsafe for invitees and guests.

99. Defendant, IMC, had a duty to warn of dangers of crime on the premises.

100. Defendant, IMC, negligently, recklessly or intentionally failed to warn invitees and guests including Plaintiff of the high incidence of crimes of violence occurring at the Embassy Suites and surrounding areas, including the parking lot, a specifically as had occurred in the two weeks prior to the incident of September 26, 2008.

101. Plaintiff reasonably believed the premises were safe, because the Defendant, IMC, assured him they were safe, and represented that they provided nighttime security.

102. Had Plaintiff, TROY ANDERSON, known of the dangers, he would not have stayed at the Embassy Suites, on September 26, 2008.

103. Defendant, IMC, breached its duty to warn.

104. Defendant, IMC's, breach proximately caused Plaintiff's injuries and damages.

105. That the breach of the duty owed to Plaintiff, Troy Anderson, resulted in Troy Anderson suffering substantial and serious physical injuries, as previously described, and further caused him to suffer substantial medical expenses, loss of income and loss of the ability to enjoy life.

106. As a result of the breach of duty owed by Defendant, IMC, the Plaintiff, Troy Anderson, suffered in the past and will suffer in the future, loss, injury and damages, including bodily injury and the pain and suffering resulting therefrom; extreme mental anguish; disfigurement; disability; loss of earning capacity; loss of capacity for the enjoyment of life; and costs and expenses for medical care and treatment, including physicians' care, hospital care, therapeutic care, and medications.

**WHEREFORE**, Plaintiff, Troy Anderson, demands judgment against Defendant, IMC, for compensatory damages, interest, costs, and such other relief as this Court deems appropriate under the circumstances.

**COUNT VI**  
**FRAUDULENT MISREPRESENTATION AGAINST IMC**

Plaintiff, Troy Anderson, adopts and realleges paragraphs 1 through 50 above, and states further as follows:

107. Defendant, IMC, promised security to the Plaintiff.

108. The promises made implied a duty that security would be reasonable and effective under the circumstances.

109. Defendant, IMC, recklessly permitted criminals to be present at the Embassy Suites without detection and to loiter in the parking lot to plan and scheme the commission of crimes.

110. Defendant, IMC, recklessly represented to Plaintiff and the public in general, that the premises were guarded by “24 hour security,” when IMC knew or should have known that to be a false and/or misleading statement.

111. Defendant, IMC, recklessly represented that they were providing safe premises when IMC knew or should have know that to be untrue.

112. Defendant, IMC, knew or should have known that criminals had previously come on the premises to commit numerous crimes, including committing a similar crime in the two weeks prior to the incident of September 26, 2008.

113. Defendant, IMC's failure to prevent the entry of criminals after making promises of security demonstrated reckless disregard for the Plaintiff's safety.

114. Two to three such criminals, in fact, entered the premises, specifically, the parking lot, and attacked the Plaintiff, carjacking his vehicle and shooting him with a firearm.

115. Defendant, IMC's, reckless actions or omissions directly, proximately, and recklessly caused the Plaintiff's injuries.

116. That the reckless actions of IMC resulted in Troy Anderson suffering substantial and serious physical injuries, as previously described, and further caused him to suffer substantial medical expenses, loss of income and loss of the ability to enjoy life.

117. As a result of the reckless actions of Defendant, IMC, the Plaintiff, Troy Anderson, suffered in the past and will suffer in the future, loss, injury and damages, including bodily injury and the pain and suffering resulting therefrom; extreme mental anguish; disfigurement; disability; loss of earning capacity; loss of capacity for the enjoyment of life; and costs and expenses for medical care and treatment, including physicians' care, hospital care, therapeutic care, and medications.

**WHEREFORE**, Plaintiff, Troy Anderson, demands judgment against Defendant, IMC, for compensatory damages, interest, costs, and such other relief as this Court deems appropriate under the circumstances.

**COUNT VII**  
**LOSS OF CONSORTIUM**

Plaintiff, Paula Anderson, adopts and realleges Paragraphs 1 through 117, above, and states as follows:

118. As a result of the negligence of Defendants, HILTON, SECURAMERICA, W2007 EQUITY INNS REALTY, LLC, and INTERSTATE MANAGEMENT COMPANY, LLC, Plaintiff, Paula Anderson, the wife of Troy Anderson, was deprived of the services, support, companionship, and consortium of her husband, Troy Anderson, and did in the past and will continue in the future to suffer said losses arising out of the shooting incident on September 26, 2008, directly and proximately attributable to the conduct of each of the Defendants as described herein.

**WHEREFORE**, Plaintiff, Paula Anderson, demands judgment against Defendants, HILTON HOTELS CORPORATION, SECURAMERICA, W2007 EQUITY INNS REALTY, LLC, and INTERSTATE MANAGEMENT COMPANY, LLC, for compensatory damages, costs, interest, and such other relief as this Court deems appropriate under the circumstances, and further demands trial by jury of all issues triable as of right.

Dated this 19<sup>th</sup> day of August, 2010.

/s/ W. Riley Allen  
W. RILEY ALLEN, ESQUIRE  
Florida Bar No: 338583  
Allen & Murphy, P.A.  
429 S. Keller Road, Suite 300  
Orlando, FL 32810  
407-838-2000  
407-838-2022 (facsimile)  
RileyAllen@floridatriallawyer.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via ECF and facsimile this 19<sup>th</sup> day of August, 2010, to: **Michael E. Reed, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602 and **John L. Morrow, Esquire** and **Lori Kemp-Ostlie, Esquire**, Conroy Simberg, et al., P.A., Two South Orange Avenue, Suite 300, Orlando FL 32801.

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT, IN AND FOR  
ORANGE COUNTY, FLORIDA

CASE NO: 2009-CA-040473-O

TROY ANDERSON and PAULA  
ANDERSON, his wife,

Plaintiffs,

v.

HILTON HOTELS CORPORATION,  
a foreign corporation, doing business as  
EMBASSY SUITES ORLANDO AT  
INTERNATIONAL DRIVE AND  
JAMAICAN COURT, also doing business  
as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign corporation,  
a/k/a SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS  
RESORTS, INC., a Florida corporation,

Defendants.

---

**PROPOSAL FOR SETTLEMENT ON BEHALF OF PLAINTIFF, TROY ANDERSON'S,  
PURSUANT TO RULE 1.442**

Plaintiff, TROY ANDERSON, by and through his undersigned attorneys, hereby serves his Proposal for Settlement, pursuant to Rule 1.442 of the Florida Rules of Civil Procedure, to Defendant, SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA LLC, and states in support thereof as follows:

1. This Proposal for Settlement is made pursuant to Florida Statute §768.79, and is extended in accordance with the provisions of Rule 1.442. Fla.R.Civ.P.
2. This Proposal for Settlement is made on behalf of Plaintiff, TROY ANDERSON ("PLAINTIFF"), and is made to Defendant, SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA LLC ("SECURAMERICA").

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against SECURAMERICA.

4. That in exchange for SIX HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$650,000.00) in hand paid from SECURAMERICA, PLAINTIFF agrees to settle any and all claims asserted against SECURAMERICA, as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October <sup>5<sup>th</sup></sup>, 2011, I ~~electronically filed the foregoing with the Orange County Clerk of Court by using the ECF system and further certify that I furnished a true and accurate copy of the foregoing via U.S. mail/facsimile to:~~ **Michael E. Reed, Esquire and Wendy B. Accardi, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602; **Simon L. Wiseman, Esquire**, Williams & Wiseman, P.A., 1115 E. Livingston Street, Orlando, FL 32803 and **Steven R. Adamsky, Esquire and Noah Bender, Esquire**, Mitrani, Rynor, Adamsky & Toland, P.A., 2400 North Commerce Parkway, Suite 302, Weston, FL 33326.



---

**W. RILEY ALLEN, ESQUIRE**

Florida Bar No.: 338583

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(407) 838-2022 Fax

**SIMON L. WISEMAN, ESQUIRE**

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WILLIAMS & WISEMAN, P.A.

1115 E. Livingston Street

Orlando, FL 32803

(407) 425-4755 Telephone

(407) 425-3931 Fax

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT, IN AND FOR  
ORANGE COUNTY, FLORIDA

CASE NO: 2009-CA-040473-O

TROY ANDERSON and PAULA  
ANDERSON, his wife,

Plaintiffs,

v.

HILTON HOTELS CORPORATION,  
a foreign corporation, doing business as  
EMBASSY SUITES ORLANDO AT  
INTERNATIONAL DRIVE AND  
JAMAICAN COURT, also doing business  
as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign corporation,  
a/k/a SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS  
RESORTS, INC., a Florida corporation,

Defendants.

---

**PROPOSAL FOR SETTLEMENT ON BEHALF OF PLAINTIFF, TROY ANDERSON'S,  
PURSUANT TO RULE 1.442**

Plaintiff, TROY ANDERSON, by and through his undersigned attorneys, hereby serves his Proposal for Settlement, pursuant to Rule 1.442 of the Florida Rules of Civil Procedure, to Defendant, HILTON HOTELS CORPORATION, a foreign corporation, doing business as EMBASSY SUITES ORLANDO AT INTERNATIONAL DRIVE AND JAMAICAN COURT, also doing business as HILTON WORLDWIDE, and states in support thereof as follows:

1. This Proposal for Settlement is made pursuant to Florida Statute §768.79, and is extended in accordance with the provisions of Rule 1.442. Fla.R.Civ.P.
2. This Proposal for Settlement is made on behalf of Plaintiff, TROY ANDERSON ("PLAINTIFF"), and is made to Defendant, HILTON HOTELS CORPORATION, a foreign

corporation, doing business as EMBASSY SUITES ORLANDO AT INTERNATIONAL DRIVE AND JAMAICAN COURT, also doing business as HILTON WORLDWIDE ("HILTON").

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against HILTON.

4. That in exchange for SIX HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$650,000.00) in hand paid from HILTON, PLAINTIFF agrees to settle any and all claims asserted against HILTON, as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 27<sup>th</sup>, 2011, I ~~electronically filed the foregoing with the Orange County Clerk of Court by using the ECF system and further certify that I furnished a true and accurate copy of the foregoing via U.S. mail/facsimile to:~~ **Michael E. Reed, Esquire and Wendy B. Accardi, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602; **Simon L. Wiseman, Esquire**, Williams & Wiseman, P.A., 1115 E. Livingston Street, Orlando, FL 32803 and **Steven R. Adamsky, Esquire and Noah Bender, Esquire**, Mitrani, Rynor, Adamsky & Toland, P.A., 2400 North Commerce Parkway, Suite 302, Weston, FL 33326.

  
\_\_\_\_\_  
**W. RILEY ALLEN, ESQUIRE**

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**SIMON L. WISEMAN, ESQUIRE**

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(407) 425-4755 Telephone

(407) 425-3931 Fax

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT, IN AND FOR  
ORANGE COUNTY, FLORIDA

CASE NO: 2009-CA-040473-O

TROY ANDERSON and PAULA  
ANDERSON, his wife,

Plaintiffs,

v.

HILTON HOTELS CORPORATION,  
a foreign corporation, doing business as  
EMBASSY SUITES ORLANDO AT  
INTERNATIONAL DRIVE AND  
JAMAICAN COURT, also doing business  
as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign corporation,  
a/k/a SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS  
RESORTS, INC., a Florida corporation,

Defendants.

---

**PROPOSAL FOR SETTLEMENT ON BEHALF OF PLAINTIFF, TROY ANDERSON'S,  
PURSUANT TO RULE 1.442**

Plaintiff, TROY ANDERSON, by and through his undersigned attorneys, hereby serves his Proposal for Settlement, pursuant to Rule 1.442 of the Florida Rules of Civil Procedure, to Defendant, W2007 EQUITY INNS REALTY, LLC, a foreign corporation, and states in support thereof as follows:

1. This Proposal for Settlement is made pursuant to Florida Statute §768.79, and is extended in accordance with the provisions of Rule 1.442. Fla.R.Civ.P.
2. This Proposal for Settlement is made on behalf of Plaintiff, TROY ANDERSON ("PLAINTIFF"), and is made to Defendant, W2007 EQUITY INNS REALTY, LLC, a foreign corporation ("EQUITY").

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against EQUITY.

4. That in exchange for ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) in hand paid from EQUITY, PLAINTIFF agrees to settle any and all claims asserted against EQUITY, as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 5, 2011, I ~~electronically filed the foregoing with the Orange County Clerk of Court by using the ECF system and further certify that I~~ furnished a true and accurate copy of the foregoing via U.S. mail/facsimile to: **Michael E. Reed, Esquire and Wendy B. Accardi, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602; **Simon L. Wiseman, Esquire**, Williams & Wiseman, P.A., 1115 E. Livingston Street, Orlando, FL 32803 and **Steven R. Adamsky, Esquire and Noah Bender, Esquire**, Mitrani, Rynor, Adamsky & Toland, P.A., 2400 North Commerce Parkway, Suite 302, Weston, FL 33326.

  
\_\_\_\_\_  
**W. RILEY ALLEN, ESQUIRE**

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(407) 425-3931 Fax

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT, IN AND FOR  
ORANGE COUNTY, FLORIDA

CASE NO: 2009-CA-040473-O

TROY ANDERSON and PAULA  
ANDERSON, his wife,

Plaintiffs,

v.

HILTON HOTELS CORPORATION,  
a foreign corporation, doing business as  
EMBASSY SUITES ORLANDO AT  
INTERNATIONAL DRIVE AND  
JAMAICAN COURT, also doing business  
as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign corporation,  
a/k/a SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS  
RESORTS, INC., a Florida corporation,

Defendants.

---

**PROPOSAL FOR SETTLEMENT ON BEHALF OF PLAINTIFF, TROY ANDERSON'S,  
PURSUANT TO RULE 1.442**

Plaintiff, TROY ANDERSON, by and through his undersigned attorneys, hereby serves his Proposal for Settlement, pursuant to Rule 1.442 of the Florida Rules of Civil Procedure, to Defendant, INTERSTATE HOTELS RESORTS, INC., a Florida corporation, and states in support thereof as follows:

1. This Proposal for Settlement is made pursuant to Florida Statute §768.79, and is extended in accordance with the provisions of Rule 1.442. Fla.R.Civ.P.
2. This Proposal for Settlement is made on behalf of Plaintiff, TROY ANDERSON ("PLAINTIFF"), and is made to Defendant, INTERSTATE HOTELS RESORTS, INC., a Florida corporation ("INTERSTATE").

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against INTERSTATE.

4. That in exchange for SIX HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$650,000.00) in hand paid from INTERSTATE, PLAINTIFF agrees to settle any and all claims asserted against INTERSTATE, as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October <sup>2<sup>th</sup></sup>, 2011, I electronically filed the foregoing with the ~~Orange County Clerk of Court~~ by using the ECF system and further certify that I furnished a true and accurate copy of the foregoing via U.S. mail/facsimile to: **Michael E. Reed, Esquire and Wendy B. Accardi, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602; **Simon L. Wiseman, Esquire**, Williams & Wiseman, P.A., 1115 E. Livingston Street, Orlando, FL 32803 and **Steven R. Adamsky, Esquire and Noah Bender, Esquire**, Mitrani, Rynor, Adamsky & Toland, P.A., 2400 North Commerce Parkway, Suite 302, Weston, FL 33326.

  
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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT, IN AND FOR  
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CASE NO: 2009-CA-040473-O

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ANDERSON, his wife,

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SECURAMERICA, LLC, a foreign corporation,  
a/k/a SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS  
RESORTS, INC., a Florida corporation,

Defendants.

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**PROPOSAL FOR SETTLEMENT ON BEHALF OF PLAINTIFF, PAULA ANDERSON'S,  
PURSUANT TO RULE 1.442**

Plaintiff, PAULA ANDERSON, by and through her undersigned attorneys, hereby serves her Proposal for Settlement, pursuant to Rule 1.442 of the Florida Rules of Civil Procedure, to Defendant, SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA LLC, and states in support thereof as follows:

1. This Proposal for Settlement is made pursuant to Florida Statute §768.79, and is extended in accordance with the provisions of Rule 1.442. Fla.R.Civ.P.
2. This Proposal for Settlement is made on behalf of Plaintiff, PAULA ANDERSON ("PLAINTIFF"), and is made to Defendant, SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA LLC ("SECURAMERICA").

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against SECURAMERICA.

4. That in exchange for TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00) in hand paid from SECURAMERICA, PLAINTIFF agrees to settle any and all claims asserted against SECURAMERICA as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October <sup>5</sup>, 2011, I ~~electronically filed the foregoing with the Orange County Clerk of Court by using the ECF system and further certify that I furnished a true and accurate copy of the foregoing via U.S. mail/facsimile to:~~ **Michael E. Reed, Esquire and Wendy B. Accardi, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602; **Simon L. Wiseman, Esquire**, Williams & Wiseman, P.A., 1115 E. Livingston Street, Orlando, FL 32803 and **Steven R. Adamsky, Esquire and Noah Bender, Esquire**, Mitrani, Rynor, Adamsky & Toland, P.A., 2400 North Commerce Parkway, Suite 302, Weston, FL 33326.

  
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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT, IN AND FOR  
ORANGE COUNTY, FLORIDA

CASE NO: 2009-CA-040473-O

TROY ANDERSON and PAULA  
ANDERSON, his wife,

Plaintiffs,

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HILTON HOTELS CORPORATION,  
a foreign corporation, doing business as  
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as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign corporation,  
a/k/a SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS  
RESORTS, INC., a Florida corporation,

Defendants.

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**PROPOSAL FOR SETTLEMENT ON BEHALF OF PLAINTIFF, PAULA ANDERSON'S,  
PURSUANT TO RULE 1.442**

Plaintiff, PAULA ANDERSON, by and through her undersigned attorneys, hereby serves her Proposal for Settlement, pursuant to Rule 1.442 of the Florida Rules of Civil Procedure, to Defendant, HILTON HOTELS CORPORATION, a foreign corporation, doing business as EMBASSY SUITES ORLANDO AT INTERNATIONAL DRIVE AND JAMAICAN COURT, also doing business as HILTON WORLDWIDE, and states in support thereof as follows:

1. This Proposal for Settlement is made pursuant to Florida Statute §768.79, and is extended in accordance with the provisions of Rule 1.442. Fla.R.Civ.P.
2. This Proposal for Settlement is made on behalf of Plaintiff, PAULA ANDERSON ("PLAINTIFF"), and is made to Defendant, HILTON HOTELS CORPORATION, a foreign

corporation, doing business as EMBASSY SUITES ORLANDO AT INTERNATIONAL DRIVE AND JAMAICAN COURT, also doing business as HILTON WORLDWIDE ("HILTON").

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against HILTON.

4. That in exchange for FIFTEEN THOUSAND AND 00/100 DOLLARS (\$15,000.00) in hand paid from HILTON, PLAINTIFF agrees to settle any and all claims asserted against HILTON, as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 2<sup>nd</sup>, 2011, I electronically filed the foregoing with the Orange County Clerk of Court by using the ECF system and further certify that I furnished a true and accurate copy of the foregoing via U.S. mail/facsimile to: **Michael E. Reed, Esquire and Wendy B. Accardi, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602; **Simon L. Wiseman, Esquire**, Williams & Wiseman, P.A., 1115 E. Livingston Street, Orlando, FL 32803 and **Steven R. Adamsky, Esquire and Noah Bender, Esquire**, Mitrani, Rynor, Adamsky & Toland, P.A., 2400 North Commerce Parkway, Suite 302, Weston, FL 33326.

  
\_\_\_\_\_  
**W. RILEY ALLEN, ESQUIRE**  
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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT, IN AND FOR  
ORANGE COUNTY, FLORIDA

CASE NO: 2009-CA-040473-O

TROY ANDERSON and PAULA  
ANDERSON, his wife,

Plaintiffs,

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EQUITY INNS REALTY, LLC, a foreign  
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RESORTS, INC., a Florida corporation,

Defendants.

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**PROPOSAL FOR SETTLEMENT ON BEHALF OF PLAINTIFF, PAULA ANDERSON'S,  
PURSUANT TO RULE 1.442**

Plaintiff, PAULA ANDERSON, by and through her undersigned attorneys, hereby serves her Proposal for Settlement, pursuant to Rule 1.442 of the Florida Rules of Civil Procedure, to Defendant, W2007 EQUITY INNS REALTY, LLC, a foreign corporation, and states in support thereof as follows:

1. This Proposal for Settlement is made pursuant to Florida Statute §768.79, and is extended in accordance with the provisions of Rule 1.442. Fla.R.Civ.P.
2. This Proposal for Settlement is made on behalf of Plaintiff, PAULA ANDERSON ("PLAINTIFF"), and is made to Defendant, W2007 EQUITY INNS REALTY, LLC, a foreign corporation ("EQUITY").

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against EQUITY.

4. That in exchange for FIFTEEN THOUSAND AND 00/100 DOLLARS (\$15,000.00) in hand paid from EQUITY, PLAINTIFF agrees to settle any and all claims asserted against EQUITY as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October <sup>27</sup>, 2011, I ~~electronically filed the foregoing with the Orange County Clerk of Court by using the ECF system and further certify that I furnished a true and accurate copy of the foregoing via U.S. mail/facsimile to:~~ **Michael E. Reed, Esquire and Wendy B. Accardi, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602; **Simon L. Wiseman, Esquire**, Williams & Wiseman, P.A., 1115 E. Livingston Street, Orlando, FL 32803 and **Steven R. Adamsky, Esquire and Noah Bender, Esquire**, Mitrani, Rynor, Adamsky & Toland, P.A., 2400 North Commerce Parkway, Suite 302, Weston, FL 33326.

  
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Attorneys for Plaintiffs

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TROY ANDERSON and PAULA  
ANDERSON, his wife,

Plaintiffs,

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as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign corporation,  
a/k/a SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS  
RESORTS, INC., a Florida corporation,

Defendants.

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**PROPOSAL FOR SETTLEMENT ON BEHALF OF PLAINTIFF, PAULA ANDERSON'S,  
PURSUANT TO RULE 1.442**

Plaintiff, PAULA ANDERSON, by and through her undersigned attorneys, hereby serves her Proposal for Settlement, pursuant to Rule 1.442 of the Florida Rules of Civil Procedure, to Defendant, INTERSTATE HOTELS RESORTS, INC., a Florida corporation, and states in support thereof as follows:

1. This Proposal for Settlement is made pursuant to Florida Statute §768.79, and is extended in accordance with the provisions of Rule 1.442. Fla.R.Civ.P.
2. This Proposal for Settlement is made on behalf of Plaintiff, PAULA ANDERSON ("PLAINTIFF"), and is made to Defendant, INTERSTATE HOTELS RESORTS, INC., a Florida corporation ("INTERSTATE").

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against INTERSTATE.

4. That in exchange for TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00) in hand paid from INTERSTATE, PLAINTIFF agrees to settle any and all claims asserted against INTERSTATE, as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October <sup>5</sup>, 2011, I ~~electronically filed the foregoing with the Orange County Clerk of Court by using the ECF system and further certify that I furnished a true and accurate copy of the foregoing via U.S. mail/facsimile to:~~ **Michael E. Reed, Esquire and Wendy B. Accardi, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602; **Simon L. Wiseman, Esquire**, Williams & Wiseman, P.A., 1115 E. Livingston Street, Orlando, FL 32803 and **Steven R. Adamsky, Esquire and Noah Bender, Esquire**, Mitrani, Rynor, Adamsky & Toland, P.A., 2400 North Commerce Parkway, Suite 302, Weston, FL 33326.

  
\_\_\_\_\_  
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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2009-CA-040473-O

TROY ANDERSON and PAULA  
ANDERSON, his wife,

Plaintiffs,

v.

HILTON HOTELS CORPORATION,  
a foreign corporation, doing business as  
EMBASSY SUITES ORLANDO AT  
INTERNATIONAL DRIVE AND  
JAMAICAN COURT, also doing business  
as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign corporation,  
a/k/a SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS  
RESORTS, INC., a Florida corporation,

Defendants.

**PROPOSAL FOR SETTLEMENT ON BEHALF OF PLAINTIFF, TROY ANDERSON'S,  
PURSUANT TO RULE 1.442**

Plaintiff, TROY ANDERSON, by and through his undersigned attorneys, hereby serves his Proposal for Settlement, pursuant to Rule 1.442 of the Florida Rules of Civil Procedure, to Defendant, SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA LLC, and states in support thereof as follows:

1. This Proposal for Settlement is made pursuant to Florida Statute ' 768.79, and is extended in accordance with the provisions of Rule 1.442. Fla.R.Civ.P.

2. This Proposal for Settlement is made on behalf of Plaintiff, TROY ANDERSON ("PLAINTIFF"), and is made to Defendant, SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA LLC ("SECURAMERICA").

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against SECURAMERICA.

4. That in exchange for THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00) in hand paid from SECURAMERICA, PLAINTIFF agrees to settle any and all claims asserted against SECURAMERICA, as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 16, 2012, I electronically filed the foregoing with the Orange County Clerk of Court by using the ECF system and further certify that I furnished a true and accurate copy of the foregoing via U.S. mail/facsimile to: **Michael E. Reed, Esquire and Wendy B. Accardi, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602; **Simon L. Wiseman, Esquire**, Williams & Wiseman, P.A., 1115 E. Livingston Street, Orlando, FL 32803 and **Steven R. Adamsky, Esquire and Noah Bender, Esquire**, Mitrani, Rynor, Adamsky & Toland, P.A., 2400 North Commerce Parkway, Suite 302, Weston, FL 33326.



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IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2009-CA-040473-O

TROY ANDERSON and PAULA  
ANDERSON, his wife,

Plaintiffs,

v.

HILTON HOTELS CORPORATION,  
a foreign corporation, doing business as  
EMBASSY SUITES ORLANDO AT  
INTERNATIONAL DRIVE AND  
JAMAICAN COURT, also doing business  
as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign corporation,  
a/k/a SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS  
RESORTS, INC., a Florida corporation,

Defendants.

\_\_\_\_\_ /

**PLAINTIFFS' NOTICE OF DROPPING PARTY FROM LAWSUIT WITHOUT  
PREJUDICE**

Plaintiffs, TROY ANDERSON and PAULA ANDERSON, his wife, by and through their undersigned attorneys hereby file this their Notice of Dropping Party from Lawsuit as it relates to Plaintiff, PAULA ANDERSON, only. Each party shall bear their own attorney's fees and costs related to the dropping of PAULA ANDERSON from this lawsuit.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on August 31, 2012, I electronically filed the foregoing with the Orange County Clerk of Court by using the ECF system and further certify that I furnished a

true and accurate copy of the foregoing via U.S. mail/facsimile to: **Michael E. Reed, Esquire**  
and **Wendy B. Accardi, Esquire**, Wicker, Smith, et al., P.A., P.O. Box 2152, Tampa, FL 33602;  
and **Steven R. Adamsky, Esquire** and **Noah Bender, Esquire**, Mitrani, Rynor, Adamsky &  
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/s/ W. Riley Allen

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1 IN THE CIRCUIT COURT OF THE  
2 NINTH JUDICIAL CIRCUIT IN AND  
3 FOR ORANGE COUNTY, FLORIDA

4 CASE NO. 2009-040473-0

5 TROY and PAULA ANDERSON,

6 Plaintiffs,

ORIGINAL

7 vs.

8 HILTON HOTELS CORPORATION, a  
9 foreign corporation, doing  
10 business as EMBASSY SUITES  
11 ORLANDO AT INTERNATIONAL DRIVE  
12 AND JAMAICAN COURT, also doing  
13 business as HILTON WORLDWIDE,  
14 SECURAMERICA, LLC, a foreign  
15 corporation, a/k/a  
16 SECUREAMERICA, LLC, W2007  
17 EQUITY INNS REALTY, LLC,  
18 INTERSTATE HOTELS & RESORTS,  
19 INC., a Florida corporation,

20 Defendants.

-----/

21 TRANSCRIPT OF PROCEEDINGS BEFORE  
22 THE HONORABLE F. RAND WALLIS

23 VOLUME VII  
24 (Pages 935 through 993)

25 DATE: September 24, 2012 -  
October 1, 2012

PLACE: Orange County Courthouse  
Courtroom 18B  
425 North Orange Avenue  
Orlando, Florida 32801

REPORTED BY: Emily W. Andersen  
Registered Merit Reporter

1        A P P E A R A N C E S:

2  
3            The Wiseman Law Firm  
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24           Corporation  
25           By: Michael Reed, Esquire  
             Shelley Leinicke, Esquire

             Mitrani, Rynor, Adamsky & Toland, P.A.  
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             Suite 202  
             Weston, Florida 33326  
             (954) 335-1010  
             Attorneys for the Defendant, SecurAmerica LLC  
             By: Steven R. Adamsky, Esquire  
                     Noah Bender, Esquire

1           Is that unreasonable for Mr. Anderson to be  
2           afraid for her safety?

3           "Is that what you told people at the  
4           hospital?"

5           "Yeah. I told them I don't want her up there  
6           because if they came back -- you know."

7           "How would they know where you were?"

8           "I have no idea. I was going by what the  
9           police said. The police said that they might come  
10          to my house" -- now, he stopped -- "because they  
11          could have got my insurance papers out of my car.  
12          That was just spooky, and then they had me under an  
13          assumed name which made me think they were coming  
14          back to the hospital."

15          Counsel forgot to read that part to you, but  
16          that part is important because it's clear that there  
17          was a lot of concern for her safety. They had  
18          papers, the registration of his vehicle, sufficient  
19          to be able to identify where he was. I think that's  
20          very reasonable. And again, it just reflects giving  
21          you part of the facts and not all of the facts.

22          Thank you, Your Honor.

23          THE COURT: I'm going to declare a mistrial.  
24          I have concerns as far as the representations that  
25          have been made thus far to the jury.

1 I have concerns about the ruling on The Naked  
2 Truth case and how that has played out in front of  
3 this jury.

4 I have concerns as far as representations made  
5 as far as what conduct, actually, was -- from the  
6 defense taking the position was so public, as far as  
7 the spending of money. I don't see, at this point,  
8 that the Defendant has established anything near or  
9 short of just mere conjecture, as far as whether  
10 that evidence should be presented in front of this  
11 jury.

12 I am going to go back and tell the jury that  
13 I've declared a mistrial and excuse them at this  
14 point.

15 I would like to reconvene a hearing on  
16 Wednesday to discuss the ruling on The Naked Truth  
17 case and whether or not any activities of the  
18 Defendant should be present in front of this jury  
19 when this case is retried. And it will be set for  
20 trial on October 22nd of this year, obviously. It's  
21 a 2008 case, so I imagine it would be number one on  
22 the docket, two-week trial period.

23 And so we will reconvene on Wednesday. I will  
24 ask Counsel to call my judicial assistant and find  
25 out when the hearing time will begin. And I am

1 going to set aside two hours for the hearing with  
2 regard to the allegations, both of pre -- the  
3 pre-event actions of the Plaintiff and Ms. Parks,  
4 and also I would like to have a hearing and have the  
5 Defendants present all itemized evidence they  
6 believe established the defense of comparative  
7 negligence that they believe entitles them to  
8 present that argument to this jury.

9 I will see everyone on Wednesday.

10 (The trial was concluded at 9:43 a.m.)  
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IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 2009-040473-0

TROY and PAULA ANDERSON,

Plaintiffs,

-vs-

ORIGINAL

HILTON HOTELS CORPORATION,  
a foreign corporation, doing  
business as EMBASSY SUITES  
ORLANDO AT INTERNATIONAL DRIVE  
AND JAMAICAN COURT, also doing  
business as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign  
corporation, a/k/a  
SECURAMERICA, LLC, W2007  
EQUITY INNS REALTY, LLC,  
INTERSTATE HOTELS & RESORTS,  
INC., Florida corporation,

Defendants.

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TRANSCRIPT OF PROCEEDINGS BEFORE  
THE HONORABLE F. RAND WALLIS

VOLUME XVII (Pages 2239 - 2387)

DATE TAKEN: October 22, 2012 -  
November 2, 2012

PLACE: Orange County Courthouse  
425 North Orange Avenue  
Courtroom 18-B  
Orlando, Florida 32801

REPORTED BY: Holly L. DeLai  
Court Reporter

## 1 APPEARANCES:

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Attorneys for the Defendant, SecurAmerica, LLC  
BY: STEVEN R. ADAMSKY, ESQUIRE  
NOAH BENDER, ESQUIRE

1 instructions, and all of the special instructions  
2 that the plaintiff has asked for.

3 This one concerning duty replicates the  
4 401.20, which the Court has agreed to give. And as  
5 to Embassy Suites' duty, the Court, I'm sure, is  
6 well aware of the large body of case law that says  
7 in all but the most exceptional circumstances, the  
8 only jury instructions that are to be given are  
9 those that are standard, and this is not a standard  
10 instruction.

11 And the Court is already instructing the jury  
12 concerning Embassy Suites, the claim whether  
13 Embassy Suites negligently failed to maintain its  
14 premises in a reasonably safe condition, and this  
15 instruction would be highly prejudicial and we  
16 believe erroneous.

17 THE COURT: Okay. I'm not going to rule on  
18 that special instruction at this time. I'll look  
19 at that while we're going this morning in the  
20 morning session, and we can have further argument  
21 if necessary on that.

22 Then we have the proposed instruction on  
23 preliminary issues, vicarious liability.

24 Before we do that, do we have all the jurors  
25 here?

1 THE COURT DEPUTY: Not yet.

2 THE COURT: Okay. How many are we missing?

3 THE COURT DEPUTY: He's checking right now.

4 THE COURT: Okay.

5 MS. LEINICKE: What was the instruction the  
6 Court just referenced?

7 THE COURT: This is -- it's just at the end of  
8 the plaintiff's. It's entitled: 401.14,  
9 Preliminary Issues, Vicarious Liability.

10 MR. WISEMAN: Yes, Your Honor.

11 As with regard to the agency, it's taken  
12 straight from the standard instructions,  
13 Your Honor.

14 There has been testimony in this case through  
15 Alonzo Alvarez that W2007 was its agent. And in  
16 addition to that, there was a management agreement,  
17 wherein it states very clearly that they are, in  
18 fact, agents of W2007.

19 MS. LEINICKE: Your Honor, we would object. I  
20 don't think it's necessary to do that. And the way  
21 the jury instructions are set up, it's identifying  
22 Embassy Suites as, effectively, all of our group of  
23 defendants. There's really no reason to have a  
24 special instruction concerning agency.

25 MR. WISEMAN: Judge, if I may respond.

1           The defendants and plaintiffs have both agreed  
2           that Embassy Suites has been clumped together as  
3           all of these three entities, W2007, Interstate, and  
4           Hilton Hotels Corporation.

5           If the defendants are inclined to agree to  
6           that, that they are all one, as is set forth in the  
7           verdict form, I don't think we have a problem with  
8           that, because it may well confuse the jury  
9           somewhat.

10          THE COURT: Well, that's my concern, is I  
11          think the first we ever heard of these entities is  
12          that one deposition.

13          I haven't seen the verdict form, but my  
14          understanding is that you-all have agreed upon a  
15          verdict form. Is that right?

16          MR. WISEMAN: Yes, Your Honor.

17          MS. LEINICKE: I think there's some minor  
18          tweaking that needs to be done, but we've agreed  
19          substantively with it.

20          THE COURT: Okay. Well, what you haven't  
21          agreed upon, does that have anything to do with the  
22          substance of this instruction that we're talking  
23          about or -- my concern is that it would confuse the  
24          jury, and that's entirely my concern. And I know  
25          the 5th DCA, that's going to be their concern.

1           Obviously, I don't want to confuse the jury.  
2           And if you-all have an agreement which would result  
3           in having this whole thing cured by the verdict  
4           form, then I don't see any need to have this  
5           instruction.

6           MR. WISEMAN: I agree, Your Honor, absolutely.

7           MS. LEINICKE: Yeah, I don't think there's any  
8           reason for this instruction on agency. The jury is  
9           not being asked in its verdict to determine agency.  
10          That's not been a disputed issue in this case.

11          THE COURT: Okay. So subject to you-all  
12          agreeing, totally agreeing on even the minor issues  
13          with regard to the verdict form, it would be my  
14          intention not to give this jury instruction.

15          MR. ALLEN: Your Honor, just so long as -- so  
16          the record is clear, we only put the testimony on  
17          to establish the relationships. And if the  
18          relationships are stipulated to, that they all are  
19          in the same pot, then we don't have a problem with  
20          that. If that's the position, then it eliminates  
21          that potential confusion and we'd agree.

22          We only put it on just because we have to  
23          prove up those elements, if there was going to be a  
24          dispute.

25          THE COURT: Okay. Well, I guess my other

1 question, then, is if it's a stipulation, is it a  
2 stipulation that you would seek to have me read to  
3 the jury, or is there any need to even do that, if  
4 there's going to be an agreement from the  
5 defendants, that based upon your agreeing to the  
6 verdict form, it's not necessary to even address  
7 that with the jury?

8 MR. ALLEN: I think --

9 MS. LEINICKE: The --

10 MR. ALLEN: Sorry.

11 MS. LEINICKE: Pardon me. I didn't mean to --  
12 go ahead.

13 MR. ALLEN: No, go ahead.

14 MS. LEINICKE: The latter, Your Honor.  
15 Embassy Suites is the entire penumbra of the  
16 Embassy Suites people, and the jury will be asked  
17 about Embassy Suites. I don't think there's any  
18 need for any special instruction or advisory to the  
19 jury on that.

20 MR. ALLEN: And, Your Honor, the only response  
21 I would have is that Ms. Bonner, the first witness  
22 that came on by video and she asked the question,  
23 Who is Interstate --

24 THE COURT: Right.

25 MR. ALLEN: -- I think they need to understand

1           that all these parties are lumped together by  
2           stipulation of the parties.

3           It doesn't imply anything negative for the  
4           defendants to say we're all lumped together, but  
5           her specific question, I think, justifies giving  
6           that information to the jurors so they are not then  
7           confused. And it might be appropriate to say, So  
8           when you see the verdict form, or whatever, you'll  
9           see them identified as Embassy, but it includes  
10          W2007, et cetera.

11          MS. LEINICKE: Your Honor, when the question  
12          was posed, my recollection is the response was,  
13          That will be answered for you momentarily, or  
14          shortly with the testimony, and then the next  
15          witness or two talked about Interstate and the  
16          hierarchy and how they're tied together.

17          I think it's been resolved by the evidence,  
18          and there's no need for an instruction on that  
19          point.

20          THE COURT: You can respond.

21          MR. ALLEN: Her question doesn't explain who  
22          Embassy Suites is, in the overall picture, in light  
23          of her question. If we're all in agreement that  
24          they're all clumped together, I don't see there  
25          being a problem just letting them know they're all

1 clumped together, specifically because of  
2 Ms. Bonner's question.

3 Because it otherwise might be confusing,  
4 they'd think to themselves, What happened to  
5 Interstate.

6 THE COURT: I agree. I think it can be  
7 resolved by a one sentence stipulation, just  
8 something to the effect of: Members of the jury,  
9 you're to assume, for the purposes of your  
10 deliberations, that Interstate Resorts and Hotels,  
11 Inc. -- let's see.

12 MR. WISEMAN: Hilton Hotels Corporation,  
13 Your Honor.

14 THE COURT: Just that the three entities,  
15 however it's going to be worded, that they are to  
16 be considered as one or the same?

17 MR. ALLEN: Yes, Your Honor, I think that  
18 would be fair.

19 THE COURT: All right.

20 MS. LEINICKE: Again, for the record, we would  
21 object, but we'll work with plaintiff's counsel to  
22 come up with a statement.

23 THE COURT: Okay. If plaintiff's counsel  
24 could draft a one or maybe, maybe, two sentence  
25 stipulation to read, then I will not read this jury

1 instruction.

2 Where do we stand now?

3 COURT DEPUTY: We're missing three.

4 MS. LEINICKE: The jury instruction we were  
5 just handed concerning you're not to place any  
6 blame or negligence on the assailants who robbed  
7 and shot the plaintiff, Troy Anderson. It goes on,  
8 but that's the one we're talking about.

9 That was not part of the packet we were  
10 originally handed. I understand it was e-mailed  
11 somewhere along the line, but I didn't see it until  
12 just now.

13 The same arguments, Your Honor, as we made on  
14 the other issue as to Po --

15 THE COURT: I need to see that one. Is that  
16 one --

17 MS. LEINICKE: -- Folks, P-o F-o-l-k-s.

18 MR. WISEMAN: May I approach?

19 THE COURT: Wait.

20 I'm sorry, is that --

21 MS. LEINICKE: It is not a standard  
22 instruction. The jury is being instructed  
23 specifically to consider only negligence of  
24 Embassy Suites, SecurAmerica, and Troy Anderson.

25 They are being asked to state a percentage of

1 MR. WISEMAN: Yes. I don't think there was  
2 any dispute over it, Your Honor, it was just a  
3 matter of when we were going to do it.

4 THE COURT: Okay.

5 MR. REED: I had no objection to them being  
6 published. I'm not sure if putting them on the  
7 screen, if counsel's going to put them on the  
8 screen --

9 MR. WISEMAN: And that's fine, Your Honor.

10 MR. ALLEN: Oh, no, no, we weren't going to do  
11 that, we were just going to read the question and  
12 the response.

13 THE COURT: Okay. All right.

14 MR. WISEMAN: And I guess the only outstanding  
15 issue --

16 MR. ALLEN: We had the Robert Wombolt issue,  
17 Your Honor, that you had reserved ruling on, in  
18 reference to the testimony that was effectively  
19 stricken. And you had just reserved ruling, so we  
20 just had that as an issue out there.

21 THE COURT: Okay. And I'm going to deny that  
22 request to reopen that testimony at this point.

23 MR. ALLEN: Okay.

24 THE COURT: And with that, why don't we go  
25 ahead and do the -- have the testimony, have the

1 witness, and then we'll have -- the plaintiff can  
2 publish the request for admissions, then I will  
3 read what has been prepared, as far as reading to  
4 the jury the fact that -- I don't know, have the  
5 defendants seen this, as far as, "Members of the  
6 jury, you can assume, for purposes of your  
7 deliberation, that Interstate Hotels and Resorts,  
8 Inc., Hilton Hotels Corporation, and W2000 Equity  
9 Inns Realty, LLC are considered as one and the  
10 same. These defendants will be referred to in the  
11 jury instructions and verdict form as  
12 Embassy Suites."

13 MS. LEINICKE: That's correct. Again, over  
14 our objection, but we agree to the instruction as  
15 worded.

16 THE COURT: Okay. All right. And I will read  
17 that last thing before we break for lunch.

18 MR. REED: Judge, I wanted to make a  
19 correction.

20 MR. WISEMAN: It should be W2007, Your Honor.

21 THE COURT: Yeah, it was 2007.

22 MR. WISEMAN: Sorry. I just wanted to make  
23 sure.

24 THE COURT: And then we'll break for lunch and  
25 then have them come back. Let's see where we end

1 THE COURT: All right. Seeing no hands.

2 Ma'am, you may step down.

3 (Witness steps down.)

4 THE COURT: And before we break for lunch, I  
5 wanted to check back with you-all and find out,  
6 does anybody have any commitment that would not  
7 allow you to stay past 5:00?

8 (Jurors raise hands.)

9 THE COURT: Okay. I see hands. That's no  
10 problem. So what we will do is, we are going to  
11 make final preparations prior to the closing -- the  
12 jury instructions and then closing arguments.

13 We're going to excuse you for lunch, and we  
14 will resume back at 1:00. So please, once again,  
15 do not discuss the case amongst yourselves or with  
16 anybody else, and we'll see you back at 1:00.

17 All rise for the jury.

18 (The jury left the courtroom after which the  
19 following proceedings were had:)

20 THE COURT: Okay. Can we handle the proffer  
21 and the directed verdict motions now? Can we  
22 handle those now, get a proffer?

23 MR. REED: I can start it.

24 THE COURT: Well, I guess maybe we should  
25 handle the motions and then let you-all break and

1 go to lunch.

2 MR. REED: All right. If I can be heard,  
3 Judge, on behalf of -- first, I would like to move  
4 for partial summary judgment on behalf of Hilton  
5 Hotels Corporation, because there has been no  
6 record evidence that substantiates that any  
7 reasonable jury, considering the evidence in the  
8 light most favorable to the plaintiff, and now that  
9 the case has been completed and all inferences,  
10 therefore, no reasonable jury could return a  
11 verdict in favor of Hilton Hotel Corporation.  
12 Specifically, it's not been demonstrated but is  
13 necessary that some record evidence of exercising  
14 some kind of control or judgment in some way that  
15 has been controlling in the manner and the nature  
16 in which the security services have been provided  
17 at the hotel, which was the complained of mechanism  
18 of injury to the plaintiff on the premises of the  
19 Embassy Suites, and, therefore, I'd ask that the  
20 Court direct a verdict in favor of the Hilton Hotel  
21 Corporation as a party defendant.

22 THE COURT: Response.

23 MR. WISEMAN: Your Honor, as to the  
24 Embassy Suites defendant, it's our position that  
25 we've met our burden with regard to knew or

1 reasonably should have known about the  
2 September 16, 2008 armed robbery, which obviously  
3 makes it more foreseeable with regards to the  
4 February 26, 2008 armed robbery, which we cited to  
5 the Court, prior to this, the Foster versus Po  
6 Folks case. There is ample evidence in that  
7 regard.

8 I would probably just cite to the Court the  
9 prior testimony that I cited to in the summary  
10 judgment motion, with regard to the testimony of  
11 Ron Caimano. Ron Caimano -- and we've heard the  
12 video deposition testimony, Your Honor.

13 He has said that Hilton came down on, I  
14 believe it was two occasions each year, based on  
15 their relationship with Interstate, pursuant to the  
16 franchisor/franchisee agreement, on pages 114  
17 through 120, which was played during this trial, of  
18 Ron Caimano's deposition.

19 It addressed those visits and indicated that  
20 those quality assurance inspections occurred twice  
21 a year where Hilton would come down and inspect  
22 security issues, to include lighting.

23 Additionally, Hilton was told to make changes  
24 to security issues, such as lighting, that they  
25 would be required to do so, and we've heard

1 evidence in that regard. I'll be happy to read  
2 that into the record. It's already part of the  
3 record.

4 THE COURT: Okay. Based upon the testimony,  
5 primarily of Mr. Caimano, I believe the jury should  
6 at least consider that issue.

7 The testimony concerning the inspections by  
8 Hilton, I believe, would be relevant to whether or  
9 not there was control and whether Hilton should or  
10 should not have known of these other events. So I  
11 will deny the motion.

12 MR. REED: Thank you, Judge.

13 And the next motion we would make would be a  
14 partial summary judgment for the property owner,  
15 W2007 Equity Inns Realty, LLC, and Interstate.  
16 Well, I'll move Interstate separately -- because --  
17 for basically the same argument. There has not  
18 been sufficient evidence in front of this jury to  
19 demonstrate adequate control over what occurred, or  
20 what should have occurred on September 26th, when  
21 Mr. Anderson was shot, and no reasonable jury,  
22 considering all of the evidence that's been  
23 elicited, including all inferences favorable  
24 therefrom, would warrant a verdict against W2007  
25 Equity Inns Realty.

1 THE COURT: Response.

2 MR. WISEMAN: Judge, as Your Honor knows,  
3 there's a management agreement, which is in  
4 evidence, with Interstate and W2007, which states  
5 very clearly, in accordance with Mr. Alvarez'  
6 deposition testimony, that they are considered  
7 agent of W2007, and Interstate being an agent of  
8 W2007. He then confirmed that in his testimony.

9 Mr. Caimano also testified that they came down  
10 and inspected the Embassy Suites periodically,  
11 three to four times a year, which would include  
12 inspecting security, page 128, line 23 through page  
13 129, line seven, which was played to this jury.

14 I would obviously cite the pertinent case law  
15 with regard to the standard on -- I think we have  
16 an agreement.

17 MR. REED: No, there's no agreement.

18 MR. WISEMAN: Mr. Reed pointed out -- during  
19 my argument, Your Honor, I would point out that  
20 they had a nondelegable duty.

21 In addition, I'd just cite for the Court the  
22 Etheredge versus Walt Disney World case, 999 So.2d  
23 669, which has set forth the standard with regard  
24 to a directed verdict and that there be reasonable  
25 evidence needed. And, obviously, there should be

1 all reasonable inferences drawn in favor of the  
2 plaintiff and in the light most favorable to the  
3 plaintiff.

4 THE COURT: And I believe that the entry of  
5 the exhibit with regard to the agreement is  
6 sufficient for the jury to consider. There hasn't  
7 been any testimony that disputes the accuracy of  
8 that, and I will deny the motion for directed  
9 verdict as to W2000 [sic].

10 MR. REED: Judge, we'd make the exact same  
11 argument -- I won't belabor the point -- for  
12 Interstate Hotels and Resorts.

13 THE COURT: Any different argument?

14 MR. WISEMAN: Other than all the testimony  
15 with regards to what Mr. Vergara and Mr. Caimano  
16 have said with regard to the unacceptability of the  
17 four to six minutes patrolling on the evening of  
18 the 26th, that they should have known about the  
19 armed robbery prior to that, in addition to the  
20 patrol periods on the 26th on the exterior versus  
21 responding to guest requests for bed items and bell  
22 carts.

23 Obviously, Mr. Vergara's testimony with regard  
24 to the lighting, in addition, is inconsistent with  
25 the CCTV. The lighting speaks for itself. And,

1 obviously, we've heard numerous testimony with  
2 regard to the lighting as well.

3 So that's the basic summary, Your Honor.

4 THE COURT: Okay. And I find there's  
5 sufficient evidence such that the jury should  
6 consider that as well, in light of the additional  
7 -- the testimony that's already been highlighted,  
8 as far as W2000 [sic], and what has now been added  
9 by plaintiffs' counsel, I'll deny that motion for  
10 directed verdict.

11 MR. REED: Same argument, Judge,  
12 Embassy Suites Orlando at Jamaican Court and Hilton  
13 Worldwide.

14 THE COURT: Anything different?

15 MR. WISEMAN: Well, actually, I don't think  
16 Embassy Suites are a separate defendant here,  
17 Judge. There are three defendants, Interstate,  
18 W2007, and Hilton Hotels Corporation. We've taken  
19 care of all three of those. I think there's a  
20 separate Embassy Suites, defendant, is doing  
21 business as defendant, Your Honor.

22 THE COURT: Okay. And I'll deny the motion  
23 for directed verdict as to Embassy Suites as well,  
24 for the same reasons previously stated.

25 MR. REED: Thank you, Judge.

1 THE COURT: Anything else?

2 MR. WISEMAN: Well, we would like to move for  
3 directed verdict, but we want to take care of  
4 SecurAmerica's motion first, Your Honor.

5 MR. ADAMSKY: Your Honor, briefly.

6 For the record, SecurAmerica moves for a  
7 directed verdict. There is insufficient evidence  
8 for the jury to conclude that we were negligent,  
9 and we satisfied the terms of the contract and  
10 provided a qualified security guard and we would  
11 request a directed verdict, for the record.

12 THE COURT: Response.

13 MR. WISEMAN: With regards to a reasonable  
14 basis, Judge, we've shown that. Mr. Bovich has  
15 testified that four to six minutes spent patrolling  
16 the exterior was unacceptable, that the employment  
17 process for Mr. Lucuara was unacceptable, in that  
18 there was no background check for 11 months after,  
19 no correct completion of the culture form, and, in  
20 general, he did not -- or SecurAmerica did not  
21 complete a thorough background check and that was  
22 unacceptable. He also stated that he should have  
23 known about the 16th, and unacceptable that he  
24 didn't know, and that no changes were made between  
25 the 16th and the 26th to the lighting.

1 THE COURT: And I will deny the motion for  
2 directed verdict, as it concerns SecurAmerica,  
3 finding that the jury has heard evidence that would  
4 draw into question, at least the argument can be  
5 made, that SecurAmerica was negligent in providing  
6 services, especially in light of the testimony of  
7 their own employees and the requirements that were  
8 established, as far as what Embassy Suites expected  
9 of SecurAmerica. And I will deny that motion for  
10 directed verdict.

11 MR. ADAMSKY: Your Honor, may I just have the  
12 record reflect that that motion was made after the  
13 plaintiffs' case and I'm now renewing it at the  
14 close of --

15 THE COURT: Yes.

16 MR. ADAMSKY: Make sure the record's clear on  
17 that.

18 THE COURT: Yes.

19 MR. ADAMSKY: And both motions have been  
20 denied?

21 THE COURT: Yes.

22 MR. REED: Same for us, Judge.

23 THE COURT: Yes.

24 MR. WISEMAN: Judge, at this time, if we could  
25 move for a directed verified as to the comparative

1 negligence of Troy Anderson. The Court has already  
2 read the Orlando Executive Parking versus PDR case,  
3 402 So.2d 442, specifically at pages 446 and 47, as  
4 a 5th District Court of Appeal case from 1981, and  
5 it states as follows: We reject as entirely  
6 fallacious the defendant's claim that the brutal  
7 and deliberate act of the rapist murderer  
8 constituted an independent intervening cause which  
9 served to insulate him from liability, as well as  
10 establish that it's a reasonable possibility that  
11 the intervention, criminal or otherwise, of a third  
12 party is the avoidable risk of harm, which, itself,  
13 causes one to be deemed negligent. The occurrence  
14 of that very conduct cannot be superseded, a  
15 superseding cause of a subsequent misadventure.

16 There has been no evidence in this case that  
17 Mr. Anderson did anything wrong in this regard to  
18 cause himself to be shot, and it would be  
19 inappropriate to place him on the verdict form  
20 given the case law, Your Honor.

21 THE COURT: Response.

22 MS. LEINICKE: Your Honor, the jury has heard  
23 evidence that Mr. Anderson did not park where  
24 Mr. Steiner directed him to park, which would have  
25 been on the end of the turnaround, but, rather, he

1 independently decided to park where he did.

2 We believe that is evidence of comparative  
3 negligence, that he chose to park in what he said  
4 was a dark area.

5 THE COURT: Okay. Anything else to add,  
6 Mr. Adamsky?

7 MR. ADAMSKY: No other argument, Your Honor.

8 THE COURT: Okay. Brief response.

9 MR. WISEMAN: Yes.

10 Ron Caimano testified that, in fact, he had  
11 informed Mr. Anderson -- sorry. That in speaking  
12 with Mr. Steiner, Mr. Steiner informed Mr. Anderson  
13 to park where he ultimately parked, and that's  
14 quoting, "where he ultimately parked." In  
15 addition, Troy -- Mr. Anderson has testified in  
16 that regard as well.

17 And that would be, obviously, an admission  
18 from Mr. Caimano with regard to where Mr. Steiner  
19 directed Mr. Anderson to park.

20 THE COURT: Okay. I believe the argument --  
21 that there has been sufficient evidence for the  
22 jury to at least consider the issue of the  
23 comparative negligence, based upon the direction on  
24 where to park, and I will deny the directed verdict  
25 from the plaintiff with that regard.

1 Anything else?

2 MR. WISEMAN: I guess the only question in  
3 that regard would be just to make sure that the  
4 motion in limine, with regard to the Orlando  
5 Executive Park case, be, you know, still in place  
6 and the defendants not be permitted to argue  
7 contrary to that, other than to argue that he  
8 didn't follow the direction, or he made his own  
9 decision to park there. I think, you know, there  
10 may be a combination of evidence there, and we can  
11 both argue that. But as long as we're clear on  
12 that, Your Honor.

13 THE COURT: Response.

14 MR. REED: You're just going to have to  
15 refresh my recollection about the Orlando Executive  
16 Park case, I wasn't at the hearing. But are you  
17 talking about the evidence to be argued to the jury  
18 as to where he chose to park? Is that what you  
19 mean?

20 MR. WISEMAN: Well, you can't argue that Troy  
21 was at fault for being shot.

22 THE COURT: For anything other than --

23 MR. WISEMAN: Exactly, Your Honor. Anything  
24 other than being directed to -- or making a  
25 decision to park where he parked.

1 MR. REED: I good with that, Judge.

2 MR. ADAMSKY: And likewise, Your Honor,  
3 plaintiff should not be permitted to argue that  
4 Jason Lacuara's reaction after this, after the  
5 incident had occurred, they shouldn't argue that  
6 negligence, because that's not relevant to  
7 preventing the crime. So I think that that should  
8 be the flip side of that argument as well.

9 MR. ALLEN: Your Honor, I would just submit  
10 that Mr. Lucuara's testimony is now before the jury  
11 as to what he did. And his perception or portrayal  
12 of what he did and how he interacted with  
13 Mr. Anderson, what he allegedly performed at the  
14 scene, is contrary to the video. And the jurors  
15 have seen the video. It speaks for itself.

16 I mean, it's certainly appropriate to identify  
17 that contrary to Mr. Lucuara's testimony, he didn't  
18 render the assistance that he claims. He walked  
19 around holding a towel, and finally comes and lays  
20 the towel down after several minutes. He didn't do  
21 any of the things that he said that he did.

22 THE COURT: I think the issue is, and this is  
23 where I see it, is his actions are his actions, and  
24 his actions are documented in the videotape.

25 And the videotape is admitted into evidence,

1 and you can comment upon what his actions were and  
2 how they were or were not consistent or  
3 inconsistent with what any of the other witnesses  
4 said, including himself.

5 Then categorizing that or arguing that as  
6 negligence, as far as how he acted after the event  
7 took place, I think the point is well taken. But  
8 I'm not going to forbid any party from commenting  
9 upon what the jury saw in plain view on the  
10 videotape.

11 MR. ALLEN: And I'm perfectly fine with that,  
12 Your Honor. I wouldn't comment about him being  
13 negligent after the fact, it's just his conduct  
14 speaks for itself in the video. We would like to  
15 comment on that.

16 THE COURT: Okay. All right. And I think  
17 that's fine.

18 MR. ALLEN: Thank you.

19 THE COURT: All right. Anything else?

20 MR. ADAMSKY: No, sir.

21 THE COURT: Okay. All right. Then I'm going  
22 to e-mail the instructions that'll have the full  
23 instructions and the adverse inference, and we can  
24 talk about where to insert the adverse inference  
25 within the sequence of the jury instructions, and

1 that will go out right now. And we'll see  
2 everybody back at 1:00.

3 MR. ADAMSKY: One more thing, I'm sorry,  
4 Your Honor, I forgot.

5 I have not seen what plaintiff intends to show  
6 in closing. When are we supposed to exchange that  
7 information?

8 THE COURT: Right now.

9 MR. REED: And, Judge, the defense withdraws  
10 its retained experts, and you can't comment on them  
11 unless you called them.

12 MR. ADAMSKY: We've withdrawn ours as well.

13 MR. ALLEN: I think both parties agreed not to  
14 comment on experts who weren't called.

15 MR. WISEMAN: Judge, if we can, after lunch,  
16 just publish the medical bill summary and the  
17 request for admissions.

18 THE COURT: Okay.

19 MR. ADAMSKY: Do you-all have what you're  
20 going show?

21 MR. ALLEN: Well, I didn't know we were going  
22 to have closings today, so we didn't have anything.  
23 The only thing we'd use is the jury instructions  
24 and -- these are just medication records that just  
25 really show which medications --

1 MR. ADAMSKY: You're going to use the jury  
2 instructions?

3 MR. ALLEN: Yeah. We'd prefer that --

4 MR. ADAMSKY: Your Honor, may we approach?  
5 Do you want to do this now or after lunch?

6 THE COURT: It depends upon how long this is  
7 going to be.

8 MR. ALLEN: It'll be very brief.

9 They have the jury instructions, but they have  
10 them in a different format than how they appear for  
11 the Court, and they have the particular word  
12 highlighted in red. So I don't mind them using the  
13 jury instructions at all, I just think that  
14 highlighting them is inappropriate.

15 THE COURT: Let me see.

16 MR. ADAMSKY: Your Honor, if I could just hand  
17 you a set and show you what I've done.

18 May I approach?

19 THE COURT: Yes.

20 MR. ADAMSKY: I just highlighted the words  
21 that I want to talk about. I blocked and pasted  
22 this from the Supreme Court website. I didn't have  
23 the -- I still don't have the final typewritten  
24 thing, so I wanted to prepare it, and that's what I  
25 did with the jury instructions. Your Honor can

1 look through it.

2 And there's a couple of quotes there from  
3 trial testimony that I've taken from the  
4 transcripts, and I've actually blocked and pasted  
5 those from the transcripts.

6 And I have one overhead view that was shown  
7 to -- Your Honor, I have the daily activity report  
8 as part of that.

9 THE COURT: Okay. I don't have any objection  
10 -- I mean, I don't have -- I will overrule an  
11 objection to using -- you can use the text of the  
12 jury instructions and highlight what you want to  
13 highlight. Just make sure that that's exactly how  
14 they're going to be word for word in the jury  
15 instructions.

16 MR. ADAMSKY: Okay. When Your Honor e-mails  
17 it, I'll take a look at it.

18 THE COURT: Okay.

19 MR. ADAMSKY: And, Your Honor, as far as the  
20 exhibits that are in evidence, of course we can  
21 display those?

22 THE COURT: You can use any exhibits that are  
23 in evidence, yes.

24 MR. ADAMSKY: Thank you.

25 THE COURT: The only thing that you have to

1 show to the other side is a demonstrative aid that  
2 is not in evidence and see if there's any objection  
3 to that.

4 MR. ADAMSKY: Yes, sir. That's what I  
5 thought.

6 THE COURT: All right.

7 MR. ALLEN: This is from the trial, these  
8 excerpts. We can address -- I mean, we'll figure  
9 this out.

10 THE COURT: Okay. Thank you.

11 (Luncheon recess was taken from 11:50 a.m. to  
12 12:53 p.m. after which the following proceedings  
13 were had:)

14 THE COURT: Okay.

15 MS. LEINICKE: May it please the Court.

16 I'm handing the Court an original and six  
17 copies of the verdict form as the parties have  
18 agreed.

19 THE COURT: Okay.

20 MS. LEINICKE: And let me also hand you --  
21 I've made two sets of the jury instructions. The  
22 set that the Court sent to the parties -- and I've  
23 talked with Mr. Allen, and I believe he concurs,  
24 has both large font and small font, in terms of  
25 type size, and so I printed them exactly as the

1 All right. Members of the jury, you can  
2 assume, for purposes of your deliberation, that  
3 Interstate Hotel and Resorts, Inc., Hilton Hotels  
4 Corporation, and W2007 Equity Inns Realty, LLC are  
5 considered as one and the same. These defendants  
6 will be referred to in the jury instructions and  
7 verdict form as Embassy Suites.

8 (Proceedings continued in Volume XVIII.)  
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IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 2009-040473-0

TROY and PAULA ANDERSON,

Plaintiffs,

-vs-

**ORIGINAL**

HILTON HOTELS CORPORATION,  
a foreign corporation, doing  
business as EMBASSY SUITES  
ORLANDO AT INTERNATIONAL DRIVE  
AND JAMAICAN COURT, also doing  
business as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign  
corporation, a/k/a  
SECURAMERICA, LLC, W2007  
EQUITY INNS REALTY, LLC,  
INTERSTATE HOTELS & RESORTS,  
INC., Florida corporation,

Defendants.

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TRANSCRIPT OF PROCEEDINGS BEFORE  
THE HONORABLE F. RAND WALLIS

VOLUME XVIII (Pages 2388 - 2563)

DATE TAKEN: October 22, 2012 -  
November 2, 2012

PLACE: Orange County Courthouse  
425 North Orange Avenue  
Courtroom 18-B  
Orlando, Florida 32801

REPORTED BY: Holly L. DeLai  
Court Reporter

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1	I N D E X OF PROCEEDINGS	
2	VOLUME XVIII	
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1           And that's part of what this process is about,  
2           to try to fix what we can, help what we can. If we  
3           can't do that, then we make up for what was lost.

4           So here, Dr. Deutsch went through and  
5           identified the things that are even so  
6           embarrassing, a Flexi-Seal fecal collector and  
7           reusable underpads and diapers. Things that would  
8           be so ultimately embarrassing for any man,  
9           especially a big, strapping guy like Troy Anderson,  
10          to have to try to deal with, but he's willing to do  
11          what he needs to do.

12          Dr. Raffa. What Dr. Raffa does is reduce,  
13          which is part of the process, he reduces to dollar  
14          figures what the losses are. And when you retire,  
15          you will receive a verdict form from His Honor and  
16          it will have spaces on there -- it will have spaces  
17          on there to fill in to identify the damages.

18          And I'm just going to recite for you, in terms  
19          of the damages -- I want to run through quickly,  
20          though, you're going to be asked, you know, was  
21          there negligence. Was there negligence on the part  
22          of Embassy Suites. And these are all, as far as  
23          you heard, W2007, Hilton, Interstate, they're all  
24          clumped together, it's Embassy Suites.

25          Was there negligence on the part of

1 have ten minutes left?

2 THE COURT: Five.

3 MR. ALLEN: Okay. Thank you.

4 MR. REED: May it please the Court.

5 \* \* \* \* \*

6 CLOSING ARGUMENT

7 MR. REED: Good afternoon, ladies and  
8 gentlemen. On behalf of Embassy Suites, the first  
9 thing that I would like to do is tell you how much  
10 I thank you for this invasion of your lives to  
11 spend your time here with us in this very important  
12 matter that, as I told you during jury selection,  
13 is so important in our civil justice system,  
14 because without you doing this work, our case of  
15 civil justice just doesn't get done.

16 And when the jury selection process was going  
17 on, I was explaining that in America, it's still  
18 widely perceived that everybody gets a fair shake.  
19 And there's just something truly, truly wonderful  
20 about a system where we have people with a  
21 controversy, whether it be a company versus an  
22 individual or an individual versus a company, and  
23 under the system of rules that we have, in terms of  
24 evidence and civil procedure, we bring together  
25 people from our community and everybody has their

1 opportunity to have their say, and then the group  
2 of people from the community come together with one  
3 voice and decide the outcome of that. And that  
4 truly is a wonderful thing that many other  
5 countries aspire to have what we have.

6 And it is an important civic function, and I  
7 thank you so much for doing it and being so  
8 vigilant in taking notes and paying such close  
9 attention.

10 And after a long time of doing this, which is  
11 somewhat evident, you've probably noticed that when  
12 you would go home at night and your spouse or  
13 someone would talk to you, you probably felt like  
14 you're tired. And you're thinking to yourself,  
15 well, I've been sitting in this chair all day long.  
16 But the degree of intensity, and it is natural --  
17 and everybody that is a juror tends to do the same  
18 thing. There's a focus that's just unlike any  
19 other normal workday for you, because you're paying  
20 such close attention to every moment, and that's  
21 what makes you feel kind of tired at night.

22 I know that you've been thinking about the  
23 evidence. And those of us who have been lawyers  
24 for a long time kind of have a sense that we can  
25 kind of feel like the jurors are ready for the

1 case. And I have absolutely no doubt that you guys  
2 are ready for this case. And it will be no sooner  
3 the better that all the lawyer talking stops and  
4 you guys get to go back there and spread the papers  
5 out on the table and try and decide the outcome of  
6 the case. So that's going to happen in short  
7 order, members of the jury.

8 But something that over the years I have  
9 commonly forgotten to do, and I don't mean to be  
10 presumptuous, but as I mentioned in the jury  
11 instructions -- or in the jury selection, there's a  
12 written document that the judge is going to give  
13 the collection of you one of. And also in the jury  
14 instructions, it's a good idea to pick a foreperson  
15 among your number who's going to be the person  
16 who's going to record on this, and the instructions  
17 tell you about that.

18 But mechanically -- and this is the point that  
19 I don't mean to be presumptuous about, but in the  
20 event, in the event, after you've had a chance to  
21 consider the evidence and talk with each other  
22 about the jury instructions and given all the  
23 thought that you think it warrants, if you wish to  
24 return a verdict for the defendants so that the  
25 defendants win, the mechanical way to do that is by

1 -- the first two questions are the liability  
2 questions on this verdict form, because there's the  
3 Embassy Suites, defendant and SecurAmerica.

4 So the mechanical way to return a verdict in  
5 favor of the defendant, if that is your desire, is  
6 to check no to these two questions and then merely  
7 sign it, and then Deputy Triano, or whoever is the  
8 deputy, will have made arrangements with you about  
9 how it's to be returned to the courtroom.

10 So when the lawyers are finished talking, the  
11 judge is going to have a few final instructions for  
12 you, and then you will be retiring to that private  
13 room that you have to deliberate. All the  
14 photographs, the medical records, and the other  
15 documentary things that we have that have been  
16 introduced into evidence, will come back there with  
17 you and you'll be able to, at long last, be  
18 completely uninhibited and speak freely with one  
19 another about the evidence and your thoughts about  
20 the witnesses and lawyers, and things of that  
21 nature.

22 Now, also, during the opening statement, one  
23 thing that you might remember my saying is that  
24 there is going to be evidence in this trial that is  
25 simply not reconcilable.

1 I mentioned that when you heard the original  
2 statement from Mr. Allen and then I came second,  
3 one of the things that I said is you're just simply  
4 not going to be able to reconcile it.

5 Because, you know, sometimes both people can  
6 be right about something, if there's a significant  
7 contradiction in the testimony. Sometimes, it  
8 might be a matter of degree. Maybe somebody is  
9 completely wrong and the other one is partially  
10 wrong versus somebody clearly right and somebody  
11 clearly wrong.

12 But in a case like this, there's just such a  
13 complete dichotomy, a complete dichotomy of what  
14 the evidence is and who's commenting on it and what  
15 they have to say about it, it really becomes  
16 difficult to try and square it all up.

17 And so one of your jobs -- thank God we have  
18 this system, because one of your jobs is going to  
19 be to decide, as a collective body, which witnesses  
20 to believe, which witnesses not to believe.  
21 Because if you can't square them up, you have to  
22 think about the jury instructions, which will  
23 shepherd you through the process, because the  
24 plaintiffs have the burden of proof on their claim.

25 One thing of interest is that when I finish

1 speaking to you today, I will not say another word,  
2 because the plaintiffs have the burden of proof on  
3 their claim. That means that when Mr. Allen  
4 finished, and now I've had the opportunity to speak  
5 and I can't speak anymore, he gets a little bit  
6 more time.

7 So that final crack at trying to persuade you  
8 about some nuance on the evidence or a certain  
9 perception that you might have, I don't get to  
10 stand back up here and have something else to say  
11 about it. So I would simply ask you that when  
12 Mr. Anderson -- or Mr. Allen has an opportunity to  
13 say something else, please listen to the filter of  
14 what in the world might that pesky Mr. Reed have to  
15 say about that, because I doesn't get another say  
16 about it.

17 Now, why is it that I believe the correct  
18 verdict, members of the jury, and the right thing  
19 to do is to check no on these two questions?

20 Well, first of all, I want to tell you a  
21 little bit about two important parts of these first  
22 two questions. Because it says: Was there  
23 negligence on the part of Embassy Suites which was  
24 a legal cause of injury or damage to the plaintiff.

25 So it incorporates two things for which

1 Judge Wallis is going to and has given you an  
2 instruction. So the question of was there  
3 negligence, and he read that to you, that means a  
4 failure to use reasonable care. Reasonable care,  
5 not perfect care, not the most extraordinary care  
6 known to mankind, just reasonable care. That's  
7 what our community would expect. And someone doing  
8 something that a reasonably careful person would do  
9 or not do under circumstances or failing to do  
10 something that a reasonably careful person would do  
11 under like circumstances. So that's the first half  
12 of the first question.

13 Negligence. The other half of the question is  
14 that the negligence that's complained of in here,  
15 for us, is the failure to have the kind of security  
16 that's going to protect Mr. Anderson from the harm  
17 that's complained of. But it has to be the cause  
18 of the injury complained about here, getting shot.  
19 So the negligence claim must be the cause, the  
20 legal cause, of injury or damage to the plaintiff.

21 And let me mention to you a little bit about  
22 what that says. The legal cause that's identified  
23 in this first question, ladies and gentlemen, is  
24 this: Negligence is a legal cause of injury or  
25 damage if it directly and in natural, continuous

1 sequence produces or contributes substantially to  
2 producing such injury, loss or damage so that it  
3 can be reasonably said that but for the negligence,  
4 the loss, injury or damage would not have occurred.  
5 There has been no proof of that whatsoever in this  
6 trial, none whatsoever.

7 The plaintiff has to prove that by a certain  
8 standard, by a certain form of persuasiveness, a  
9 compellingness that means it rings true to you that  
10 you are satisfied. And the way the law describes  
11 that is the greater weight of the evidence. It  
12 means the more persuasive and convincing force and  
13 effect of the entire evidence in the case.

14 So that's what I want to talk to you about  
15 now, because that hasn't been proved. And as I go  
16 through this with you, members of the jury, I want  
17 you to sort of keep in mind something that I asked  
18 at the beginning of the jury selection process --  
19 and I'll return to it momentarily.

20 Because it's not disputed for a moment that  
21 Mr. Anderson has been injured, he's been shot, for  
22 goodness sake, he's been hospitalized. There's no  
23 doubt that that bullet entering his body -- those  
24 bullets entering body could have hit different  
25 organs, the man could have died. He has got this

1 residual defect that's been complained about.  
2 Nobody would wish that on anybody.

3 But that is part of the damages portion of the  
4 case that you reach after and only if you are  
5 satisfied that the preliminary threshold issues  
6 have been proven by the legal standard that our law  
7 requires, which is the more compelling and  
8 convincing force and effect of the entire evidence  
9 in the case, because, members of the jury, what  
10 this is about, first and foremost, before that is  
11 ever considered, is the attribution of  
12 responsibility which was being complained about  
13 here. And that is why we are in this courtroom.

14 Now, I first want to talk with you about  
15 Mr. Anderson. Because as the Court has told you,  
16 one of the things that you should consider is  
17 whether to believe people. And I really like to  
18 think of it as what rings true to you. And when  
19 you become a juror, much like I told you during the  
20 jury selection process, you don't have to leave  
21 your compassion at the door, well, you certainly  
22 don't have to leave your common sense at the door.  
23 That belongs in the jury room. That belongs in the  
24 conversation, when you're talking to one another.

25 One other point, as you begin the

1 conversation, remember, it all works better if  
2 everybody have a fair say, everybody gets to have a  
3 fair shake. I know everybody will do that. But  
4 here's what the believability instruction will help  
5 guide you through when you talk about the  
6 witnesses. And in my judgment, this is essential  
7 to an analysis of whether you find something  
8 persuasive or not.

9 In evaluating the believability of any witness  
10 and the weight you will give to the testimony of  
11 any witness. And that's a significant point to  
12 remember for the jury about the weight, the scales  
13 of justice, and when you begin to tip the scales,  
14 here's where the weight begins to start to matter.  
15 Because it's the people that you find persuasive  
16 that tend to have more pressure on the scales, or  
17 some piece of document material or a photograph.  
18 That's when the scales begin to tip.

19 The plaintiff's burden is to tip those scales  
20 in their favor by the standard that the jury  
21 instructions tell you. So here's what the  
22 instruction says: You may consider the demeanor of  
23 the witness while testifying, the frankness or lack  
24 of frankness of the witness, the intelligence of  
25 the witness, any interest the witness may have in

1 the outcome of the case, the means and the  
2 opportunity the witness had to know the facts about  
3 which the witness testified, the ability of the  
4 witness to remember the matters about which the  
5 witness testified, the reasonableness of the  
6 testimony of the witness considered in the light of  
7 all of the evidence in the case and in the light of  
8 your own experience and common sense.

9 Now, ask yourself, does Mr. Anderson have an  
10 interest in the outcome of the case. Of course he  
11 does, so does the defense's witnesses. But  
12 Mr. Anderson is here, and you've heard his lawyer  
13 talk to you about wanting you to give him millions  
14 of dollars.

15 Now, Dr. Greer came here and was a  
16 retained-by-the-lawyers psychiatrist to come here  
17 to provide opinions in this trial versus a  
18 psychiatrist or psychologist that Mr. Anderson went  
19 to see from some different referral source.

20 And Dr. Greer -- and I don't certainly  
21 begrudge him for it, because anybody that's going  
22 to do this kind of work has to be paid, he was  
23 hired and received some number, I think it was  
24 about two or \$3,000 for the report, and he spent  
25 one day or so with Mr. Anderson and had some time

1 for his testimony in court, coming from Daytona  
2 Beach and being paid for his deposition -- made it  
3 abundantly clear that in his analysis, after  
4 spending considerable time with Mr. Anderson,  
5 performing those handwritten tests where  
6 Mr. Anderson bubbled out the bubble sheet and sent  
7 it off to the computer to be scored, he found  
8 Mr. Anderson to be clearly depressed.

9 He said that Mr. Anderson was manipulative.  
10 The test results revealed some evidence of  
11 malingering, which he did relate to Mr. Anderson,  
12 but the computer scored it. He said that  
13 Mr. Anderson could work in the future but not now,  
14 not now, but he didn't set up any treatment  
15 sessions with him, and he didn't believe that  
16 Mr. Anderson lost his job because of any physical  
17 limitations.

18 I think that was in January of 2011. And it  
19 was about three or four months later that  
20 Mr. Anderson went to see -- and he told you that he  
21 was completely satisfied that Mr. Anderson  
22 understood how depressed he was.

23 And in Plaintiff's Exhibit 15, I think that's  
24 the number, is Dr. Williamson -- Plaintiff's 15,  
25 Dr. Williamson, the colorectal surgeon's records

1 are in evidence. Remember when I showed you the  
2 sheet where he filled out the questionnaire and the  
3 question was, Are you depressed or do you have  
4 anxiety, and he didn't check yes. That's three or  
5 four months after having sat with a  
6 litigation-retained psychiatrist where the  
7 conversation was about depression. And  
8 Mr. Anderson didn't record that in Dr. Williamson's  
9 notes.

10 And if you remember when Dr. Williamson was in  
11 the witness stand -- he was one of the first  
12 witnesses to talk about Mr. Anderson's injuries --  
13 I asked him -- because I knew, from having met  
14 Mr. Anderson in 2011 when I took his deposition,  
15 and knowing about his explanation of things -- and  
16 he had told me in his deposition that when he was  
17 in ORMC, one of the things that was so devastating  
18 to him was because he didn't have the ability to  
19 sort of kind of come to grips with the proposition  
20 that he was going to be anesthetized, because all  
21 of this was unexpected. And then when he got shot  
22 and he was taken to ORMC and they anesthetized him,  
23 it complicated his recovery process because he  
24 wasn't prepared for it.

25 And then when I had Dr. Williamson on the

1 witness stand and I took the opportunity and I  
2 heard him say, well, we're going to perform certain  
3 procedures on Mr. Anderson under anesthesia,  
4 because although it might certainly be done under  
5 normal circumstances in a clinic setting, he needs  
6 to be anesthetized because of his sensitivity down  
7 in that area. An ultrasound, a process where they  
8 inserted a balloon so they could find out about if  
9 he sensed this feeling in his large colon, and  
10 things of that nature, and I asked him, well, what  
11 arrangements with you did Mr. Anderson make for  
12 some specialized, non-narcotic anesthesia, or did  
13 he tell you, Dr. Williamson, that he's got the need  
14 for some special precautions, and he said, I don't  
15 know. I don't know -- I don't have any knowledge  
16 of what you're talking about. At least he didn't  
17 at the time, when he made the arrangements for  
18 these outpatient procedures, but he learned about  
19 it somewhat later in time.

20 Now, if you think about Mr. Anderson's retort  
21 to that, when they put Mr. Anderson on the witness  
22 stand, Mr. Anderson said, oh, I took that up with  
23 my anesthesiologist. Let me ask you to draw upon  
24 your own common sense.

25 Here's a man who is claiming to be so

1 completely devastated by having lost his sobriety  
2 of seven years, in part because of the morphine  
3 that he experienced when he was in the hospital,  
4 and doesn't say a word about having to be  
5 reanesthetized by a doctor that's going to put him  
6 back under, that he's going to leave it to the  
7 anesthesiologist. Ask yourself, does that truly  
8 ring true? Does stuff like that render  
9 Mr. Anderson's testimony credible?

10 Because I would suggest to you that any person  
11 that had that precise, major, primary concern, that  
12 was about to go back under anesthesia, would not  
13 leave it for one of the ancillary service  
14 providers, here the anesthesiologist, it would be  
15 in big, red letters on the front of  
16 Dr. Williamson's chart, This man is an alcoholic,  
17 he's a drug addict. Just a few months ago, he's  
18 become in recovery. We have to take very special  
19 precautions not to put him under anesthesia. And  
20 Dr. Williamson looked each of you in the eye and  
21 said, I don't know anything about that. That means  
22 you may consider Mr. Anderson's testimony on that  
23 point not believable and not credible.

24 Now, with regard to Dr. Deutsch. Again, a  
25 litigation-retained witness. And now we have a

1 stacking of information and outcomes upon  
2 litigation-retained witnesses.

3 Because Dr. Deutsch, who assigns value and  
4 elements of damage that are going to be posted by  
5 his testimony in the courtroom, and is going to  
6 interview Mr. Anderson, and Mr. Anderson knows he's  
7 going to see a litigation-retained witness who's  
8 going to have something to say to the jury that  
9 decides his case, that is going to be a very  
10 important factor in the outcome -- remember what I  
11 said about an interest in the outcome of the  
12 case -- Dr. Deutsch interviews him on January 30,  
13 2012, and asked him to his face, Have you been  
14 convicted of a felony, and Mr. Anderson told him  
15 no. That's just false. That's just false.

16 And if you remember what Dr. Deutsch said,  
17 when he was deposed and when he testified, that he  
18 was trying to make it clear to Mr. Anderson, You'd  
19 better tell me the truth, because I can handle  
20 problems in the past in my testimony but I need to  
21 know.

22 First of all, members of the jury, would a  
23 regular, treating life care planner who's not  
24 litigation retained say something like that to  
25 somebody, you'd better tell me so I can handle it

1 in my testimony? And despite the admonition that  
2 Dr. Deutsch gave Mr. Anderson, Mr. Anderson simply  
3 didn't tell him the truth.

4 There's a doctor, who was a hematologist, and  
5 she has some treatment records that are contained  
6 within Plaintiff's Exhibit 15. Her name is  
7 Dr. Priya Vishnu. And she was seeing Mr. Anderson  
8 in that period of time that has been referred to by  
9 Dr. Greer and Mr. Anderson as when he was in his  
10 disease state. And her visit date with him, that  
11 mattered to me, was January 27, 2009.

12 And in the social history section, she  
13 recorded what Mr. Anderson told her, that he  
14 doesn't drink alcohol. And Dr. Greer agreed that  
15 that is false. In fact, he pointed out in his  
16 deposition that it was false.

17 Now, members of the jury, again, drawing upon  
18 your common sense, what in the world would be the  
19 motivation to go see a hematologist and just not  
20 tell them the truth? Because that's not true,  
21 unless it would be suggested that at the time of  
22 speaking, that you're actually intoxicated at the  
23 time. But that just isn't credible. It just isn't  
24 credible.

25 And according to Mr. Anderson, from the time

1 of his shooting in 2008, until sometime in March of  
2 2012, he was back in his disease and he wasn't  
3 reliable. Well, I took his deposition in 2011, and  
4 I don't know if we're supposed to conclude from  
5 that that the entirety of his deposition is not  
6 reliable, but it certainly was before March 2012,  
7 and he was willing to be placed under oath and give  
8 testimony about the details of the case. And I  
9 asked him in his deposition, Since the time of the  
10 shooting -- remember, three years later, I took his  
11 depo. I asked him, Three years have gone by, and  
12 since the time of your shooting, have you been  
13 intoxicated from alcohol? And he told me, Well,  
14 not intoxicated, but I have drank alcohol. And  
15 then tried to fight with me about it, when he was  
16 in the witness stand.

17 And I don't remember, I certainly didn't keep  
18 count, of how many times I had to hand Mr. Anderson  
19 his deposition and confront him with what he had  
20 told me on numerous points which were inconsistent.  
21 Inconsistent. It is simply not credible.

22 And if you remember, one of the more dramatic  
23 moments was at the very end of his testimony when I  
24 was trying to get him to be candid with me about,  
25 and certainly it is -- everybody recognizes that

1 alcoholism is a disease, that's not in dispute,  
2 what is in dispute is being honest about it.

3 And when I asked him, Is this something that  
4 is a conscious, free choice of yours that you have  
5 power over if you just make up your mind to do it,  
6 much like you did in 2001, when you started into  
7 the path of sobriety -- of course you hadn't been  
8 shot -- and he fought with me and he said, no, it  
9 is not my conscious, free choice. It is not  
10 something I have the power over.

11 So then I showed him his deposition where he  
12 said exactly the same thing. In his deposition he  
13 said, Yeah, these are choices I make. It's my own  
14 conscious, free choice. And as I said to him in  
15 court, I said in his deposition, I understand this  
16 is very stressful, and if you wanted to, you could  
17 go to a meeting tonight and you can get help for  
18 it. And he said, Yes, I could, but he didn't do  
19 it. That also is a conscious, free choice of  
20 Mr. Anderson's. Much of what Mr. Anderson has to  
21 say to you, members of the jury, simply isn't  
22 believable.

23 When I asked Dr. Deutsch about why is it that  
24 he's posting this future wage earning capacity  
25 reduction and the past wage earning capacity

1 reduction, he said because Mr. Anderson had been  
2 fired at Wyndham because people were working off  
3 the books or off the clock. And he had described  
4 it in his report as poor choices.

5 Mr. Anderson, in his testimony, placed some  
6 nuances on that, and he assigned the blame to  
7 others that worked underneath him, as opposed to --  
8 he agreed that he was fired, but he assigned it  
9 entirely to people that worked underneath him. And  
10 I would ask you, ladies and gentlemen, to think  
11 about that, in light of the jury instruction, which  
12 is the reasonableness of the testimony of the  
13 witness.

14 Because Mr. Anderson wants you to give him a  
15 lot of money, in large part because the man has a  
16 criminal record, he has been a drug user, and he  
17 got fired for something that he did that has not  
18 one thing to do with this legal case. And he's  
19 asking you to replace those wages for things that  
20 have got nothing to do with anything that happened  
21 at the Embassy Suites. And going forward, he wants  
22 a loss of wage earning capacity claim. Reject  
23 that. Reject that entirely.

24 The man would still have a job, he was not  
25 physically incapable of doing the job, and he would

1 still be on the payroll at Wyndham if he had done  
2 his job the way he was supposed to.

3 Dr. Deutsch wants you to give him money for a  
4 case manager in part, because he said he needs help  
5 getting to appointments. And when I pressed him  
6 about what he included in his report, because he  
7 tried to evade me on it, he said that he can't  
8 clean the house. Do you remember that testimony?  
9 He said he can't clean the house, and that's part  
10 of what he wanted to be paid for. But he can golf,  
11 he can bench press 100 pounds, but he can't clean  
12 the house. I suggest to you, members of the jury,  
13 that you should recognize that Dr. Deutsch's  
14 testimony, and the assignment of most of the  
15 increments of what he is pointing to, simply are  
16 not reasonable. You may reject what he has to say  
17 in its entirety or give it the weight you think it  
18 deserves.

19 I believe that his interest in the case was  
20 about \$7,500 plus his trial time and his deposition  
21 time. Dr. Greer's was about \$5,000. And if you  
22 remember, Dr. Deutsch has done this on at least 15  
23 other occasions with Mr. Allen. This isn't the  
24 first time they've done this together.

25 THE COURT: Let's take a ten minute break.

1 (The Jury leaves the courtroom.)

2 (Break taken from 2:57 p.m. to 3:04 p.m.)

3 THE COURT: Are we ready?

4 MR. ALLEN: Your Honor, not that I'm planning  
5 on taking any significant amount of time, we timed  
6 it, but I don't think an hour is what I agreed to.  
7 I'm trying to find it.

8 MR. REED: Judge, he's already gone an hour,  
9 so now if you suggest I can't --

10 MR. ALLEN: No, you can go an hour. You can  
11 go as long as you want. I didn't agree to it,  
12 that's all I'm saying.

13 If you can find that for me, because I know  
14 better than after two weeks --

15 MR. REED: Riley, don't you think it's a  
16 little late to have this argument?

17 MR. ALLEN: Well, I still have a rebuttal. I  
18 think I have eight minutes left on rebuttal. But I  
19 didn't -- I'm confident, 100 percent confident, I  
20 did not agree to be limited to an hour.

21 I would say that I would take an hour and a  
22 half, for example, or whatever the Court would  
23 allow, but I -- I know that after two weeks, it's a  
24 lot of material. And I didn't want to feel rushed,  
25 and I kind of felt rushed to get through as much as

1           there is. What did you say it was, Mike?

2           MR. REED: I don't know.

3           MR. ALLEN: It's not in the pretrial?

4           MR. REED: But the judge had a handwritten  
5 thing to fill out.

6           THE COURT: I did. Hold on.

7           MR. ALLEN: If I said that, I would surely be  
8 apologetic, but I --

9           THE COURT: Well, I've got here -- actually,  
10 it's, for closing, two hours per party.

11          MR. ALLEN: That's what I thought.

12          THE COURT: Yeah.

13          MR. ALLEN: I mean, one hour, that just didn't  
14 seem right.

15          MR. REED: Well, I'll just go to five, we'll  
16 send them home and do the other --

17          MR. ALLEN: Okay. I have no problem you going  
18 as long as you want. And not that I would take two  
19 hours, Your Honor, I just felt rushed trying to do  
20 it in the allotted time to have some rebuttal,  
21 because I know it's just a ton of material.

22          THE COURT: All right. Well, how much more  
23 time do you need, do you think?

24          MR. ALLEN: 30 minutes, maybe. I will try not  
25 to take it.

1 THE COURT: Well, I mean, we just need to have  
2 even time. If you want 30 minutes, then they each  
3 get an hour and a half.

4 MR. ALLEN: Sure. They can have as long as  
5 they want.

6 THE COURT: All right. So an hour and a half.  
7 You would actually have 35 or 38 more minutes.

8 MR. ALLEN: Yes, sir.

9 THE COURT: So, all right. An hour and a  
10 half?

11 MR. REED: Judge, I'm not going to use all  
12 that, but I just want to get a sense of --

13 THE COURT: Well, we already had a lawyer  
14 yesterday that said I only have five questions and  
15 I counted and there were 36 questions after he said  
16 that, so --

17 MR. ADAMSKY: Does that include subparts,  
18 Your Honor?

19 MR. REED: Well, I thought -- I want to try to  
20 remember, Judge. It was about 2:35 or so, when I  
21 started, is that --

22 THE COURT: Oh, I've got the stop watch on  
23 you, yeah. You've used 30 minutes.

24 MR. ADAMSKY: The problem is, before we  
25 started closing, we all went on the record and

1           agreed to an hour, and now --

2           THE COURT: Well, but I think we agreed upon  
3           an hour because there was representation that that  
4           was what was in the order, and I just -- I didn't  
5           even look it up, I just assumed --

6           MR. ADAMSKY: My only concern is personal. I  
7           just want to make sure that I get my full closing  
8           before we leave.

9           THE COURT: Right.

10          MR. ADAMSKY: Because if we go an hour and a  
11          half times three, there will be a problem.

12          THE COURT: Right. Well, if you each want to  
13          go -- you want to use another hour --

14          MR. REED: No, I'm not going to use --

15          THE COURT: I understand that, but hold on a  
16          minute. If you want to go an hour -- if we get to  
17          where it's you start, I guess I can give you the  
18          option, and you're not able to finish, then we can  
19          just come back tomorrow and you can finish your  
20          closing argument tomorrow, and the same with  
21          Mr. Allen. I'm not going to hold -- we've already  
22          had multiple hands go up and they said they  
23          couldn't stay past 5:00.

24          MR. REED: Okay. I'll get cranking, and I'll  
25          just hustle, Judge.

1 THE COURT: Well, you've got an hour, so --  
2 all right?

3 MR. ALLEN: Thank you, Judge. Appreciate it.

4 THE COURT: Okay. Are they ready?

5 THE COURT DEPUTY: I'll check, Judge.

6 We're ready, Judge.

7 THE COURT: All right. Bring them in.

8 Jury entering.

9 (The Jury entered the courtroom after which  
10 the following proceedings were had:)

11 THE COURT: You may be seated.

12 Mr. Allen, does the plaintiff recognize the  
13 presence of the Jury?

14 MR. ALLEN: Yes, Your Honor.

15 THE COURT: Mr. Reed, does Embassy Suites  
16 recognize the presence of the Jury?

17 MR. REED: Yes, Your Honor.

18 THE COURT: And Mr. Adamsky, does SecurAmerica  
19 recognize the presence of the Jury?

20 MR. ADAMSKY: Yes, sir.

21 THE COURT: Okay. All right, Mr. Reed, you  
22 may continue.

23 MR. REED: Thank you, Your Honor.

24 Ladies and gentlemen, the only other point  
25 that I would make about Dr. Williamson was that,

1 interestingly, he noticed -- and I'm not  
2 diminishing the genuine problems that Mr. Anderson  
3 does have with his colon and his anal sphincter  
4 muscle. Fortunately, there is not pain associated  
5 with bowel movement, thankfully, because imagine  
6 how many times he would experience pain if that  
7 were the case, and he doesn't.

8 The only recommendations that he made for him  
9 going forward are procedures that can be handled in  
10 an outpatient setting, if they're necessary.

11 And also, fortunately, Mr. Anderson's  
12 anatomical defect in his anus was described as  
13 small and doesn't warrant an actual additional  
14 surgical procedure to correct. So those things,  
15 all of us can be thankful for for Mr. Anderson.

16 Now, I want to talk about more to the heart of  
17 the liability claim here. Because when the  
18 plaintiffs started off their claim, the person that  
19 they began the analysis with you is Mr. Denau.

20 And when you deliberate with each other, ask  
21 each other a couple of questions, if you don't  
22 mind. How can Emmanuel Denau's testimony be square  
23 with Jennifer DeSalva? Because they just can't.  
24 Somebody is making stuff up.

25 Mr. Denau said, because I made sure he said it

1 when I cross-examined him in a very limited  
2 fashion, that on September 16 -- and I trust this  
3 is in your notes -- he came to the hotel between  
4 12:30 and 12:45, and he had a conversation with a  
5 girl that he knew, because he had been there  
6 before, and her name was Jennifer, and he  
7 recognized her name was Jennifer DeSalva. And  
8 Jennifer DeSalva was Hispanic and she had freckles,  
9 reddish blonde hair. And I brought her to court  
10 today for you to meet.

11 She said -- or Mr. Denau said, on that night  
12 -- and this is where the credibility problems and  
13 persuasiveness of the evidence that the plaintiffs  
14 are asking you to use to support their claim begin  
15 to completely crumble, because it rests, in large  
16 measure, on Emmanuel Denau.

17 So Emmanuel Denau looked you in the eyes and  
18 said a great many things, including the fact that  
19 on this specific night, 9/16, that when he got  
20 there, he had a conversations with  
21 Jennifer DeSalva, and she as there, which she  
22 wasn't, she had just gotten off work, which she  
23 didn't, because she never even clocked in that day,  
24 and he walked her to her car because she was  
25 scared. That's just not true.

1           And if he would say something like that, that  
2           is not true, under the instruction that  
3           Judge Wallis has given you, you are entitled and  
4           should disregard every single thing the man says  
5           because it is not trustworthy. It's not reliable.

6           And some of the other thing hinge on it. He's  
7           the one that faxed the records in, he's the one  
8           that saw the documents being filled out, he's the  
9           one that had the conversation with Shawn Steiner.  
10          Remember, Mr. Klawitter said, Shawn Steiner called  
11          me and told me all about the incident.

12          The night auditor, for goodness sake, even he  
13          has to be a liar for their claim to be correct.  
14          Mr. Steiner says, I don't know about any 9/16  
15          incident. Klawitter said he called him and told  
16          him about it. That can't be reconciled either.

17          Emmanuel Denau's testimony is not believable.  
18          Jennifer DeSalva is a former employee with no stake  
19          in the outcome. Mr. Denau is a former employee of  
20          SecurAmerica who has filed a claim against them  
21          seeking money damages, and then he says, well, I  
22          was laid off, I wasn't really fired, but he made a  
23          claim against them. And he was only there for  
24          approximately eight months or less. And he told  
25          you that Jason Lacuara had to come home because he

1 was so upset.

2 If he can't even tell you the truth about the  
3 lady that he claims that he walked to the car, you  
4 can't believe those kinds of details from this man,  
5 you just simply cannot.

6 And that is a perfect example of the kind of  
7 evidence that I was talking to you about. They  
8 both can't be right. They both can't be right. So  
9 you're going to have to pick a side. You're going  
10 have to pick a side. If you can't square it and  
11 you can't reconcile it, you're just going to have  
12 to collaborate with each other fairly, in an  
13 open-minded way, and ask each other, which side am  
14 I going to fall on.

15 Emmanuel Denau is the person that began the  
16 process of explaining that there's a requirement  
17 that there be 30 minutes in and 30 minutes out.  
18 That's just not the evidence and it's not true.  
19 There's not one word about that in the post orders  
20 or any written documents in this case.

21 It's Emmanuel Denau's testimony that supports  
22 that. He's not credible or believable. Others  
23 from SecurAmerica that were also fired said the  
24 same thing. It started with Emmanuel Denau.

25 In the video, regarding -- that Mr. Caimano

1 played, he described this security guard as a  
2 roving around person, and there's deggy points all  
3 over the place. And others have said that too.  
4 Mr. Denau even showed you a picture of one and how  
5 you touch the little wand to it. But if you're on  
6 a particular floor dealing with a customer, you can  
7 start your deggy process there and move around.

8 There is no evidence from anybody at the  
9 Embassy Suites that there's some kind of mandatory  
10 30 minute in, 30 minute out requirement. That just  
11 isn't credible. It's an inside job and it's an  
12 outside job.

13 And when Mr. Wiseman deposed Mr. Vergara --  
14 and he asked him multiple times, 15 minutes,  
15 15 minutes, how long, what are you saying, the very  
16 first time he asked Mr. Vergara this question, and  
17 before he continued to ask the same thing over and  
18 over and over again, he said, How long do you  
19 expect them to be outside? And he said, Well, for  
20 as long as it takes to go out there and walk around  
21 the perimeter of the property, and I want them to  
22 do it every hour.

23 That's what the evidence is, ladies and  
24 gentlemen, and that's what should ring true to you,  
25 because that's a reasonable thing for a security

1 guard to do, is be out there, at least on the hour,  
2 and walk around the entire property.

3 If you've got all these people that we see  
4 with a bus tour, a church group, coming in out of  
5 the front lobby where all the people are, that's  
6 the most reasonable place for the security guard to  
7 be. Where did Tenicka Parks say he was? The lady  
8 in the car with this man sees him standing right  
9 there at the front door.

10 We saw the bad guys just outside right by,  
11 according to Mrs. Robinson, in the shrubbery, in  
12 the landscaping, very close to the front door when  
13 she's watching them. That's the most appropriate  
14 place for the security guard to be.

15 In terms of reasonable care, please keep in  
16 mind, ladies and gentlemen, this is a lawsuit  
17 against a hotel property with a security guard on  
18 duty. And it's almost a  
19 damned-if-you-do-damned-if-you-don't situation.  
20 What if something had happened up on one of the  
21 floors? Well, you didn't have enough security  
22 guards because he's spending all his time outside,  
23 you should have had somebody inside. There's just  
24 no response to that.

25 You have to have a security guard that is

1 reasonable under the circumstances. I think it was  
2 47 percent occupancy that night, and having a  
3 security guard is completely reasonable. And the  
4 notice claim that the plaintiffs point to,  
5 regarding maybe you should have done something  
6 more, all turns on Mr. Denau's testimony.

7 Jennifer DeSalva, no stake in it, and  
8 Emmanuel Denau simply cannot both be correct.  
9 Somebody is misleading us.

10 The same applies to Mr. Denau's testimony  
11 regarding Jason Lacuara being upset. The fact that  
12 that's why he only had a half shift that night,  
13 et cetera.

14 And we know that Jennifer DeSalva wasn't even  
15 there. Even to say to you that she had just  
16 clocked out has to be fabricated because she wasn't  
17 even at work.

18 With regard to Lourdes Clayton, she was not  
19 able to satisfy an element of the plaintiff's  
20 burden of proof requirement regarding notice,  
21 because she wouldn't provide any evidence that you  
22 can consider in your deliberations that she either  
23 told anybody at the hotel, told anybody at the  
24 security guard company, nor does she have any  
25 firsthand knowledge that the gentleman that was out

1           there came inside and told anybody at the hotel.

2           So there isn't anything that is elicited from  
3 Lourdes Clayton that tends to satisfy the burden of  
4 proof regarding foreseeability.

5           Now, Mr. Wombolt. Mr. Wombolt didn't have any  
6 personal knowledge of 9/16. That's the gentleman  
7 that had -- I think all of us had a little trouble  
8 understanding. And he was conflating the 16th with  
9 the 26th. He never spoke with Mr. Lacuara about  
10 9/16. And he said, as did Mr. Klawitter, that  
11 Jason Lacuara was a dedicated and quality security  
12 guard.

13           Imagine, a hotel company that's got a  
14 dedicated and quality security guard patrolling the  
15 property, even Mr. Klawitter said that, the  
16 regional manager they placed that emphasis on, and  
17 then they want to call the man completely  
18 inadequate and scared of his shadow when something  
19 happens. That doesn't even ring true either. They  
20 have to make up their mind about Mr. Lacuara. And  
21 to point to any training inadequacies and then call  
22 their own employees that say he's a good officer  
23 doesn't really make very much sense.

24           Mr. Wombolt, when he testified -- I knew what  
25 Mrs. Robinson was going to say, so I wanted to see

1 if I heard Mr. Wombolt saying words like it was  
2 dark, it was dark, it was dark, and I could see  
3 silhouettes but I really couldn't see very much  
4 else, words that we tended to hear from some of the  
5 other witnesses, so I wanted to test what he had to  
6 say, knowing exactly what Mrs. Robinson was going  
7 to say, because I had her deposition.

8 So I showed him the pictures that I knew were  
9 the kind of pictures that were going to be where  
10 Mrs. Robinson was under the portico, and he said,  
11 well, you wouldn't be able to see facial features,  
12 you wouldn't be able to see the color of people's  
13 clothes, you wouldn't be able make out fine  
14 details, all things that I knew that Mrs. Robinson  
15 was completely able to make out. So his testimony  
16 isn't believable either, because a subsequent  
17 witness came along behind him to demonstrate that  
18 those things just aren't true.

19 Mrs. Robinson saw the facial features of the  
20 people over there by -- where Mr. Anderson's car  
21 was parked. She saw the gentleman's teeth. Now,  
22 she certainly didn't see -- she wasn't able to see  
23 the man's teeth when he's standing there in the  
24 bushes near the front door, but she certainly saw  
25 the color of his clothes and all of the fine

1 details that were going on when they were a little  
2 farther away.

3 Now, Mr. Vergara has been at that hotel for  
4 years and years and years. He too attends the  
5 Central Florida Hotel and Lodging Association  
6 security meetings, has the same interaction with  
7 law enforcement that Mr. Caimano does.

8 He explained to you that it's part and parcel  
9 of having a security guard there late at night on  
10 the floor so that the guests are more comfortable  
11 if they open the door in the middle of the night.  
12 He explained to you that you can't prevent all the  
13 incidents.

14 And he did say that he's only expected to have  
15 a security guard on the exterior as long as it  
16 takes to go around the property. He did not know  
17 about the incident on September 16.

18 And think for just a moment about the nature  
19 of the conspiratorial liars that we're being held  
20 out to be. Mr. Steiner would lie and say, I don't  
21 know about the incident, and Mr. Klawitter would  
22 say, He called me to report the 9/16 incident, the  
23 night auditor.

24 The former employee, Ms. DeSalva, she must --  
25 her testimony, since it's so completely

1 inconsistent and unreconcilable with Mr. Denau, it  
2 can't be true either.

3 Even Mr. Caimano, he must not be telling you  
4 the truth either, because he told you that he was  
5 unaware of the incident on 9/16, and Mr. Klawitter  
6 said that he went back to that hotel in the days  
7 immediately following, and first, in his direct  
8 examination, said that he met with the man and  
9 Mr. Vergara, and then later, on cross-examination,  
10 said, well, maybe it was just Mr. Vergara.

11 He didn't meet with either one of them,  
12 because it is impossible to suggest that those  
13 people, Mr. Vergara and Mr. Caimano, would just  
14 flat out come in here and lie to you about that.

15 Now, Mrs. Robinson, she said that she saw the  
16 robbers' faces. She saw Jason Lacuara at the front  
17 desk coming to the front door. That is consistent  
18 with Tenicka Parks. She saw Jason at the door when  
19 Anderson got out of his vehicle. That is  
20 consistent with Tenicka Parks.

21 She didn't recall the street lights on  
22 Jamaican Court or the other bollard lights that are  
23 protected by the cars in the video that we looked  
24 at, so when I showed her the -- remember those  
25 things that her husband called the shells with the

1 streetlights there in the landscaping and I showed  
2 her the puddle of light? Well, of course those are  
3 such subtle things that nobody really is going to  
4 remember that kind of detail. She testified it  
5 wasn't there, and when I confronted her with it,  
6 the point is that she was unwilling to concede to  
7 you that it was actually there. You have  
8 photographic evidence of it in evidence. She would  
9 at least admit there was light reflecting off the  
10 ground coming down from the light over it.

11 And when we looked at the video, if you  
12 remember, when you see those two people that are  
13 walking across the parking lot and they kind of  
14 walk across the driveway where people exit, you see  
15 the two people going in the direction of  
16 Mr. Anderson, they come into the scene from all the  
17 way from the south parking lot on the other side of  
18 the property.

19 Members of the jury, if it is so dark, so  
20 incredibly dark that you can't see a thing, how did  
21 they see Mr. Anderson over there in dark? Because  
22 it's not that dark, that's why, because there's  
23 lights around. And that's why Mr. Anderson can  
24 see, and presumably that's why the assailants can  
25 see.

1 Mrs. Robinson told you that she overheard  
2 Shawn Steiner at the desk the next day, or that  
3 evening, talking to her husband, "Nothing like this  
4 has ever happened before." That's a  
5 contemporaneous statement. There's no lawyers,  
6 there's no legal claim posted around here, and she  
7 overhears them saying something contemporaneously  
8 that is supported by their subsequent testimony.

9 Now, in terms of the preventability of this,  
10 keep in mind that these individuals that  
11 perpetrated this crime on Mr. Anderson, they were  
12 not making any efforts whatsoever to conceal their  
13 identities.

14 MR. ALLEN: Your Honor, objection. Can we  
15 approach?

16 THE COURT: Yes.

17 (The following proceedings were had before the  
18 Court and out of the hearing of the Jury.)

19 MR. ALLEN: We're on the second issue that  
20 counsel has brought up. He just said the  
21 assailants could see where they were going because  
22 it was so well light, so we're getting into the  
23 assailants' minds, and now we're getting into the  
24 assailants' minds again, and it's improper. It's  
25 outside Your Honor's ruling, so I would like

1 counsel to stay away from that, please.

2 MR. REED: I'm not even remotely going to --  
3 could you guys just -- is there any chance I could  
4 have an opportunity to respond?

5 MR. ALLEN: Go ahead.

6 MR. REED: What I'm talking about is  
7 preventability, Judge, not targetedness. Mr. Allen  
8 said in his opening statement, when preventable --  
9 I mean, it was preventable, they should have done  
10 more things to prevent it. And these people -- for  
11 that to be true, that means that these people had  
12 to be deterrable. And they walked right out there  
13 in broad daylight, looked Mrs. Robinson right in  
14 the eye, they make no effort to conceal who they  
15 are. This has to do with preventability, not  
16 targeting anybody. I understand the Court's  
17 admonition on that, I have no intention of going  
18 there. I'm talking about the preventability of the  
19 crime.

20 MR. ALLEN: There was a motion in limine on  
21 making those arguments, which was granted on  
22 September 21, 2012, at the pretrial conference.

23 I mean, I understand you can -- you know,  
24 there will be a couple of words that slip out.  
25 It's foreseeability. The issue is foreseeable, not

1 preventable. I mean, it's crossed the line.

2 MR. WISEMAN: I think the point you're making  
3 is preventability --

4 MR. REED: Preventability.

5 MR. WISEMAN: -- not what's in the minds of  
6 the criminals. That's exactly what the case law  
7 says.

8 THE COURT: Well, I think that statement by  
9 Mr. Reed, when you're talking about what they could  
10 and could not see and whether they could or could  
11 not see Mr. Anderson, you are asking the jury to  
12 step into the minds of the criminals. And I  
13 believe that is over the line, and I will sustain  
14 the objection.

15 MR. REED: Judge, just so -- can I understand?  
16 With regard to the going forward, I just want to  
17 make sure not to --

18 THE COURT: You have asked the jury, in my  
19 mind, to step into the minds of the criminal  
20 perpetrators and whether or not they could or could  
21 not see, and I believe that does step over the  
22 line. I will sustain the objection.

23 MR. REED: But my question is different,  
24 because I want to make sure that I don't violate  
25 your ruling with some additional things I want to

1 say. That part I understand.

2 But the preventability aspect of it, Mr. Allen  
3 spent a lot of time talking about preventability in  
4 his closing argument, he did. And it has to be a  
5 preventable crime for it to matter. And saying  
6 that they did it where so many people could see it  
7 implies that it wasn't preventable because they're  
8 going to do it, they're doing it in a way that  
9 their identities are not being concealed. This is  
10 not an inference, those are facts.

11 They're in plain sight of so many people. The  
12 Robinsons -- they looked Mrs. Robinson right in the  
13 eye. This has nothing to do with targeting  
14 Mr. Anderson, there could have been anybody there.

15 THE COURT: You can argue what she said, they  
16 looked them in the eye, you can say that, there's  
17 nothing wrong with that. But when you ask the jury  
18 to step into the minds of criminal perpetrators  
19 that have never been found, never been prosecuted,  
20 I mean, that is pure speculation, and that does  
21 violate the Court's order.

22 MR. ADAMSKY: One question, Your Honor. In  
23 terms of them not concealing their faces, the  
24 witnesses have testified that their faces were  
25 visible. Is it okay to argue that their faces were

1 not concealed?

2 THE COURT: And they saw that, whatever the  
3 witnesses saw.

4 MR. ALLEN: Whatever the witnesses saw, I have  
5 no problem.

6 (The following proceedings were had before the  
7 Court and Jury.)

8 THE COURT: Objection is sustained.

9 MR. REED: Ladies and gentlemen, keep in mind  
10 that Mrs. Robinson made it abundantly clear that  
11 this happened right there in front of her. These  
12 people looked her right in the eye. She saw their  
13 faces. They weren't wearing masks, they were not  
14 trying to conceal their identity in the least.

15 MR. ALLEN: Your Honor, objection.

16 THE COURT: Overruled.

17 MR. REED: And she also saw them, as she  
18 pointed out, on the right-hand side of the sidewalk  
19 right by the front door of the hotel.

20 Mr. Allen said a couple of things that I wrote  
21 down concerning having a security guard, that for  
22 25 to 30 minutes, there was some black males in the  
23 parking lot.

24 There were lots of black males in the parking  
25 lot. It was a church group of predominantly, if

1 not completely, African-American black people in  
2 the parking lot. And there really isn't any way to  
3 look at -- for a security guard to stand there and  
4 look at this particular group of black people and  
5 to identify them as perpetrators is unreasonable.

6 Mr. Robinson, when I showed him the pictures  
7 of the lights and I circled them with the  
8 highlighter and blocked them out so you could see  
9 them, wouldn't even acknowledge they were lights,  
10 he called them shells.

11 Ask yourself what would be his motivation to  
12 do that and why is he making it so difficult for me  
13 to simply say, oh, I see the lights, there they  
14 are. It's because he's biased. He's made up his  
15 mind on which side he wants to favor.

16 Because if somebody shows you a light in the  
17 courtroom, which is a matter of common experience,  
18 all you have to do is say, oh, yeah, it's a light,  
19 and he wouldn't do it.

20 Now, Ms. Drentwett. The simple fact of the  
21 matter is that her description of the people that  
22 she saw were in gray shorts and had some baseball  
23 hats on backwards is not the description that was  
24 given by Mrs. Robinson. These aren't the same  
25 people. They're -- if you look real carefully at

1 the video, the trailing perpetrator, he has on --  
2 they're not shorts, but neither are they jeans that  
3 come all the way down, they're kind of midcalf.  
4 But neither of them were wearing baseball caps, and  
5 certainly neither one of them had on gray shorts.

6 Mrs. Robinson saw these people exiting in that  
7 purple car. We know they took Mr. Anderson's  
8 pickup truck. And if you look real carefully, you  
9 can see the hoodie of the person in the front.

10 If you watch the video real carefully, I would  
11 submit to you that you actually see these people  
12 walking towards Mr. Anderson, but as they get very  
13 close to him, you can see them actually breaking  
14 out into a run right directly towards Mr. Anderson.

15 And Ms. Drentwett said, although she said, in  
16 part, I couldn't really see what they were doing,  
17 she said that she had sufficient clarity that she  
18 could see one of them holding a gun in sort of a  
19 sideways fashion. So she had sufficient lighting  
20 to see. She didn't have any concerns about the  
21 lighting in the parking lot. So there's not this  
22 mirror image suggestion that these are the same  
23 people, et cetera.

24 Now, Mr. Steiner. Mr. Steiner is a night  
25 auditor. And there's a certain kind of person that

1 wants to become a night auditor. There can't be  
2 that many of them in the world. You know, if you  
3 go into a hotel, it's the guy that's bloodshot,  
4 when you happen to get there at 2:00 in the  
5 morning. And they contend that he isn't telling  
6 you the truth.

7 There's a controversy over whether did he tell  
8 Mr. Anderson to park at the tip of the  
9 curve-around, or did he go too far and park on the  
10 apex of the curve. I can, perhaps, understand at  
11 11:30 at night, when Mr. Anderson's there with his  
12 companion, that particular subtlety on where  
13 exactly do I park might not have been what was  
14 foremost on his mind, but he told him -- when  
15 Mr. Anderson went back in there, he told  
16 Mr. Anderson [sic] that his car had been stolen but  
17 not that he had been shot.

18 Now, I can understand the confusion of the  
19 moment, Mr. Anderson having just been through such  
20 a traumatic circumstance, but that kind of  
21 subtlety, seems to me, to be of less significance.

22 What is of more significance is the suggestion  
23 that he lied by calling Mr. Klawitter and reporting  
24 this 9/16 incident, when he testified that he  
25 didn't even know about it. He said he didn't know

1 about it, just like Mr. Caimano, just like  
2 Mr. Vergara, just like Jennifer DeSalva.

3 In the interest of time, I'm not going to  
4 spend too much time on Mr. Klawitter's testimony.  
5 The only thing I would point out, this person was  
6 previously fired from a previous job at a gas  
7 station in the overnight shift at a RaceTrac, and  
8 then he claims that his documentation of being  
9 fired from that job was a fabrication, just like he  
10 claimed it was a fabrication when he was working  
11 for SecurAmerica.

12 So Mr. Steiner's testimony can't be reconciled  
13 with Mr. Klawitter either. You're going to have to  
14 pick a side, because Mr. Klawitter says he called  
15 him. Steiner says, I don't know anything about it.  
16 This is where the believability of witness  
17 instruction becomes so important.

18 When you saw Mr. Lacuara's deposition, when he  
19 was asked by Mr. Wiseman the first time about the  
20 9/16 incident, he certainly did not tell you, yes,  
21 I know about the 9/16 incident.

22 And Mr. Wiseman asked him some questions that  
23 contained some components that I tried to clear up  
24 with Mr. Caimano about some rash of robberies,  
25 which were the subsequent questions to Mr. Lacuara,

1 about incidents on and around the Embassy Suites  
2 property, and Mr. Caimano laid to rest any concerns  
3 whatsoever about any rash of incidents on the  
4 Embassy Suites property because there weren't any.  
5 There weren't any. So he doesn't have any direct  
6 knowledge of any incident on 9/16 either.

7 So you're left with Tenicka Parks. And  
8 Tenicka Parks was obviously attempting to help  
9 Mr. Anderson in her testimony, because when there  
10 was a pregnant pause -- which I did on purpose --  
11 in a quiet room like this where there's a bunch of  
12 complete strangers and there's just silence, she  
13 would fill it with something to try to help  
14 Mr. Anderson, by putting some minor twists and  
15 spins on something that I had just confronted her  
16 with in her deposition. And just like  
17 Mr. Anderson, that happened fairly regularly.

18 But what she said in her deposition is fatal  
19 to the suggestion that Mr. Lacuara was not outside  
20 or in the front lobby, because she made it  
21 abundantly clear -- and I showed her the video and  
22 I said, that's the guy with the uniform, that's who  
23 you're talking about -- I saw him right there by  
24 the front door. And frankly, that's the same exact  
25 testimony that Mrs. Robinson gave on that point.

1 I know that you have looked at all of the  
2 evidence carefully and considered it. The  
3 photographs are all in evidence. Look through the  
4 SecurAmerica report. There's no suggestion in here  
5 about a 30 minute in, 30 minute out requirement.  
6 What has been suggested is that we're just a bunch  
7 of collaborative misrepresentations, and we've even  
8 blanked the document that has the post orders on  
9 it.

10 There isn't any proof, other than what the  
11 former employees of SecurAmerica say about a  
12 30 minute requirement. And in light of what  
13 Jennifer DeSalva said, you really can't believe  
14 what they have to say about it.

15 You have been patient and listened and  
16 watched. And I know you have given careful  
17 attention to every single thing that we have said  
18 in this case and watched all of the witnesses  
19 carefully.

20 So this will be the only opportunity that I  
21 have to say thank you one more time. But I thank  
22 you genuinely. I know you'll treat us fairly in  
23 your deliberations. You'll pick a foreperson. We  
24 will be waiting in this room when you return with  
25 your verdict.

1           And members of the jury, after you've taken  
2           into account all the evidence as I have described  
3           it and applied it to the law that Judge Wallis has  
4           given you, which is going to shepherd you through  
5           the verdict form, and given fair consideration to  
6           the claims that Mr. Anderson is making, I trust  
7           that you will find that looking at the evidence  
8           leads to the conclusion that both defendants should  
9           receive a defense verdict by checking no, and  
10          whichever of you has been selected as the  
11          foreperson will be able to put your hand on the  
12          doorknob, as you're getting ready to knock on the  
13          door and come back in, look everybody in the eye  
14          and agree that you're doing the right thing.

15           And I appreciate your time and attention.  
16          Thank you so much.

17           THE COURT: Okay. Mr. Adamsky, you may  
18          proceed.

19                           \* \* \* \* \*

20                           CLOSING ARGUMENT

21           MR. ADAMSKY: Thank you, Your Honor, may it  
22          please the Court.

23           Members of the jury, sometimes tragedy happens  
24          without fault and without blame. And it's part of  
25          human nature, when somebody has a tragedy and is

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

TROY and PAULA ANDERSON,

CIRCUIT CIVIL DIVISION

Plaintiffs,

CASE NO. 2009-CA-040473-O

v.

HILTON HOTELS CORPORATION, a foreign corporation, doing business as EMBASSY SUITES ORLANDO AT INTERNATIONAL DRIVE AND JAMAICAN COURT, also doing business as HILTON WORLDWIDE, SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA LLC, W2007 EQUITY INNS REALTY, LLC, a foreign corporation, and INTERSTATE HOTELS & RESORTS, INC., a Florida corporation,  
Defendants.

VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of EMBASSY SUITES which was a legal cause of loss, injury or damage to Plaintiff?

YES

NO

2. Was there negligence on the part of SECURAMERICA which was a legal cause of loss, injury or damage to Plaintiff?

YES

NO

*If your answer to question 1 and 2 is NO, your verdict is for the Defendants, and you should not proceed further except to date and sign this Verdict Form and return it to the courtroom. If your answer to either question 1 or 2 is YES, please answer questions 3 through 7.*

3. Was there negligence on the part of Plaintiff, TROY ANDERSON, which was a legal cause of his loss, injury or damage?

YES

NO

4. State the percentage of any negligence or fault, which was a legal cause of loss, injury, or damage to TROY ANDERSON that you charge to:

EMBASSY SUITES 72 %  
SECURAMERICA 28 %  
TROY ANDERSON 0 %

(Total must be 100%)

(NOTE: for any response of "NO" to question 1, 2, or 3, place a zero next to that person or entity in answering question 4)

In determining the amount of damages, do not make any reduction because of negligence, if any, of TROY ANDERSON. If you find that TROY ANDERSON was negligent or at fault, the court in entering judgment will make an appropriate reduction in the damages awarded.

5. What is the amount of any damages sustained by TROY ANDERSON:

a. for past medical expenses \$ 205,116.00  
b. for future medical expenses \$ 408,000.00

6. What is the amount of any damages sustained by TROY ANDERSON for lost wages:

a. in the past \$ 31,000.00  
b. in the future \$ 37,200.00

7. What is the amount of any damages sustained by TROY ANDERSON for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, or loss of capacity for the enjoyment of life:

a. in the past \$ 816,750.00  
b. in the future \$ 204,000.00

TOTAL DAMAGES OF TROY ANDERSON  
(add lines 5(a), 5(b), 6(a), 6(b), 7(a) and 7)b) \$ 1,702,066.00

SO SAY WE ALL, this 2 day of November, 2012.

Marsh  
Foreperson

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

TROY ANDERSON,

Plaintiff,

CASE NO: 2009-CA-040473-O

v.

HILTON HOTELS CORPORATION, a foreign corporation, doing business as EMBASSY SUITES ORLANDO AT INTERNATIONAL DRIVE AND JAMAICAN COURT, also doing business as HILTON WORLDWIDE, SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA LLC, W2007 EQUITY INNS REALTY, LLC, a foreign corporation, and INTERSTATE HOTELS RESORTS, INC., a Florida corporation,

Defendants.

FILED IN OFFICE  
CIVIL DIVISION  
2013 APR 25 P 1:51  
CLERK OF CIRCUIT COURT  
ORANGE COUNTY FL

**PARTIAL FINAL JUDGMENT**

PURSUANT TO THE VERDICT rendered in this action on November 2, 2012,  
IT IS ORDERED and ADJUDGED:

The Plaintiff, TROY ANDERSON, shall recover from Defendants: HILTON HOTELS CORPORATION, a foreign corporation, doing business as EMBASSY SUITES ORLANDO AT INTERNATIONAL DRIVE AND JAMAICAN COURT and also doing business as HILTON WORLDWIDE; INTERSTATE HOTELS RESORTS, INC., a Florida corporation; and, W2007 EQUITY INNS REALTY, LLC, a foreign corporation, (collectively hereinafter referred to as EMBASSY SUITES pursuant to the Verdict form agreed to by Plaintiff and all Defendants), the sum of \$1,142,937.07 (which reflects an agreement between the parties as to the collateral source set-off) plus taxable costs in the amount of \$109,251.67 agreed to by the parties, for a partial final judgment total of \$1,252,188.74, for which let execution issue at the applicable statutory interest rate.

The Plaintiff, TROY ANDERSON, shall recover from the Defendant, SECURAMERICA, LLC, the sum of \$444,475.52 (which reflects an agreement between the parties as to the collateral source set-off) plus taxable costs in the amount of \$42,486.76 agreed to by the parties, for a partial final judgment total of \$486,962.28, for which let execution issue at the applicable statutory interest rate.

This Court reserves jurisdiction for the determination of all attorney's fees issues, which includes any taxable costs related to all attorney's fees issues.

DONE AND ORDERED in Chambers, Orange County, Orlando, Florida, this 25<sup>TH</sup> day of April, 2013.

Copies provided to:  
W. Riley Allen, Esq.  
Simon Wiseman, Esq.  
Michael Reed, Esq.  
Steven Adamsky, Esq.  
Shelley Leinecke, Esq.  
Noah Bender, Esq.

  
\_\_\_\_\_  
HONORABLE F. RAND WALLIS

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2009-CA-040473-O

TROY ANDERSON,

Plaintiff,

v.

HILTON HOTELS CORPORATION,  
a foreign corporation, doing business as  
EMBASSY SUITES ORLANDO AT  
INTERNATIONAL DRIVE AND  
JAMAICAN COURT, also doing business  
as HILTON WORLDWIDE, SECURAMERICA,  
LLC, a foreign corporation, a/k/a SECUREAMERICA  
LLC, W2007 EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS RESORTS,  
INC., a Florida corporation,

Defendants.

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**PLAINTIFF'S MOTION TO TAX ATTORNEY'S FEES AND COSTS  
PURSUANT TO FLA. STAT. 768.79, FLA. STAT. 44.102(6)(b), FLA. R. CIV. PRO. 1.442  
AND FLA.R.CIV.PRO. 1.525 AND REQUEST FOR EXTENSION OF TIME TO  
PROVIDE SUPPORTING DOCUMENTATION**

Plaintiff, TROY ANDERSON, files this his Motion to Tax Attorney's Fees and Costs pursuant to Fla. Stat., 768.79, Fla. Stat. 44.102(6)(b), Fla.R.Civ.Pro. 1.442 and Fla.R.Civ.Pro. 1.525 against Defendants, HILTON HOTELS CORPORATION, a foreign corporation, doing business as EMBASSY SUITES ORLANDO AT INTERNATIONAL DRIVE AND JAMAICAN COURT, also doing business as HILTON WORLDWIDE (“Hilton Hotels Corporation”), SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA LLC (“SecurAmerica”), W2007 EQUITY INNS REALTY, LLC, a foreign corporation (“W2007”),

and INTERSTATE HOTELS RESORTS, INC., a Florida corporation (“Interstate”), as well as an extension of time in order to provide the compilation of all documentation, Affidavits, including supporting expert Affidavits, and other information sufficient to identify in detail the amount of attorney's fees and costs Plaintiff claims entitlement to pursuant to Fla. Stat. 768.79, Fla. Stat. 44.102(6)(b), Fla.R.Civ.Pro. 1.442 and Fla.R.Civ.Pro. 1.525, and as grounds therefore, states as follows:

1. A verdict was rendered against Hilton Hotels Corporation, SecurAmerica, W2007 and Interstate on November 2, 2012 in the total amount of \$1,702,066.00, for which entry of judgment is pending. A true and correct copy of Plaintiff’s Motion for Entry of Partial Final Judgment is attached hereto as Exhibit “A.”

2. Throughout the discovery phase and trial of this case, Defendants maintained a complete "no liability" position despite evidence in the form of testimony from corporate representatives, employees, former employees, medical physicians, police officers and independent witnesses, that demonstrated Defendants had breached their duty of reasonable care owed to Plaintiff, Troy Anderson. In accordance with the jury’s findings the evidence demonstrated Defendants had liability as delineated on the verdict form for the tragedy which occurred on September 26, 2008, to Plaintiff, Troy Anderson.

3. Plaintiff and Plaintiff’s counsel expended a tremendous amount of time, effort, and money because of Defendants' failure to admit any responsibility for the occurrence of September 26, 2008, and the resulting injuries and damages suffered by Plaintiff, Troy Anderson.

4. Florida Statutes and Florida Rules of Civil Procedure allow parties the

opportunity to avoid lengthy litigation and trial if the adverse party or parties will reasonably come forward and admit certain truths and their responsibility. When the adverse part(ies) fail to do so, and said truths and responsibility is proven at trial, the Rules also allow a remedy for the party which has carried its burden in proving those matters otherwise denied by the Defendants.

5. Plaintiff is in the process of diligently compiling all documentation concerning attorney's fees and costs expended, Affidavits, including supporting expert Affidavits, and other relevant information to support the amount of time, effort, costs, and money expended, and respectfully requests this Court afford him an extension of time within which to provide same.

**PROPOSALS FOR SETTLEMENT PURSAUNT TO FLA. STAT. 768.79, FLA, STAT. 44.102(6)(b) AND FLA.R.CIV.PRO. 1.442 REJECTEDBY DEFENDANTS**

6. Plaintiff, Troy Anderson, served Proposals for Settlement pursuant to Fla. Stat. 768.79, Fla. Stat. 44.102(6)(b) and Fla.R.Civ.Pro. 1.442 on October 5, 2011 to Hilton Hotels Corporation in the amount of \$650,000.00, to W2007 in the amount of \$100,000.00, and to Interstate in the amount of \$650,000.00. In addition, Plaintiff, Troy Anderson, served a Proposal for Settlement pursuant to Fla. Stat. 768.79, Fla. Stat. 44.102(6)(b) and Fla.R.Civ.Pro. 1.442, on March 16, 2012 in the amount of \$300,000.00 to SecurAmerica. A copy of Plaintiff's Proposals for Settlement are attached hereto and marked as composite Exhibit "B."

7. The Proposals for Settlement served on each Defendant were not accepted and the jury found against the Defendants in the total amount of \$1,702,066.00 on November 2, 2012. By stipulation at trial, Defendants agreed Hilton Hotels Corporation, W2007 and Interstate were one and the same and thus requested they be referred to as "Embassy Suites." As a result of said stipulation, these Defendants were referred to as "Embassy Suites" on the Verdict Form and in the Jury Instructions. Accordingly, the jury attributed 72% negligence to Embassy Suites and

28% to SecurAmerica.

8. The verdict rendered by the jury exceeded by significantly more than 25% each Proposal for Settlement identified above. Counsel for Plaintiff (W. Riley Allen, Esquire and Simon Wiseman, Esquire) expended a significant number of hours and incurred a significant amount of costs since the service of the Proposals for Settlement were served associated with investigation, completion of discovery in this cause, preparation for trial, and attendance at the actual trials of this cause. That pursuant to all applicable Florida law, Plaintiff is entitled to attorney's fees and costs from the date of service of the Proposal for Settlement on October 5, 2011 as to Embassy Suites and March 16, 2012 as to SecurAmerica That had Defendants accepted the Proposals for Settlement served by Plaintiff on October 5, 2011 and March 16, 2012, a considerable amount of time, effort, and money would have been saved by Plaintiff and his counsel in this cause.

9. Plaintiff is in the process of diligently compiling all documentation, Affidavits, including supporting expert Affidavits, and other information sufficient to identify in detail the amount of attorney's fees and costs Plaintiff claims entitlement to pursuant to Fla. Stat. 768.79, Fla. Stat. 44.102(6)(b), Fla.R.Civ.Pro. 1.442 and Fla.R.Civ.Pro. 1.525. In this regard, as previously stated, given the extent of time and effort put forth in this case since the service of the Proposals for Settlement identified herein, Plaintiff, TROY ANDERSON, respectfully requests that this Court grant him a reasonable extension in order to provide the compilation of all documentation, Affidavits, including supporting expert Affidavits, and other information sufficient to identify in detail the amount of attorney's fees and costs Plaintiff claims entitlement to pursuant to Fla. Stat. 768.79 Fla. Stat. 44.102(6)(b), Fla.R.Civ.Pro. 1.442 and Fla.R.Civ.Pro.

1.525.

**ENTITLEMENT TO ATTORNEY'S FEE MULTIPLIER**

10. The subject case, pursuant to all applicable case law in the State of Florida, is also one for which a multiplier in reference to the issue of attorney's fees is applicable.

11. The Florida Supreme Court in Standard Guaranty Insurance Company v. Quanstrom, 555 So.2d 828 (Fla. 1990), has delineated the factors to be considered by the trial court in assessing a contingency multiplier. It is important initially to note that Quanstrom identifies three (3) categories of cases where a contingency multiplier is appropriate: First, in public policy enforcement cases, i.e., cases presenting discrimination, environmental, and **consumer protection issues**; second, in **tort** and contract cases; and, third, in cases involving family law, eminent domain, and estate and trust matters. Anderson v. Hilton Hotels Corporation, et al., fits within the second category identified by the Supreme Court in Quanstrom, i.e., that of being a consumer protection issue and tort case.

12. In analyzing tort cases, in reference to determining a reasonable award of attorney's fees, the Supreme Court identified several factors, including but not limited to, the time and labor required, the skill requisite to perform the legal service provided properly, the preclusion of other employment by the attorney or attorneys involved due to acceptance of the case, whether the fee was fixed or contingent, the time limitations imposed by the circumstances, the amount at risk and the results obtained, awards in similar cases, and the experience, reputation, and ability of the attorney or attorneys involved. 555 So.2d at 833. In the subject case, based on some of the identified factors, it is clear counsel for Plaintiff has met the burden of the Supreme Court to justify a contingency fee multiplier, particularly, in light of the

significant amount of time, effort, and money expended by counsel for Plaintiff, the skill requisite to present Plaintiff's case to the jury so as to maximize the result for Plaintiff, the fact the case was accepted on a contingency fee basis, the significant amount of time committed to preparation and trial of the subject case, the amount at risk associated with proceeding to trial despite the risks related thereto, the inability of counsel to devote much time at all to other matters because of the significant time commitment required by the subject case, and the excellent result obtained in light of all risks present.

13. Further, the Supreme Court identified additional factors the trial court should consider in assessing a contingency fee multiplier. These factors include those identified in Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985), as follows: the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; the amount involved and the results obtained; the time limitations imposed by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the lawyer or lawyers performing the services; whether the fee is fixed or contingent; whether the relevant market requires a contingency fee multiplier; and, whether the attorney was able to mitigate the risk of non-payment in any way. 555 So.2d at 834. The Court stated: "We find that the multiplier is still a useful tool which can assist trial courts in determining a reasonable fee in this category of cases when a risk of non-payment is established." In the subject case, there was an obvious risk of non-payment. Moreover, there was the significant risk related to monies expended by counsel in the form of costs associated with prosecution of the subject cause. All

such monies expended in the form of costs, in addition to hundreds of hours expended, were placed at risk at the trial of the subject cause. All of these factors are the types of factors addressed by the Supreme Court in Rowe and Quanstrom.

14. The Supreme Court in Quanstrom did modify in part the finding of the Supreme Court in Rowe in reference to application of the amount of the contingency fee multiplier as follows: If the trial court determines that success or the result obtained were more likely than not at the outset of the case, it may apply a multiplier of 1 to 1.5; if the trial court determines that the likelihood of success was approximately even at the outset, the trial judge may apply a multiplier of 1.5 to 2.0; and, if the trial court determines that success was unlikely at the outset of the case, it may apply a multiplier of 2.0 to 2.5.

15. Accordingly, in the subject case, a multiplier is clearly justified inasmuch as counsel for Plaintiff has clearly met the criteria established by the Supreme Court in Quanstrom sufficient to justify a contingency fee multiplier of 2.0 to 2.5.

WHEREFORE, Plaintiff, Troy Anderson, respectfully requests that this Court award attorney's fees and costs in accordance with Fla. Stat. 768.79, Fla. Stat. 44.102(6)(b), Fla.R.Civ.Pro. 1.442 and Fla.R.Civ.Pro. 1.525. Plaintiff further requests in considering its award of attorney's fees and costs that it take into account Plaintiff's entitlement to a contingency fee multiplier of 2.0 to 2.5, as will be supported by expert Affidavits and the Supreme Court in Quanstrom. Finally, Plaintiff respectfully requests this Court grant him a reasonable extension in order to provide the compilation of all documentation, Affidavits, including supporting expert Affidavits, and other information sufficient to identify in detail the amount of attorney's fees and costs Plaintiff claims entitlement to pursuant to Fla. Stat. 768.79 Fla. Stat. 44.102(6)(b),

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on November 27, 2012, I electronically filed the foregoing with the Orange County Clerk of Court by using the ECF system and further certify that I furnished a true and accurate copy of the foregoing via electronic mail to: **Michael E. Reed, Esquire** and **Wendy B. Accardi, Attorney at Law**, Wicker, Smith, O'Hara, McCoy & Ford, P.A., P.O. Box 2152, Tampa, FL 33602 ([tpactrpleadings@wickersmith.com](mailto:tpactrpleadings@wickersmith.com)); **Steven R. Adamsky, Esquire** and **Noah S. Bender, Esquire**, Mitrani, Rynor, Adamsky & Toland, P.A., 2400 North Commerce Parkway, Suite 302, Weston, FL 33326 ([SAdamsky@mitrani.com](mailto:SAdamsky@mitrani.com), [NBender@mitrani.com](mailto:NBender@mitrani.com), and [ASuarez@mitrani.com](mailto:ASuarez@mitrani.com)); and **Simon L. Wiseman, Esquire**, The Wiseman Law Firm, 1115 E. Livingston Street, Orlando, FL 32803 ([ILantigua@wisemantriallaw.com](mailto:ILantigua@wisemantriallaw.com)).

/s/ W. Riley Allen, Esquire  
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Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT IN AND FOR  
ORANGE COUNTY, FLORIDA

TROY ANDERSON,

CASE NO.: 2009-CA-040473-O

Plaintiff,

vs.

HILTON HOTELS CORPORATION, etc.,  
et al.,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO TAX ATTORNEY'S FEES AND  
COSTS AGAINST DEFENDANT SECURAMERICA, LLC PURSUANT TO PROPOSAL  
FOR SETTLEMENT DATED MARCH 16, 2012**

THIS CAUSE came before the Court on May 23, 2013 upon Plaintiff's Motion to Tax Attorneys' Fees and Costs against Defendant SecurAmerica, LLC ("SecurAmerica"), pursuant to a proposal for settlement dated March 16, 2012. The Court having heard argument of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. This negligence action was brought by Troy Anderson and his wife Paula Anderson against SecurAmerica and others to recover damages resulting from an assault on Plaintiff Troy Anderson.

2. The Second Amended Complaint dated August 10, 2010, sets forth two claims against SecurAmerica. Count II sets forth a claim by Troy Anderson for negligence, and count VII sets forth a claim by Paula Anderson for loss of consortium.

3. On March 16, 2012, Plaintiff Troy Anderson served a proposal for settlement on

SecurAmerica. That proposal for settlement stated as follows:

PROPOSAL FOR SETTLEMENT ON BEHALF OF PLAINTIFF,  
TROY ANDERSON'S [sic], PURSUANT TO RULE 1.442

Plaintiff, TROY ANDERSON, by and through his undersigned attorneys, hereby serves his Proposal for Settlement, pursuant to Rule 1.442 of the Florida Rules of Civil Procedure, to Defendant, SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA, LLC, and states in support thereof as follows:

1. This Proposal for Settlement is made pursuant to Florida Statutes 768.79, and is extended in accordance with the provisions of Rule 1.442, Fla.R.Civ.P.

2. This Proposal for Settlement is made on behalf of Plaintiff, TROY ANDERSON ("PLAINTIFF"), and is made to Defendant, SECURAMERICA, LLC, a foreign corporation, a/k/a SECUREAMERICA, LLC ("SECURAMERICA").

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against SECURAMERICA.

4. That in exchange for THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000.00) in hand paid from SECURAMERICA, PLAINTIFF agrees to settle any and all claims asserted against SECURAMERICA as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

4. While the above-quoted proposal for settlement states that it is made on behalf of Plaintiff Troy Anderson, it refers in paragraph 4 to any and all *claims* asserted against SECURAMERICA" in the instant case. In fact, Troy Anderson had only one claim, singular, against SecurAmerica. The only other claim set forth against SecurAmerica was that of Paula Anderson, for loss of consortium.

5. SecurAmerica did not accept the March 16, 2012 proposal for settlement.

6. At the hearing on this motion on May 23, 2013, counsel for Troy Anderson conceded that had the proposal for settlement been accepted, Paula Anderson's then-pending claim for loss of consortium would have been dismissed as well as Troy Anderson's claim. Counsel stated, "In fact, if Troy Anderson's Proposal for Settlement would have been taken, his wife's claims would have been automatically disposed of because she no longer would have had a derivative claim." [Transcript of 5/23/13 hearing, p. 52].

7. The Plaintiff has thus acknowledged that the intention and effect of the March 16, 2012 proposal for settlement, had it been accepted, would have been to dispose of both Troy Anderson's claim against SecurAmerica and Paula Anderson's separate claim for consortium against SecurAmerica. This was not stated in the March 16, 2012 proposal for settlement. That proposal for settlement did not state what, if any, portion of the \$300,000 demanded was attributable to Paula Anderson.

8. The Plaintiff Troy Anderson has raised, in argument in support of his motion, the fact that on October 5, 2011, Paula Anderson had served a proposal for settlement on SecurAmerica. The Court declines to consider that earlier proposal in ruling on the instant motion. That earlier proposal by Paula Anderson is inadmissible because the Plaintiff is not seeking to enforce that earlier proposal and is not seeking sanctions based on that earlier proposal. *See Fla. Stat. § 768.79(8); Fla. R. Civ. P. 1.442(i).*

9. On August 31, 2012, the Plaintiff's filed a Notice of Dropping Party from Lawsuit Without Prejudice, voluntarily dropping Paula Anderson as a party to the lawsuit.

10. On April 25, 2013, this Court entered a final judgment for Troy Anderson in accordance with a jury verdict against SecurAmerica in the amount of \$486,962.28.

11. The Plaintiff now moves the Court to determine his entitlement to attorneys' fees and costs against SecurAmerica pursuant to the March 16, 2012 proposal for settlement.

## CONCLUSIONS OF LAW

12. The March 16, 2012 proposal for settlement is ambiguous as to whether it proposed to settle “any all *claims* against SecurAmerica” as stated at paragraph 4 of the proposal, or whether it proposed to settle only the one claim of plaintiff Troy Anderson against SecurAmerica. The Second Amended Complaint contains only a single “claim” by Troy Anderson against SecurAmerica, i.e., count II for negligence. The other “claim” against SecurAmerica contained in the Second Amended Complaint is the claim of Paula Anderson in count VII for loss of consortium. By proposing to settle “any all *claims*,” plural, the proposal could reasonably be interpreted to include both the claim of Troy Anderson as well as the claim of Paula Anderson, who was a party to the case at the time of the proposal. The failure of the March 16, 2012 to state with particularity what claim or claims were included in the proposal renders the proposal ambiguous.

13. Because the March 16, 2012 proposal is ambiguous, it is therefore unenforceable as a matter of law. The Fifth District held in *Stasio v. McManaway*, “Because the offer of judgment statute and related rule must be strictly construed, virtually any proposal that is ambiguous is not enforceable.” 936 So.2d 676, 678 (Fla. 5th DCA 2006). This is in keeping with the Florida Supreme Court’s holding in *State Farm Mut. Auto. Ins. Co. v. Nichols*: “If ambiguity within the proposal could reasonably affect the offeree’s decision, the proposal will not satisfy the particularity requirement.” 932 So.2d 1067, 1079 (Fla. 2006). The proposal was ambiguous as to whether it was it was an offer to settle the claim of Troy Anderson or to settle the two “claims” of both plaintiffs. The supreme court has held that “settlement proposals must clarify which of an offeree’s outstanding claims against the offeror will be extinguished.” *Id.* at

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1080 (citing *Dryden v. Pedemonti*, 910 So.2d 854, 856-57 (Fla. 5th DCA 2005)); *see also Sparklin v. Southern Industrial Associates, Inc.*, 960 So.2d 895 (Fla. 5th DCA 2007) (holding

unenforceable a proposal for settlement that “contained ambiguous nonmonetary terms regarding which defendants would be released from liability”).

14. Although the March 16, 2012 proposal was entitled a proposal “On Behalf of Plaintiff Troy Anderson,” the proposal was in fact a joint proposal to settle the entire case against SecurAmerica, including the claim of Paula Anderson. The plaintiff conceded that the intended effect of the March 16, 2012 proposal was to dispose of both Plaintiffs’ claims against SecurAmerica. Counsel for the plaintiff acknowledged at the hearing that had the proposal been accepted, the derivative consortium claim of Paula Anderson could not have been separately maintained after dismissal of Troy Anderson’s negligence claim, and that Paula Anderson’s claim would have had to be dismissed. The plaintiff does not dispute that the March 16, 2012 proposal does not comply with the requirements for a joint proposal. The proposal for settlement is thus unenforceable because Troy Anderson and Paula Anderson are not “properly identified” as the parties making the proposal, and the proposal does not “state the amount and terms attributable to each party” as required by Fla. R. Civ. P. 1.442(c)(3). *See also Hibbard v. McGraw*, 918 So.2d 967, 970 (Fla. 5th DCA 2006) (joint proposal ambiguous and invalid because it “did not specify the amount attributable to each plaintiff”).

15. The March 16, 2012 proposal for settlement did not meet the strict requirements of clarity and particularity required by rule 1.442. Rule 1.442 requires that a proposal for settlement “name the party or parties making the proposal,” “identify the claim or claims the proposal is attempting to resolve,” “state with particularity any relevant conditions,” and “state with particularity any nonmonetary terms.” Fla. R. Civ. P. 1.442(c)(2)(A)-(D). Moreover, “This requirement of particularity is fundamental to the purpose underlying the statute and rule.

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A proposal for settlement is intended to end judicial labor, not create more.” *Nichols*, 932 So.2d at 1078. The requirements of rule 1.442 and of Florida Statutes section 768.79 must be

construed in favor of SecurAmerica. The Fifth District has stated that the proposal for settlement rule “is a punitive measure and should be construed in favor of the party to be sanctioned.” *Stasio*, 936 So.2d at 678. The Supreme Court of Florida has likewise held, “This language must be strictly construed because the offer of judgment statute and rule are in derogation of the common law rule that each party pay its own fees.” *Willis Shaw Exp., Inc. v. Hilyer Sod, Inc.*, 849 So.2d 276, 278 (Fla. 2003).

16. The plaintiff cannot clarify the March 16, 2012 proposal by extrinsic evidence of the October 5, 2011 proposal by Paula Anderson. As the Fifth District has stated, “In order to qualify under the rule, the terms of the proposal must be devoid of ambiguity, patent or latent, and not require any clarification or later judicial interpretation.” *Dryden*, 910 So.2d at 255-56. Moreover, evidence of the earlier proposal is inadmissible, because that offer was not accepted, and the plaintiff has not attempted to enforce that earlier proposal. *See Fla. R. Civ. P. 1.442(i); Fla. Stat. § 768.79(8)*.

17. The burden of demonstrating strict compliance with the requirements of rule 1.442 and section 768.79 is on the plaintiff. *Stasio*, 936 So.2d at 679; *Dryden*, 910 So.2d at 855. The plaintiff has not met that burden, and the March 16, 2012 proposal for settlement is therefore unenforceable.

THEREFORE, it is hereby ordered that Plaintiff’s Motion to Tax Attorneys’ Fees and Costs against Defendant SecurAmerica, LLC, is DENIED.

DONE AND ORDERED this 10<sup>TH</sup> day of JUNE, 2013, at Orlando, Orange County, Florida.



F. RAND WALLIS  
CIRCUIT COURT JUDGE

cc: All Counsel of Record

64441-6

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN AND FOR  
ORANGE COUNTY, FLORIDA

TROY and PAULA ANDERSON,

CIRCUIT CIVIL DIVISION

Plaintiffs,

CASE NO. 2009-CA-040473-O

v.

HILTON HOTELS  
CORPORATION, a foreign  
corporation, doing business as  
EMBASSY SUITES ORLANDO  
AT INTERNATIONAL DRIVE  
AND JAMAICAN COURT, also  
doing business as HILTON  
WORLDWIDE, SECURAMERICA,  
LLC, a foreign corporation, a/k/a  
SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a  
foreign corporation, and  
INTERSTATE HOTELS &  
RESORTS, INC., a Florida  
corporation,

Defendants.

\_\_\_\_\_ /

**ORDER ON PLAINTIFF'S MOTION TO DETERMINE ENTITLEMENT TO  
ATTORNEYS FEES PURSUANT TO PROPOSALS FOR SETTLEMENT**

THIS MATTER came on for consideration on May 23, 2013, on plaintiff, Troy  
Anderson's, motion to determine entitlement to attorneys fees pursuant to proposals for  
settlement, and the Court having reviewed the pleadings, having heard argument of  
counsel, and being duly advised in the premises, makes the following findings of fact and

~~relies on the following law and/or legal principles:~~

CASE NO. 2009-CA-040473-O

**FINDINGS OF FACT**

1. On October 5, 2011, plaintiff Troy Anderson served separate proposals for settlement to (a) Interstate Hotels Resorts, Inc. in the amount of \$650,000, (b) Hilton Hotels Corporation, d/b/a Embassy Suites Orlando at International Drive and Jamaican Court, also d/b/a Hilton Worldwide in the amount of \$650,000, and (c) W2007 Equity Inns Realty, LLC. in the amount of \$100,000. (Interstate Hotels, Hilton Hotels Corporation d/b/a Embassy Suites Orlando at International Drive and Jamaican Court a/k/a Hilton Worldwide and W2007 Equity Inns Realty, LLC collectively referred to as “hotel defendants”)

2. Each of these three proposals for settlement contained identical terms:

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against [defendant].

4. That in exchange for [amount of proposal] in hand paid from [defendant], PLAINTIFF *agrees to settle any and all claims asserted against [defendant] as identified in Case Number 2009-CA-040473-O, brought in the Circuit Court in and for Orange County, Florida. [emphasis added]*

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney’s fees.

3. At the time these settlement proposals were served, both Troy Anderson and his wife, Paula, were plaintiffs because Paula Anderson’s claim was not dismissed until August 31, 2012.

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~~4. No portion of the settlement proposals identifies any portion of the money~~  
sought that is attributable to resolution of Paula Anderson’s consortium claim.

CASE NO. 2009-CA-040473-O

5. At the May 23, 2013, hearing, plaintiff's counsel conceded that, as a matter of law, upon dismissal of an injured party's claims in a lawsuit that any spousal consortium claim can no longer proceed as a matter of law.

6. Nothing in the settlement proposals references dismissal of Troy Anderson's claims as a term of the proposal for settlement. However, at the hearing plaintiff's counsel asserted that the term "settle" in a proposal for settlement is synonymous with the term "dismiss."

7. At the time these settlement proposals were served, the plaintiffs' claims were set forth in the "second amended complaint and demand for jury trial" served August 19, 2010, which included the following counts: (I) negligence of Hilton d/b/a Embassy Suites, (II) negligence of SecurAmerica, LLC, (III) negligence of W2007 Equity Inns Realty, Inc., (IV) negligent failure of Interstate Management ("IMC") to provide safe premises, (V) failure of IMC to warn of known danger, (VI) fraudulent misrepresentation by IMC, and (VII) loss of consortium (on behalf of Paula Anderson).

8. Plaintiff did not request, and the jury did not return, a verdict identifying or assigning separate and discrete percentages of fault to the three "hotel defendants." Rather, the jury returned a verdict finding the "hotel defendants" (identified collectively as "Embassy Suites" on the verdict form) were collectively 72% fault and 28% fault by SecurAmerica.

9. The jury verdict awarded Troy Anderson total damages of \$1,702,066.

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~~Based on the apportionment of fault, \$1,225,487.50 was the responsibility of the "hotel~~  
defendants" and \$476,448.48 was the responsibility of SecurAmerica.

CASE NO. 2009-CA-040473-O

10. Because the jury was not asked to apportion fault among the “hotel defendants,” the final judgment could not, and does not, identify any specific sum attributable to any of the “hotel defendants” that is their share of the contribution to Troy Anderson’s claim of loss.

11. After calculations for set-offs, partial final judgment was entered on April 25, 2013, in the amount of \$1,142,937.07 against the “hotel defendants” and \$444,475.52 against SecurAmerica (exclusive of costs, which were also awarded by this partial final judgment).

**CONTROLLING LAW**

Florida Rule of Civil Procedure 1.442 states, in pertinent part:

**(c) Form and Content of Proposal for Settlement**

(2) A proposal shall:

(A) name the party or parties making the proposal and the party or parties to whom the proposal is being made

(B) identify the claim or claims the proposal is attempting to resolve;

(C) state with particularity any relevant conditions;

(D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal.

(3) A proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. A joint proposal shall state the amount and terms attributable to each party.

Florida Statute section 768.79 states, in pertinent part:

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~~... If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled~~

CASE NO. 2009-CA-040473-O

to recover reasonable costs and attorney's fees incurred from the date of the filing of the demand. ...

In the case of *Stasio v. McManaway*, 936 So.2d 676 (Fla. 5<sup>th</sup> DCA 2006), the appellate court stated that because Rule 1.442 has a punitive purpose, it "should be construed in favor of the party to be sanctioned." *Id.* at 678, citing *Hibbard v. McGraw*, 918 So.2d 967 (Fla. 5<sup>th</sup> DCA 2005); *Loy v. Leone*, 546 So.2d 1187 (Fla. 5<sup>th</sup> DCA 1989). The court further stated that "because the offer of judgment statute and related rule must be strictly construed, virtually *any* proposal that is ambiguous is not enforceable." *Id.* (emphasis in original). The court also advised that "the burden of clarifying the intent or extent of a settlement proposal cannot be placed on the party to whom the proposal is made." *Id.* at 679, citing *Dryden v. Pedemonti*, 910 So.2d 854 (Fla. 5<sup>th</sup> DCA 2005).

A settlement proposal must "be sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification." *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So.2d 1067, 1079 (Fla. 2006). The Court said that "this requirement of particularity is fundamental to the purpose underlying the statute. A proposal for settlement is intended to end judicial labor, not create more." *Id.* at 1078, citing *Nichols v. State Farm Mut.* 851 So.2d 742, 746 (Fla. 5<sup>th</sup> DCA 2003). In *Nichols*, a settlement proposal that included a term dismissing "any and all claims, causes of actions" was unenforceably broad and ambiguous because it could be construed to include more than just the plaintiff's claim pending in the suit in which the settlement proposal was made.

In *Dryden v. Pedemonti*, *supra*, the Fifth District found a settlement proposal was ambiguous and invalid because it could potentially extinguish a first party PIP claim and/or health insurance claims.

CASE NO. 2009-CA-040473-O

In *Sparklin v. Southern Industrial Associates, Inc.*, 960 So.2d 895 (Fla. 5<sup>th</sup> DCA 2007), the court found a proposal for settlement “contained *ambiguous nonmonetary terms regarding which defendants would be released from liability*” and was therefore unenforceable. (emphasis added)

In *Hibbard v. McGraw*, 918 So.2d 967 (Fla. 5<sup>th</sup> DCA 2006), a truck passenger was a minor at the time of injury and suit was brought by her mother on her behalf. By the time the defendant served a settlement proposal, the girl had reached majority, therefore the proposal was made only to her. The Fifth District found this proposal to be ambiguous and invalid because it “*did not specify the amount attributable to each plaintiff, i.e. to Carr and to her mother.*” (emphasis added) The court explained:

In this case, the defendants served their proposal to “Plaintiff, Amanda K. Carr” *before* moving to amend the pleadings to show Carr as the “sole” plaintiff. At the time the defendants served their proposal, “Plaintiff, Amanda K. Carr” was *not* the named plaintiff. In addition, given the defendants’ position that Carr was the *sole* plaintiff, it is unclear whether the proposal to settle “*all* claims against the Defendants” included all damages of any kind arising out of the accident (Carr’s claims as well as the claims of her mother” or only Carr’s claims for future medical expenses, (future lost earning capacity and pain and suffering) and not her mother’s claims (medical expenses and loss of consortium).

*Id.* at 971-972. (emphasis in original)

### CONCLUSIONS

Based on the facts of this matter and the controlling law, this Court finds:

1. The settlement proposals made by Troy Anderson to each of the “hotel defendants” are void and unenforceable because

CASE NO. 2009-CA-040473-O

(a) the offers to the individual defendants cannot be compared to the undifferentiated verdict and final judgment entered collectively against these three “hotel defendants” and

(b) the settlement offers are vague and ambiguous because they do not attribute any sum to plaintiff Paula Anderson yet the proposals can be reasonably interpreted to include resolution of her consortium claim.

2. The case of *Merrill Crossings Associates, v. McDonald*, 705 So.2d 560 (Fla. 1997), as cited and relied upon by Mr. Anderson, states that negligent tortfeasors cannot identify intentional tortfeasors as *Fabre* defendants, however there can be apportionment of liability between and among the negligent tortfeasors. *See also: Hennis v. City Tropics Bistro, Inc.*, 1 So.3d 1152 (Fla. 5<sup>th</sup> DCA 2009); *Burns International Securities Services Inc. of Florida v. Philadelphia Indem. Ins. Co.*, 899 So.2d 361 (Fla. 4<sup>th</sup> DCA 2005). The case neither discusses nor involves issues of interpretation and enforceability of proposals for settlement and is therefore inapplicable to the matters now before this Court.

3. The cases of *U.S. Security Services Corp. v. Ramada Inn, Inc.*, 665 So.2d 268 (Fla. 3d DCA 1996) and *Grobman v. Posey*, 863 So.2d 1230 (Fla. 4<sup>th</sup> DCA 2003), also cited by Mr. Anderson, are also inapplicable because, *inter alia*, they do not address proposals for settlement, but rather they focus on the situations where a party seeks to identify a *Fabre* defendant and discuss issues of derivative and vicarious fault. As explained in the case of ~~*Continental-Florida-Materials, Inc. v. Kusherman*, 91 So.3d 159~~ (Fla. 4<sup>th</sup> DCA 2012):

CASE NO. 2009-CA-040473-O

A distinction must be drawn between apportionment of fault and ultimate liability. The former allows the finder of fact to determine to what extent, if any, each party or non-party contributed to the loss or injury. The latter determines who will actually pay for that loss or injury. The combination of both insures responsibility for one's own negligence, and ultimately who will pay – and to what extent of – the total loss.

*Id.* at 165.

4. By failing to obtain an apportionment of fault between and among the “hotel defendants,” plaintiff is unable to compare the monies proposed in any of the three proposals for settlement with the fault (and related dollar amount of the damages awarded by the jury) of any of these defendants to determine whether the verdict and/or final judgment against each such defendant is more than 25% larger than the proposal for settlement. Ultimate liability for payment of the final judgment is irrelevant to this analysis.

5. Even if the three proposals for settlement could be considered in the aggregate so that this Court could compare “like with like,” (and both parties appear to agree that there is nothing in Rule 1.442, section 768.79, or the governing case law to permit such addition of multiple proposals), these three proposals total \$1,400,000, which is less than the verdict and/or partial final judgment against the “hotel entities.” Therefore, the plaintiff cannot meet the mathematical 25% relationship between the proposals and the verdict and/or partial final judgment to permit plaintiff to pursue a claim for attorneys fees.

6. Separately and independently, the Court finds that Mr. Anderson's settlement proposals were ambiguous because paragraph 4 of each proposal states only that plaintiff “*agrees to settle any and all claims asserted against [defendant] as*

CASE NO. 2009-CA-040473-O

*identified in Case Number 2009-CA-040473-O.*” At the time these offers were pending, “any and all claims” included those of *both* Troy Anderson and Paula Anderson. These offers do not attribute any portion of the sums demanded to Paula Anderson, and equally importantly, the proposals do not offer to dismiss Troy Anderson’s suit. As Mr. Anderson’s counsel correctly conceded, dismissal of Mr. Anderson’s claims would have also required dismissal of Mrs. Anderson’s derivative consortium claim. Potential interpretations of these facially ambiguous settlement proposals include but are not limited to: (1) Mr. Anderson would settle his claims, but *not* dismiss his portion of the lawsuit so that Mrs. Anderson could attempt to proceed with her then-pending consortium claim could proceed, (2) the entire lawsuit, including Mrs. Anderson’s consortium claim, would be dismissed (as that term is interpreted by plaintiff’s counsel to equate to “settled”), but Mrs. Anderson would receive no money for the resolution of her claim, or (3) the entire lawsuit would be “settled” (dismissed) and some undisclosed portion of the funds identified by Mr. Anderson would be paid to Mrs. Anderson in violation of the strict requirements of Rule 1.442 and section 768.79.

WHEREFORE, it is

ORDERED AND ADJUDGED, that the settlement proposals served by Troy Anderson to the three “hotel defendants” are vague, ambiguous, and unenforceable, and

CASE NO. 2009-CA-040473-O

Troy Anderson is not entitled to seek recovery of any attorneys fees from these defendants.

DONE AND ORDERED at Orlando, Orange County, Florida, this 10<sup>TH</sup> day of JUNE, 2013.

Frank Wallis  
CIRCUIT JUDGE

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Ft. Lauderdale, FL 33302

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

TROY ANDERSON ,

Appellant,

v.

CASE NO. 5D13-2552, 13-2553

HILTON HOTELS CORPORATION,  
ETC., ET AL.,

Appellee.

\_\_\_\_\_ /

DATE: August 01, 2013

**BY ORDER OF THE COURT:**

Upon consideration of Appellant's Response, filed July 31, 2013, it is

ORDERED that above-styled cases are hereby consolidated and shall  
travel with Case No. 5D13-1722.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*

*Pamela R. Masters*

PAMELA R. MASTERS, CLERK



cc:

Shelley H. Leinicke  
Steven R. Adamsky  
Simon Wiseman

W. Riley Allen  
Barbara A. Eagan  
Orange Co. Circuit Ct. Clerk  
(2009-CA-40473)

Pamela A. Chamberlin  
Michael Edward Reed

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

TROY ANDERSON ,

Appellant,

v.

CASE NO. 5D13-2552, 5D13-2553

HILTON HOTELS  
CORPORATION, ETC., ET AL.,

Appellees.

\_\_\_\_\_ /

DATE: July 21, 2014

**BY ORDER OF THE COURT:**

ORDERED that Appellant's "Motion to Consider the Consolidated Case Record Together With the "Traveling Together" Case Record, filed July 18, 2014, is granted. Consolidated Case Nos. 5D13-2552 and 5D13-2553, which are travelling with 5D13-1722, shall share a record with Case No. 5D13-1722.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*

*Pamela R. Masters*

PAMELA R. MASTERS, CLERK



cc:

Shelley H. Leinicke  
Margaret E. Kozan  
Michael Edward Reed

W. Riley Allen  
Steven R. Adamsky  
Simon Lawrence Wiseman

Pamela A. Chamberlin  
Barbara A. Eagan  
Orange Co. Circuit Ct. Clerk  
(2009-CA-040473-O)

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

HILTON HOTELS CORPORATION,  
ETC.,  
ET AL.,

Appellants,

v.

Case No. 5D13-1722

TROY ANDERSON AND PAULA  
ANDERSON,

Appellees.

\_\_\_\_\_ /

Opinion filed December 19, 2014

Appeal from the Circuit Court  
for Orange County,  
F. Rand Wallis, Judge.

Shelley H. Leinicke, of Wicker, Smith,  
O'Hara, McCoy & Ford, P.A., Fort  
Lauderdale, for Appellant Hilton Hotels  
Corporation, and Pamela A. Chamberlain,  
of Mitrani Rynor Adamsky & Toland, P.A.,  
Miami Beach, for Appellant SecurAmerica,  
LLC.

Barbara A. Eagan and Margaret E. Kozan,  
of Eagan Appellate Law, PLLC, Orlando,  
W. Riley Allen, of Riley Allen Law,  
Orlando, and Simon L. Wiseman, of The  
Wiseman Law Firm, Orlando, for Appellee  
Troy Anderson.

No Appearance for Appellee Paula  
Anderson.

TROY ANDERSON,

Appellant,

v.

Case Nos. 5D13-2552  
5D13-2553

HILTON HOTELS CORPORATION, ETC.,  
ET AL.,

Appellees.

\_\_\_\_\_ /

Barbara A. Eagan and Margaret E. Kozan, of Eagan Appellate Law, PLLC, Orlando, W. Riley Allen, of Riley Allen Law, Orlando, and Simon L. Wiseman, of The Wiseman Law Firm, Orlando, for Appellant Troy Anderson.

Shelley H. Leinicke, of Wicker, Smith, O'Hara, McCoy & Ford, P.A., Fort Lauderdale, for Appellee Hilton Hotels Corporation, and Pamela A. Chamberlain, of Mitrani Rynor Adamsky & Toland, P.A., Miami Beach, for Appellee SecurAmerica, LLC.

EVANDER, J.

Hilton Hotels Corporation (“Hilton”), W2007 Equity Inns Realty, LLC (“W2007”), Interstate Hotels & Resorts, Inc. (“Interstate”), and SecurAmerica, LLC (“SecurAmerica”) appeal from a final judgment in a personal injury/negligent security case in which the jury awarded Troy Anderson (“Anderson”) damages in excess of \$1.7 million. Anderson filed a separate appeal from the trial court’s post-trial orders denying his request for an award of attorney’s fees under section 768.79, Florida Statutes (2011). We affirm the

final judgment in all respects and write only to address the issues raised in Anderson's appeal.

On September 26, 2008, Anderson was the victim of a criminal attack in the parking lot of an Embassy Suites Hotel in Orlando, Florida. The hotel was owned and operated by W2007 pursuant to its franchise agreement with Hilton. Interstate managed the hotel pursuant to its contract with W2007. SecurAmerica was retained by Interstate to provide security services on the hotel's property. Following the attack, Anderson and his wife, Paula, filed a multi-count second amended complaint against the four defendants. The complaint asserted that each of the defendants was negligent and, notably, was devoid of any allegations of vicarious liability.

On October 5, 2011, Anderson served separate demands for judgment on Hilton, W2007, and Interstate. In his demands for judgment, Anderson sought \$650,000 each from Hilton and Interstate, and \$100,000 from W2007. On March 16, 2012, Anderson served a demand for judgment on SecurAmerica in the amount of \$300,000.

Shortly before the trial commenced in late October 2012, Paula Anderson and her loss of consortium claim were dropped from the lawsuit. As a result, only Anderson's claims were presented to the jury. During the charge conference, the defendants' counsel proposed that the jury instructions and the verdict form reference defendants Hilton, W2007, and Interstate collectively as "Embassy Suites." The proposal was accepted by Anderson's counsel and, at his request, the jury was given the following instruction:

Members of the jury, you can assume, for purposes of your deliberation, that Interstate Hotels and Resorts, Inc., Hilton Hotels Corporation, and W2007 Equity Inns Realty, LLC are

one and the same. These defendants will be referred to in the jury instructions and verdict form as Embassy Suites.

The jury returned a verdict finding the “Embassy Suites” defendants 72% at fault, SecurAmerica 28% at fault, and Anderson 0% at fault. Anderson’s total damages were determined to be \$1,702,066. After consideration of collateral source set-offs and the imposition of taxable costs, the trial court entered a partial final judgment against the “Embassy Suites” defendants in the amount of \$1,252,188.74, and against SecurAmerica in the amount of \$486,962.28. In its partial final judgment, the trial court reserved jurisdiction for the determination of all attorney’s fees issues.

Anderson claimed entitlement to attorney’s fees pursuant to section 768.79, Florida Statutes (2011). That statute provides that where a plaintiff files a demand for judgment that is not accepted by the defendant within thirty days, and the plaintiff recovers the judgment in an amount of at least twenty-five percent greater than the demand, the plaintiff is entitled to recover reasonable attorney’s fees incurred from the date of the filing of the demand. § 768.79(1), Fla. Stat. (2011). A demand for judgment must be in writing, state that it is being made pursuant to the statute, identify the offeror and offeree, and state the total amount of the demand. § 768.79(2), Fla. Stat. (2011); see also Fla. R. Civ. P. 1.442.<sup>1</sup>

An award of attorney’s fees under section 768.79 is a sanction against the rejecting party for the refusal to accept what is presumed to be a reasonable offer. *Sarkis v. Allstate Ins. Co.*, 863 So. 2d 210, 222 (Fla. 2003). Because the statute is

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<sup>1</sup> Section 768.79 provides the substantive law concerning offers and demands of judgment, while rule 1.442 provides for its procedural mechanism. *Winter Park Imports, Inc. v. J.M. Family Enterprises*, 66 So. 3d 336, 338 (Fla. 5th DCA 2011). Rule 1.442 utilizes the term “proposal for settlement” in referring to both offers of judgment and demands for judgment.

penal in nature, it must be strictly construed in favor of the one against whom the penalty is imposed and is never to be extended by construction. *Id.* at 223. Strict construction of section 768.79 is also required because the statute is in derogation of the common law rule that each party is to pay its own attorney's fees. *Campbell v. Goldman*, 959 So. 2d 223, 226 (Fla. 2007). Because the statute must be strictly construed, a proposal that is ambiguous will be held to be unenforceable. *Stasio v. McManaway*, 936 So. 2d 676, 678 (Fla. 5th DCA 2006). Furthermore, the burden of clarifying the intent or extent of a proposal for settlement cannot be placed on the party to whom the proposal is made. *Dryden v. Pedemonti*, 910 So. 2d 854, 855 (Fla. 5th DCA 2005).

In the instant case, the demands for judgment served by Anderson on each of the defendants were identical, except for the amount demanded:

1. This Proposal for Settlement is made pursuant to Florida Statute §768.79, and is extended in accordance with the provisions of Rule 1.442, Fla.R.Civ.P.

2. This Proposal for Settlement is made on behalf of Plaintiff, TROY ANDERSON ("PLAINTIFF"), and is made to [Defendant].

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by PLAINTIFF against [Defendant].

4. That in exchange for [amount demanded] in hand paid from [Defendant], PLAINTIFF agrees to settle *any and all claims asserted against* [Defendant], *as identified in Case Number 2009-CA-040473-O*, brought in the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by PLAINTIFF, including all claims for interest, costs, and expenses and any claims for attorney's fees.

(Emphasis added).

The trial court found that the language “PLAINTIFF agrees to settle any and all claims asserted against [Defendant]” rendered each of the demands vague, ambiguous, and unenforceable. We agree with the trial court’s conclusion. Although Paragraph 3 of the demand for judgment reflects that the proposal was intended to resolve only Troy Anderson’s claim, Paragraph 4 can reasonably be interpreted to mean that the intent of the demands for judgment was to resolve the claims of both Troy and Paula Anderson.

In *Hibbard ex rel. Carr v. McGraw*, 918 So. 2d 967 (Fla. 5th DCA 2005), this court was confronted with similar language in an offer for judgment. There, Amanda Carr, through her mother, Faith Carr Hibbard, filed suit against defendants Michael McGraw and his employer, Dual Incorporated, for injuries sustained in a motor vehicle crash. At the time of the crash, Carr was a minor. The defendants tendered the following offer of judgment:

Defendants, MICHAEL MCGRAW and DUAL INCORPORATED . . . hereby submit their proposal for settlement in favor of Plaintiff, AMANDA K. CARR, in the total sum of THIRTY FIVE THOUSAND AND ONE DOLLARS (\$35,001.00), exclusive of attorneys’ fees and costs, in exchange for an executed full release and voluntary dismissal with prejudice *as to all claims against Defendants, MICHAEL MCGRAW and DUAL INCORPORATED.*

*Id.* at 969 (emphasis added). Subsequently, the defendants moved to amend the pleadings to show Carr as the “sole” plaintiff because she had attained the age of majority. *Id.* at 970. The trial court ordered that “Amanda Carr is an adult and shall appear on her own behalf as to her individual claims. Faith Carr Hibbard shall remain

as a party Plaintiff as to her parental claim for general damages and claim for medical bills while Amanda Carr was a minor.” *Id.*

When the defendants obtained a favorable judgment, the trial court awarded attorney’s fees pursuant to section 768.79 against Amanda Carr, based on the unaccepted offer of judgment. *Id.* This court reversed, observing that it was unclear whether the offer of judgment was directed only to Amanda Carr’s claims as opposed to being directed to the claims of both Amanda and her mother:

At the time the defendants served their proposal, “Plaintiff, Amanda K. Carr” was *not* the named plaintiff. In addition, given the defendants’ position that Carr was the *sole* plaintiff, it is unclear whether the proposal to settle “*all* claims against the Defendants” included all damages of any kind arising out of the accident (Carr’s claims as well as the claims of her mother) or only Carr’s claims for future medical expenses, (future lost earning capacity and pain and suffering) and not her mother’s claims (medical expenses and loss of consortium).

*Id.* at 971-72 (emphasis in original).

As we did in *Hibbard*, we conclude that the proposals for settlement in this case were ambiguous. Specifically, it cannot be clearly determined from the language of the demands for judgment whether the demands were intended to resolve only Troy Anderson’s claims, or the claims of both Troy and Paula Anderson.

Although not necessary for the resolution of this appeal, we also agree with the trial court’s conclusion that the three separate demands for judgment offered to each of the “Embassy Suites” defendants were unenforceable for an additional reason. Because Anderson requested to have these three entities treated as one by the jury, and given that the judgment obtained against the “Embassy Suites” defendants was actually less than the sum of the demands for judgment made against them, the

purpose behind the enactment of section 768.79 (i.e., to sanction a party for rejecting a presumptively reasonable proposal for settlement) would be ill-served by assessing attorney's fees against Hilton, W2007, and Interstate.

AFFIRMED.

BERGER and LAMBERT, JJ., concur.



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

TROY ANDERSON,

Case No's.: 5D13-2552 and  
5D13-2553  
(Consolidated Appeals)

Appellant,

v.

HILTON HOTELS CORPORATION,  
a foreign corporation, doing business as  
EMBASSY SUITES ORLANDO AT  
INTERNATIONAL DRIVE AND  
JAMAICAN COURT, also doing business  
as HILTON WORLDWIDE,  
SECURAMERICA, LLC, a foreign corporation,  
a/k/a SECUREAMERICA LLC, W2007  
EQUITY INNS REALTY, LLC, a foreign  
corporation, and INTERSTATE HOTELS  
RESORTS, INC., a Florida corporation,

Appellees.

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**APPELLANT'S MOTION FOR APPELLATE ATTORNEY'S FEES**

Appellant, Troy Anderson, pursuant to sections 768.79 and 59.46, Florida Statutes; Florida Rule of Appellate Procedure 9.400(b); and Florida Rule of Civil Procedure 1.442, moves for entry of an order awarding appellate attorneys fees on the following grounds:

1. During the trial court proceedings, on October 5, 2011, Anderson served proposals for settlement upon the following defendants in the amounts indicated: (a) Interstate Hotel Resorts, Inc., in the amount of \$650,000; (b) Hilton Hotels Corporation, also d/b/a Hilton Worldwide, in the amount of \$650,000; (c) and W2007 Equity Inns Realty, LLC, in the amount of \$100,000. These parties were referred to at trial as the “hotel defendants.”

2. In addition, on March 16, 2012, Anderson served a proposal for settlement upon SecurAmerica, LLC, in the amount of \$300,000.

3. The proposals for settlement are attached to this motion.

4. The final judgment entered below awarded the sum of \$1,142,937.07 (after set-offs) against the three hotel defendants and the sum of \$444,475.52 (after set-offs) against SecurAmerica.

5. Anderson moved for attorneys’ fees in the trial court based upon the four previously served and rejected proposals for settlement, as the judgment amount exceeded by 25% the amount set forth in each offer.

6. The trial judge ultimately denied Anderson’s motions for fees and this appeal ensued. A verdict appeal (No.: 5D13-1722), brought by the defendants, is traveling with these consolidated appeals.

7. Should this Court reverse the trial judge and determine that the proposals for settlement are unambiguous and enforceable, and should this Court also affirm the final judgment in the verdict appeal, Anderson would

be entitled to an award of appellate attorney fees and costs pursuant to Sections 768.79 and 59.46, Florida Statutes; Florida Rule of Civil Procedure 1.442; Florida Rule of Appellate Procedure 9.400(b); and *Frosti v. Creel*, 979 So. 2d 912, 917 (Fla. 2008) (the right to attorney fees pursuant to section 768.79 applies to fees incurred on appeal).

8. Even if this Court reverses the judgment in the verdict appeal, but finds that the proposals for settlement are unambiguous and enforceable, Anderson may nevertheless ultimately be entitled to an award of appellate attorney fees pursuant to the requirements of Section 768.79 and Rule 1.442, if he obtains a judgment that is at least 25 percent greater than the amount of his offer. *See* § 768.79(1), Fla. Stat.; *Aksomitas v. Maharaj*, 771 So. 2d 541 (Fla. 4th DCA 2000) (en banc) (reversing the final judgment but granting the (losing) appellee’s motion for appellate attorney’s fees conditioned on her ultimately prevailing in the litigation).

WHEREFORE, Anderson moves for entry of an order:

A. Awarding appellate attorney’s fees to Anderson if the verdict appeal judgment is affirmed and the orders denying fees are reversed; or

B. If the verdict appeal judgment is reversed and the orders denying fees are reversed, conditionally awarding appellate attorney’s fees upon Anderson ultimately obtaining a judgment that is at least 25% greater than the amount of his offer; and

C. Remanding to the trial court the determination of the amount of fees.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on June 19, 2014, I furnished a true and accurate copy of the foregoing via electronic mail to: Shelley H. Leinicke, [SHLeinicke@WickerSmith.com](mailto:SHLeinicke@WickerSmith.com); Michael E. Reed, [MReed@WickerSmith.com](mailto:MReed@WickerSmith.com), and Pamela A. Chamberlin, [pchamberlin@mitriani.com](mailto:pchamberlin@mitriani.com), Attorneys for Appellees.

/S/ Barbara A. Eagan

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Attorneys for Appellant

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

HILTON HOTELS  
CORPORATION, ETC., ET AL.,

Appellants,

v.

CASE NO. 5D13-1722, 5D13-2552,  
5D13-2553

TROY ANDERSON AND  
PAULA ANDERSON,

Appellees.

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DATE: December 19, 2014

**BY ORDER OF THE COURT:**

ORDERED that Troy Anderson's Motions for Attorney's Fees, both filed  
June 19, 2014, are denied.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*

*Pamela R. Masters*

PAMELA R. MASTERS, CLERK



cc:

Shelley H. Leinicke  
Margaret E. Kozan  
Michael Edward Reed

W. Riley Allen  
Steven R. Adamsky  
Simon Lawrence Wiseman

Pamela A. Chamberlin  
Barbara A. Eagan