

# MISSOURI LAWYERS WEEKLY

## Top V&S 2003

### #4 Plaintiff's Verdict

## Boy's Death After Fall Draws \$18M Verdict

*Mother Had Asked Property Mgr. For Window Guards*

A St. Louis City jury awarded \$18 million on Feb. 4 to the mother of a 4-year-old boy who was killed when he fell out the window of the family's 11th-floor apartment in a public-housing complex.

The mother, Carla Hill, claimed that she had demanded a window guard for the window from the management company at the complex a month before the accident and on numerous subsequent occasions, but that the company took no action.

In addition, she charged that the company, Pinnacle Realty Management Co., which runs apartment complexes around the country, was well aware of the dangers to children posed by windows with no guards, and should have treated her request for a window guard as an emergency that required action within 24 hours.

The jury awarded Hill \$2 million in actual damages, allocating 60 percent of the fault to Pinnacle and 40 percent to the St. Louis Housing Authority. In addition, the jury hit Pinnacle with \$16 million in punitive damages.

Because of sovereign immunity, the SLHA was protected by a \$300,000 damages cap, and was not subject to punitive damages, according to Christopher Dysart of St. Louis, who represented Hill.

"This was a case that really needed to go before a jury," Dysart said. "The problem of kids going out of windows began as soon as people started living in these high-rise complexes, and those who have studied the issue have concluded that it's a completely preventable problem if you use window guards.

"But a lot of these companies that run these public housing complexes just don't care about the people who live there. This case was a chance to give this issue a higher profile and make it more likely that these companies will behave more responsibly."

Samuel Murphy of St. Louis, who represented Pinnacle Realty, told Lawyers Weekly that the company would appeal, but declined to comment on the details of the case.

#### The Incident

The accident happened on June 12, 2000 at the Cochran Gardens apartment complex in north St. Louis.

Carla Hill was living in the four-room 11th-floor apartment at the time with her two sons and with two other children. Three of the children were around 10 years old, Dysart said. Terrance Hill was 4.

The apartment, which lacked air conditioning, had four windows. Two were equipped with

window guards, and a third was positioned over a balcony. But the window in the children's bedroom had no window guard.

That morning, Hill said she awoke around the same time as Terrence, gave him breakfast, and then went back to sleep. His older brother Purvis said that a short time after breakfast, he helped Terrence get something from the refrigerator. Purvis then went back up to the top bunk of the bunkbeds in the children's room, and refused Terrence's request that he be allowed to come up, too.

Not long after Terrence fell through the window screen to his death. None of the other children saw his fall.

#### Prior Requests

The crucial element of the case, according to Dysart, was that Carla Hill had demanded on numerous occasions that a window guard be installed on the window, and was able to document her requests.

"About a month before the incident, in early May, she saw her son climb onto the window sill, and realized that he was getting to the age where that window was becoming a real danger," he said.

On May 9, Hill made a formal request that a window guard be installed, and received a computer printout confirming her request. But the management company took no action.

But Hill didn't give up, Dysart said. In the month leading up to the accident, Hill went back to managers repeatedly to demand a window guard, even "yelling and screaming" at them on occasion.

Although some employees of the company denied that she had come back over and over again to demand the window guard, others testified that they did remember her making repeated requests.

According to Hill's testimony, when she confronted the site manager for Pinnacle, he refused to take action because he said he had a softball game to attend.

The underlying problem, Dysart said, was that the manager and other company employees

failed to treat the situation as an emergency, which it clearly was.

"According to federal regulations, a request from a tenant of a public housing project regarding an immediate threat to life, health or safety must be classified as an emergency and acted upon within 24 hours," Dysart said.

Using the St. Louis Housing Authority classification system, the Pinnacle managers classified Hill's request as routine, he said, in violation of its contract with the housing authority requiring it to deal with emergency requests within 24 hours, and to follow federal regulations as to the definition of an emergency.

#### Notice

Equally important to the case was that the management company had full knowledge of the dangers to young children posed by windows without window guards, Dysart said.

According to Dysart, there were falls from windows in St. Louis Housing Authority properties in 1991 and in 1992, which alerted officials to the need for window guards.

As a result, an SLHA official made a public statement that the authority would put window guards in the windows of every apartment where a child under the age of 10 resided, he said.

Windows guards were purchased and installed in windows at Cochran Gardens and other SLHA properties at that time and at intervals thereafter. Guards were installed in the windows in Carla Hill's apartment in 1996.

Dysart noted that even the window in the children's room received a window guard in 1996, but that the guard simply fell off about six months before the accident.

"The first guards that they bought were very heavy, and were difficult to install," Dysart said. "There were things you could do to attach them securely to the walls, but it appears that the maintenance crew was never really trained to do it, and a lot of them fell off."

A newer generation of window guards, lighter and easier to install, had since appeared on the market, Dysart said, and many had been purchased by Pinnacle for the windows in Cochran

Gardens.

But according to testimony from maintenance employees, rather than being installed, the guards were sitting unopened in boxes in storage areas around the complex.

#### Blame The Mother

The defense strategy in the case was to blame Carla Hill for not keeping close enough watch on her child, and for letting him sleep in a room with a window without a guard, Dysart said.

But that argument had less traction that it might otherwise have had because Hill had recognized the danger of the window and had asked that a guard be installed, he said.

In addition, it ran aground on a simple fact: everyone has to sleep.

"They argued that she should have watched over him better, should have made sure he didn't get near the window," he said. "But you can't stay awake 24 hours a day to watch over your kid."

Dysart brought in an expert witness to remind the jury what a challenge a 4-year-old child can be. "A kid of that age will occupy the entire apartment, and will be climbing and exploring," he said.

In addition, Dysart pointed out to the jury that the apartment doors were not equipped with locks, making it impossible to seal off the room from the boy's attempts to explore.

According to another of Dysart's experts, a specialist in preventing injuries to children, the problem of children falling out of windows has been known since the early 1970s.

"Our expert testified that people began to notice children going out of windows as soon as people started living in these buildings," he said. "And, more importantly, it became clear early on that window guards could prevent the problem."

According to the expert, the problem was "completely preventable," Dysart said.

"People who've studied this problem and other dangers to kids have concluded that the way to address it is not by increasing supervision, it's by putting up barriers," he said. "If you put up barriers, the problem goes away."

#### \$18 Million Verdict

**Type of action:** Last Demand: \$5 Million

**Size of Verdict:** \$18 Million

**Status:** Confidential settlement before appeal

**Type of Case:** Negligence

**Date of Verdict:** Feb. 2003

**Case Name:** Hill v. Pinnacle Realty Management Co. and St. Louis Housing Authority

**Court:** St. Louis City Circuit Court

**Plaintiff's Attorney:** Christopher Dysart, St. Louis