

## Legal Profession

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### Lawyer filed case against Universal Studios one day late

**Verdict:** (P) \$1,305,911.00

**Case Type:** Malpractice, Premises Liability - Amusement Park/Place of Entertainment, Affirmative Defenses - Statute of Limitations

**Case:** Suzanne Box v. Nicholas A. Heiman, No. BC276421

**Venue:** Superior Court of Los Angeles County, Central, CA

**Judge:** Victor H. Person

**Date:** 09-12-2003

### PLAINTIFF(S)

#### Attorney:

- Anthony Stuart; Stuart Law Firm; Los Angeles, CA, for Suzanne Box

#### Expert:

- Peter Francis; Biomechanical; Poway, CA called by: Anthony Stuart
- Ken Martin; Amusement Park Rides; Richmond, VA called by: Anthony Stuart
- Peter Formuzis; Economics; Santa Ana, CA called by: Anthony Stuart
- Thomas Grogan; Orthopedic Surgery; Santa Monica, CA called by: Anthony Stuart
- John Taylor; Attorney Ethics; West Los Angeles, CA called by: Anthony Stuart
- Richard Anderson; Vocational Rehabilitation; Westminster, CA called by: Anthony Stuart

### DEFENDANT(S)

#### Attorney:

- Lori A. Schweitzer; Becherer, Kannett & Schweitzer; Emeryville, CA, for Nicholas A. Heiman

#### Expert:

- David Weiner; Economics; Los Angeles, CA called by: Lori Schweitzer

- Carol Hyland; Vocational Rehabilitation; Oakland, CA called by: Lori Schweitzer
- Mark Gomez Ph.D.; Biomechanical; San Diego, CA called by: Lori Schweitzer
- Craig Needham; Legal Services; San Jose, CA called by: Lori Schweitzer
- James London; Orthopedics; San Pedro, CA called by: Lori Schweitzer
- Dana Morgan; Amusement Park Rides; Scotts Valley, CA called by: Lori Schweitzer

**Insurer:**

- American Equity Specialty Co (Travellers Insurance)

**Facts:**

On December 28, 1998, plaintiff Suzanne Box, while on holiday from her home in the United Kingdom, accompanied her seven-year-old son for a ride on Universal Studios "Jurassic Park---The Ride." The plaintiff was a 40-year-old police officer who had been working part-time (while raising four children) in London's Metropolitan Police Service. The plaintiff claimed that she and her seven-year-old son were seating next to two very large adults, the larger weighing about 350 pounds. As a result, the "lap bar" or restraining safety mechanism could not be lowered into position at a level lower than the largest individual's body would allow. This left considerable distance between the lap bar and Ms. Box's seven-year-old son.

As the ride proceeded to its climax---an 84-foot drop down a 50 degree incline into a pool of water -- Box turned to the right in an attempt to hold her son to prevent him from falling out of his seat. As the boat splashed down, the plaintiff felt a 'lightning bolt' of pain from her left shoulder through her abdomen. At the ride's conclusion, she brought her injury to the attention of the ride operators. Box was given first aid treatment at the amusement park and released. She was seen in a medical clinic the next day and diagnosed with a left shoulder sprain/strain.

Upon return to the United Kingdom, the plaintiff was diagnosed with a partial tear of the supra-spinatus tendon. Physical therapy did not alleviate pain or improve limited movement of arm, so surgery was performed in August 2000 for decompression of the acromio-clavicular joint. Surgery returned full range of motion to shoulder joint, but Box was left with unresolved chronic pain. (Five years after the accident at Universal, Box was diagnosed with a brachial plexus injury.)

Before her surgery in April 1999, Box retained attorney Harry Spiegel, Los Angeles, to represent her in a personal injury claim against Universal Studios. After being unable to negotiate a settlement of the case, Spiegel offered the case to defendant Nicholas Heiman, a "trial attorney" to whom Spiegel had previously referred cases. Heiman contacted the Box by telephone and, according to her and to Spiegel, agreed to represent Box under Spiegel's retainer agreement. On behalf of Box, Heiman sued Universal on Dec, 30, 1999, filing the complaint in the Los Angeles Superior Court.

Heiman continued to represent Box in the underlying action against Universal Studios for a period of a year and a half. During that time, he opposed three demurrers and responded to discovery until on May 25, 2001, the Superior Court (Hon. Carl West) sustained Universal Studios' demurrer to the third amended complaint without leave to amend. Heiman contacted Box on June 25, 2001, to advise her that the action had been filed a day late and had been dismissed.

Box sued Heiman for legal malpractice. She contended that she had agreed to represent her, and

simply failed to file the action on time.

Heiman contended that he had no duty to file the case within the statute of limitations because he had never agreed to represent her until after the statutory period had expired. He also contended that the Jurassic Park Ride was safe, and that Box sustained her rotator cuff injury as a result of pre-existing arthritis and her own sudden movement. Finally, Heiman disputed that plaintiff sustained a brachial plexus injury.

**Injury:**

Box alleged a partial tear of the supra-spinatus tendon of the left (dominant) shoulder with stretching injury to the brachial plexus resulting in chronic pain. She claimed she would have prevailed in her action against Universal Studios if it had been timely filed and that she would have been awarded \$942,000 for loss of present and future earnings

**Verdict Information** The jury found for Box and awarded her \$1,305,911.