

Property management companies and homeowners associations are held responsible for compliance with local traffic and other safety regulations

The case reported on page one of this newsletter has set a new and sobering level of accountability for property management companies and homeowners' associations. The verdict, delivered in February 2013 by a Palm Beach County jury, found a property management company (MMI of the Palm Beaches, Inc.), a homeowners' association (The Villas on the Green Condominium Association), and the driver of the car involved in a fatal accident (Helen Bygel) – 60%, 30%, and 10% respectively – responsible for the death of a nine-year-old boy riding his bicycle past the entrance to a condominium community. (The Villas on the Green Townhouse Association, part of that complex, reached a confidential settlement with the boy's parents prior to trial.)

SDSBS attorneys **Greg Barnhart**, **Karen Terry**, and **Matt Schwencke**, representing plaintiffs Andre Kovacs and Tracy Curtis, parents of nine-year-old Andrew Connor Curtis, established through testimony from accident reconstruction and traffic safety experts that a tall hedge and a short stop sign at the exit from the Villas on the Green complex had obstructed the vision of both the driver of the car and young Andrew. The car struck and killed the boy. Defense attorneys for the property management company and the Condominium Association tried to place the blame on the driver, and on Andrew's father for not reacting quickly enough to protect his son.

Homeowners' associations (HOAs) are typical in common-interest developments, including condominiums and single-family home developments. Membership in an HOA is usually a condition of purchase. Most HOAs are incorporated, and subject to state statutes that govern such associations and other non-profit corporations. Oversight is minimal and rules are inconsistent from state to state. Officers of the HOA may be elected directly by the membership (residential owners). HOAs provide services, regulate activities, levy assessments, and may impose fines. The HOA board of directors may create various committees to provide advice on such issues as finance, neighborhood watch, pool access, gardening, architectural controls, and other activities. The board of directors is authorized by the HOA to evaluate and decide on community issues and its rules, within the community's governing by-laws.

Typically, the HOA board of directors contracts with a property management company to provide the day-to-day professional advice, guidance, and management of the entire facility. That contract may require property managers performing the HOA's contract to be trained and certified by industry associations. Regardless, the property management contractor is

obligated to provide knowledgeable and proper advice and guidance to the HOA on issues involving the community and to properly contract (at the direction of the board) for services, repairs, renovations, security, and any other requirement for oversight and management of the community.

In the court's ruling in this case, the property management company and the HOA were found negligent in their respective failures to monitor and maintain the property's surrounding hedge height in compliance with local town codes, and in their failure to ensure compliance with community traffic sign height ordinances. Their failures caused the death of a nine-year-old boy riding his bicycle past their community.

Reporting of this verdict has prompted incredible feedback, with reports coming in from common-interest communities across the United States. The verdict is not just about hedge-height, or sign-height, or HOA board member knowledge, or even driver/biker awareness – it is about responsibility and accountability. ♦

The property management company and the HOA were found negligent and their failures caused the death of a nine-year-old boy.

The verdict is not just about hedge-height, or sign-height, or HOA board member knowledge, or even driver/bike awareness - it is about responsibility and accountability.

