

February 19, 2014

CONFIDENTIAL SETTLEMENT DEMAND

VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED
AND VIA FACSIMILE

5 EVEN A, INC. AND JEYMAR, INC.
c/o Thomas S. Jones, Esquire
ABLE & BAKER, LLC
100 Galleria Parkway
Suite 1234
Atlanta, Georgia 30339

PETROLEUM REALTY II, LLC
c/o Matthew G. Johnson, Esquire
GREEN, SMITH, JOHNSON, & HOLDER LLP
950 East Paces Ferry Road
Suite 1300
Atlanta, Georgia 30326

Re: Our Clients - Henry Smith & Autumn Smith
Date of Loss - August 19, 2008
Case Style - *Smith v. Petroleum Realty / 5 Even A, Inc. / Jeymar, Inc.*

Dear Thomas and Matt:

As you know, my law firm represents Mr. Henry Smith,¹ who was seriously and permanently injured on August 19, 2008, after suffering a gunshot wound during a robbery on your clients' premises / convenience store at 4160 Fulton Industrial Boulevard. This letter is sent as an offer of compromise and afforded the legal protections associated with settlement negotiations.²

There is no doubt that Henry was completely without fault in connection with the assault which occurred on August 19, 2008; however, the type of assault he suffered was foreseeable to Petroleum Realty / 5 Even A, Inc. / Jeymar, Inc. (hereinafter collectively referred to as "Jeymar"), given what can only be described as an absolutely shocking criminal history at the gas station at issue. In fact, the incident reports we have produced

¹ We also represent Autumn Smith, Henry's wife, in connection with her loss of consortium claim.

² This letter is being sent to you in a good faith effort to compromise and settle this matter without litigation and is, therefore, inadmissible in any legal proceeding.

Thomas S. Jones, Esquire
Matthew G. Johnson, Esquire
February 19, 2014
Page 2

to you contain numerous examples of the *exact* type of assault which Henry suffered, occurring at 5 Even A, Inc. / Jeymar, Inc., in the few years before August 2008.

THE REMARKABLE CRIMINAL HISTORY OF
4160 FULTON INDUSTRIAL BOULEVARD

First, any juror seated in this case is going to be familiar with Fulton Industrial Boulevard (“FIB”). The citizens of Fulton County reasonably expect any gas station situated on FIB, particularly near the highway, to be adequately safe and secure for patrons. In other words, a gas station cannot solicit business and profits from the community and then refuse to adequately protect customers. A business also cannot open their doors for business in a dangerous part of town, refuse to take *any* security measures for customers, and then blame the customer for stopping in “a bad part of town.”

We strongly suspect the defense of “you should have known better than to stop at our store” is not going to have much jury appeal. This point is amplified by the fact that the incident reports contain examples of off-duty police officers and doctors stopping at 4160 as well and then suffering assaults (both of whom we will depose if this matter does not resolve).

Your firms handle numerous premises claims in Georgia. Accordingly, I will not belabor discussion about the duties owed to an invitee under Georgia law. Suffice it to say, a jury will surely determine that your clients unquestionably failed to live up to their duties in connection with this claim. There can be no dispute that Jeymar’s security measures were woefully inadequate in light of the unbelievable criminal history at 4160 Fulton Industrial Blvd.

In fact, Ashiq Ali and Neil Hossain, and Nawshaud Hossain testified that there is *no security* at 4160 and there has never been any attempt to secure the premises for customers. There are cameras inside the store, which only protect the cashier and the gambling machines. Ali and the Hossains testified that they rely **solely** upon the Fulton County police to provide protection for their store. Obviously, calling the police in *reaction* to something that has occurred is a woefully inadequate way to proactively protect customers, particular against the backdrop of the remarkable criminal history of 4160 FIB.

It is not hyperbole to say that the property at issue may have the worst criminal history of any service station in the metropolitan area.

As the documents we produced in discovery reveal, there were **over 2,200 calls** to Fulton County 911 in just three and one-half years prior to August 19, 2008. As you know, this averages around two calls per day. We understand that not every call was for a violent incident and some calls may have been for a relatively benign purpose. However, these documents prove that many calls in the three and one-half years before August 19, 2008 were related to **carjacking, robbery, burglary, larceny, and the rape of a child on a nearby property**. It is indisputable that your clients were legally and actually on notice of the violence occurring at and around the gas station.

Please take the time to read through these incident reports and imagine for a moment what the jury is going to think when we have many of them blown up and present them one after another at trial. There are *multiple* incidents of customers (and employees) being harassed, held-up, robbed, and carjacked at this location. The use of guns and knives in the commission of crimes at Jeymar was, and remains, a regular occurrence. These incidents are going to enrage the jury and we suspect that feeling will permeate all aspects of this case.

Since the applicable insurance policies apparently do not exclude punitive damages, the jury's perception of Jeymar's actions should be of particular concern to your clients.

Amazingly, during their videotaped depositions, Ali and the Hossains denied knowledge of significant criminal activity on their premises. I will not belabor the absolutely absurd nature of those denials. Suffice it to say, the men were either being untruthful or have adopted an "ostrich" defense. The jury will harshly punish the businesses, regardless of which "defense" they choose for trial purposes. **Since both Mr. Hossain and his son have been attacked at 4160, their claims of ignorance regarding the criminal activity which defines 4160 were particularly noteworthy.**

Mr. Neil Hossain summed it up best during his deposition when he said that he had to leave the store open twenty-four hours a day because if he closed "the people that hang around there would break in and steal everything."³

³ Neil Hossain also clearly described the dangerous nature of his store and the area surrounding his store in the media interviews he did in the year leading up to Henry's shooting.

THE ASSAULT AND SHOOTING

On August 19, 2008, Henry Smith was en route from a job site near FIB and returning to his office. He stopped at your client's gas station to purchase a Gatorade. After he exited the store, and while standing just outside the front door of the station, he was confronted by an armed assailant who pointed a revolver at his chest and demanded his wallet. Henry gave up his wallet and then the assailant again pointed the gun at his chest. Henry was understandably fearful of being shot in the chest. Therefore, he took defensive, instinctual action and tried to re-direct the gun away from his mid-section. Henry was then shot through his left hand. The assailant took Henry's wallet and then fled into the woods behind the gas station.

Any juror is going to understand the instinctual reaction of attempting to re-direct the gun away from one's chest. A defense centered upon blaming Henry for defending himself is likely to backfire, particularly since he had already given up his wallet (as evidenced by the fact the assailant actually took it). Henry was not attempting to fight with the assailant—he was attempting to save his own life after the gun was pointed, a second time, at his chest.

After suffering the gunshot wound, Henry began screaming and went inside the gas station for help. Remarkably, the attendant attempted to ignore him. It was only after a prostitute named "Coco" came into the store and began summoning the clerk by his first name that the clerk agreed to call 911. [One has to wonder how the prostitute knew the first name of the gas station clerk and what the familiarity between the two people says about the type of activity condoned at 4160 Fulton Industrial Boulevard.]

The police and emergency services were summoned. Henry was emergently taken to Grady as a result of his gunshot wound.

SPOILIATION OF EVIDENCE

Notably, Jeymar destroyed the in-store videotape, which would have captured at least part of this incident. The Hossains—both corporate officers of Jeymar—testified that they would expect their employees to preserve the videotapes if they were on notice of an incident and he acknowledged that it would be wrong to destroy such tapes. Amazingly, Neil Hossain also claimed that Jeymar had no knowledge of the shooting

until he was served with this lawsuit, months after the shooting. This claim is simply incredible for a number of reasons, not the least of which is that the 911 records show the call pertaining to Henry's shooting coming from *inside* Jeymar's store.

Therefore, given Jeymar's actions, spoliation of evidence is now an issue in this case. We believe this spoliation issue will influence both the liability and the damages aspects of this matter.

THE DAMAGE TO HENRY SMITH AND HIS FAMILY
FROM THE ASSAULT AND SHOOTING

The pictures of Henry's hand, which we have produced to you, speak for themselves. A gunshot wound through the hand is a tremendously painful injury that any juror will comprehend. Henry's physical suffering is well-documented in his medical records. The healing from the gunshot wound has been a very painful and agonizing experience, which is continuing at present. Henry has seen a general orthopedic surgeon, a plastic surgeon, and a hand surgeon as part of his follow-up care for the physical injuries.

Moreover, the bullet fragments spread through Henry's hand and have caused permanent damage. He has lost range of motion in his little finger, suffered nerve damage, lost grip strength, and is unlikely to ever fully recover. Henry is a tremendously hard worker and attempted to return to his job within weeks of the gunshot injury in an effort to provide for his family.

Dr. James Lester (plastic surgeon) noted: "This patient has a very strenuous job that he does repetitive gripping, squeezing and pulling with his arms. It is a very aggressive job for his hands, wrists, forearms and upper arms and he needs his full grip strength. *However, the patient is quite insistent that he needs to go back to work.*"

The jury will understand and respect Henry for his work ethic and quickly come to the conclusion that he is not a malingerer. Unfortunately, Henry suffered setbacks with the health of his hand and he had to miss substantial time from work at the doctor's request. In fact, Dr. Timmons, the hand specialist, made clear in his narrative that Henry could not return to his former job.

As a result of his injuries from the shooting, Henry remains without work.

Henry has already undergone multiple surgeries and has suffered permanent nerve and muscle damage. The records reveal that due to Henry's rehabilitation efforts he has made some improvements; however, his hand is nowhere near its prior condition and never will be again. He is scheduled for yet another surgery within the next few weeks.

I have also provided you with Dr. Lester's and Dr. Timmons' recent narratives, which set forth their findings and conclusions. These documents make clear that Henry has permanent nerve damage, permanent loss of function in his hand, and likely will be unable to return to his career. Henry has made a nice living for his family for years, primarily working with his hands (that is all he knows how to do). As a result of the gunshot wound, he can no longer do that. Henry has already lost two years of work, totaling more than \$88,000.00 in *past* lost wages.⁴

Henry is forty-five years old. If you assume another 20 years of work life and conservatively assume he would only remain at his prior earnings of \$44,000.00 per year, that figure totals \$880,000.00.

In addition to the lost wages, Henry's medical bills at present total in excess of \$50,000.00, excluding the forthcoming surgery and rehabilitation.

The assault and shooting have also profoundly affected Henry and his family from an emotional perspective. Any juror will understand the horrendous emotional impact from a robbery and gunshot injury. As the records we produced to you demonstrate, Henry has been diagnosed by multiple physicians with Post-Traumatic Stress Disorder ("PTSD"). His current psychologist, Dr. Ome, continues to treat him for significant PTSD. Notably, Henry has required medication—and still does—for both his PTSD and his sleep symptoms. The jury is likely to award a very substantial amount to Henry in connection with his non-economic damage claim.

Rather than having Henry's emotional injuries laid out for you by an attorney, I asked his wife, Autumn, to discuss her observations about how this assault and gunshot injury have profoundly changed her husband. We have produced her letter to you. Moreover, Autumn and Henry testified very openly and honestly about the effect this

⁴ You have Henry's employment file. His average salary for the last two full years he was able to work was \$44,000 per year.

Thomas S. Jones, Esquire
Matthew G. Johnson, Esquire
February 19, 2014
Page 7

incident has had on their marriage. You should also take note of the devastating effect Henry's emotional injuries have had on his children.⁵ Specifically, with respect to his wife this is a compensable item of damages. We believe a jury will allocate a substantial figure to Mrs. Smith's loss of consortium claim.

⁵ In this regard, you can imagine the impact his young daughter's testimony will have upon the jury.

LIABILITY

In the few years prior to Henry's shooting, 4160 FIB had an almost surreal amount of violent crime. In response, Jeymar did literally nothing.⁶ There is not much I can add to emphasize the likelihood that we will succeed on the negligent security claims.

Next, given the unprecedented criminal history of the property, and the horribly inadequate (in fact, nonexistent) response of Jeymar, a claim of punitive damages will not only be asserted but will almost surely result in a substantial judgment.

Moreover, the only viable defense available to your client is to attempt to hold down damages by arguing that Henry was not paralyzed or killed during the shooting. I submit a defense mounted on those grounds would accomplish little other than inflaming the jury and driving up the verdict. Arguing to a jury that a victim's gunshot wound, pain, permanent hand injury, and associated mental anguish are not "worth" a lot is a precarious stance. (Our recent verdict against Pilot, discussed below, is evidence that we can effectively counter such a defense).

Should this case not resolve at this point, we intend to aggressively pursue the remaining discovery items left to be accomplished. Specifically, we intend to depose your security expert (if any), the responding officers, damage witnesses, and other who have been attacked on Jeymar's premises.

SIMILAR CLAIMS

Our firm recently tried a case in Fulton County (the venue for this claim, which is undeniably favorable for plaintiffs) involving a fistfight at a "Pilot" gas station. In that case, we contended that Pilot simply failed to adequately control an unruly customer, who ultimately punched our client and broke his jaw. Unlike the Jeymar property, the Pilot location at issue had an almost impeccable history, revealing no violent crimes. Yet, we were able to secure a verdict of \$650,000.00 on behalf of our client. The jury's verdict, and conversations with jurors after the trial, revealed that citizens of Fulton County were outraged when presented with evidence of a business's failure to protect a customer.

⁶ Even cursory internet research reveals that a business can get a very nice, multi-camera security system for less than \$3,000.00. Such a system would provide an obvious deterrent effect and would have drastically reduced the amount of loitering and violent crime at 4160 FIB. Yet, the corporate officers at Jeymar and 5 Even A were adamant that they did not even *consider* a security system (at least until very recently).

Next, three other recent verdicts and settlements are instructive. First, in *Lee v. Wal-Mart Stores*, a Clayton County jury awarded \$4,200,000.00 million to a woman who was shot in the parking lot of the Wal-Mart in Riverdale, Georgia. The facts of that case are strikingly similar to the present claim. Ms. Lee was confronted by an armed assailant after exiting Wal-Mart and shot. Similar to the present claim, the plaintiffs presented evidence of numerous prior crimes at the Wal-Mart location at issue. Predictably, the defense tried to shift the blame to the assailant. This tactic was apparently not well-received by the jury, who awarded Ms. Lee \$4,200,000.00.

Next, in *Glamsch v. Pinnacle Mortgage Company* (Fulton County venue) the defendants agreed to pay \$750,000.00 to a man who was stabbed in an apartment building managed by the defendant. Finally, in *Holmes v. NHP Management* (Fulton County venue), the defendant agreed to pay \$1,000,000.00 to a woman who was sexually assaulted (though not raped), suffered an injury to her hand, suffered PTSD, and permanent scarring after she was assaulted in her apartment.

These settlements and verdicts, ranging from \$750,000.00 to \$4,200,000.00 are instructive for this claim. While we can each point to distinctions between the cases, none of the above-cited matters involved a location with a criminal history nearly as bad as your clients' property. It is reasonable to believe that the jury's verdict in this case will fall somewhere within this range and likely well into the seven figures.

OFFER TO SETTLE

We wish to give your clients an opportunity to resolve this claim without a trial. Therefore, I am authorized to make a time-limited demand for One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) to resolve all claims on behalf of our clients.

In light of Henry's physical and emotional injuries, the liability picture in this case, the outrageous criminal history of the gas station at issue, and Jeymar's total lack of a response to such prior crimes, we feel this is a reasonable demand. If a trial is required, we will ask the jury for an amount significantly in excess of the present demand and in excess of the applicable \$2,000,000.00 limits. Given the circumstances surrounding this claim and our firm's history in litigating these cases, we believe we will secure a judgment for an amount substantially in excess of Jeymar's policy limits.

Thomas S. Jones, Esquire
Matthew G. Johnson, Esquire
February 19, 2014
Page 10

This offer to settle will expire unless accepted at 5:00 p.m. EST on October 9, 2009.

Sincerely,

Andrew E. Goldner

AEG:skt

cc: Mr. Henry Smith and Mrs. Autumn Smith