

I. Theories of Liability

A. The theories of liability developed by plaintiffs counsel are as follows:

1. Brian Butler, TVL Broadcasting, Inc., TVL Broadcasting of Rhode Island, STC Broadcasting, Inc., LIN Television Corporation, LIN T.V. Corp.

Role:

Brian Butler was an investigative reporter for WPRI Channel 12 who was acting in the course of his employment in filming within the Station and documenting its condition and operation as a nightclub. Butler filmed the fire as it broke out and, rather than leaving or assisting patrons, he remained in the building filming distressed patrons trying to leave as he stood directly within a route of egress.

TVL Broadcasting is an entity doing business as WPRI-Channel 12.

STC Broadcasting is an entity doing business as WPRI-Channel 12.

LIN T.V. Corp wholly owned LIN Television Corporation, which wholly owned TVL Broadcasting, Inc., STC Broadcasting Inc., and TVL Broadcasting of Rhode Island, which employed Jeffrey Derderian as an investigative reporter and Brian Butler as a cameraman.

Claims:

Negligence

Their negligence included:

As to Brian Butler:

- impeding the exit of patrons from the Station;
- contributing to the slowdown, back-up, and additional logjam for patrons attempting to leave through the main exit;

As to TVL Broadcasting Inc., TVL Broadcasting of Rhode Island, LLC, and STC Broadcasting Inc.:

- vicarious liability as to the actions of its employees, Jeffrey Derderian and Brian Butler, at the Station on February 20, 2003;
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As to LIN Television Corporation and LIN T.V. Corp.:

- liability for the negligence of its subsidiaries based on the fact that it so dominated and controlled the affairs of those subsidiaries at all relevant times;
- failing to enforce their own policies and protocols.

2. WHJY, Inc., Capstar Radio Operating Company, and Clear Channel Broadcasting, Inc.

Role:

WHJY, Inc. was, in 2003, a radio station broadcasting heavy metal music such as that performed by Great White. WHJY, Inc. sponsored, endorsed and promoted the Great White concert at the Station on February 20, 2003, when it knew or should have known that the band customarily used pyrotechnics before proximate audiences at its concerts. WHJY, Inc. is a wholly-owned subsidiary of Clear Channel Communications.

Capstar Radio Operating Company, since the Station Fire, has succeeded to the interests of WHJY, Inc.

Claims:

Negligence

Their negligence included:

- promoting, endorsing and sponsoring the Great White concert at the Station with knowledge that the band customarily used pyrotechnics; and
- failing to make even a minimal inquiry sufficient to discover the dangers of Great White's performance.

3. American Foam Corp./Aram Dermanouelian

A. American Foam

Role:

American Foam had no defense. It knowingly sold untreated polyurethane foam for use in a night club.

B. Aram Dermanouelian

Role:

Aram Dermanouelian was an officer, employee, and shareholder of American Foam Corporation, which sold highly flammable flexible polyurethane foam insulation to the Derderians for use in the Station as "sound foam."

Claims:

Intentional Tort and Negligence

His intentional torts included:

- instituting and maintaining a policy at American Foam Corporation of discouraging and/or prohibiting its employees, including salespeople, from disclosing to American Foam's customers the fire risks of foam products of which American Foam was aware;
- intentionally omitting material facts under circumstances requiring disclosure of such facts;

His negligence included:

- instituting a policy which resulted in the failure to inform customers of American Foam about fire risks of its foam products.

4. General Foam Corp. et als, Foamex International, Inc. et als, Leggett & Platt, Inc. et als, W. T. Burnett & Co., Inc. et als and FFNC, Inc. (Polyurethane Foam Defendants)

Role:

Suppliers of polyurethane foam to the American Foam Corporation.

1. Failure to Warn

- A. Absolutely no warnings concerning the end-use/final application of its foam.
- B. Inadequate warnings concerning its foam's exceptionally fast rate of burn and of the lethal toxicity of its products of combustion.

2. Product Stewardship

A. Defendants exercised no "stewardship" of its product, making no recommendations to American Foam as to how the foam should be used, to whom it should be sold or not sold and where and how it should be applied.

5. Triton Realty Limited Partnership, Triton Realty, Inc., and Raymond Villanova

Role:

Owner of 211 Cowesett Avenue property, which was leased to various individuals and entities for the operation of restaurants and nightclubs

Claims:

Negligence, Fraud and Violation of R.I.G.L. §9-1-2

Their negligence included:

- failing to correct and remove defective conditions on the premises, including interior finish; and
- failing to correct open and obvious building and fire code violations on the premises.

Fraud included:

- upon information and belief, transferring assets with the intent to hinder, delay, or defraud Plaintiffs.

Framingham- 1 50 FR Realty Limited Partnership by Framingham-150 FR Realty, Inc., its general partner, Seekonk-226 Limited Partnership by Seekonk-226, Inc., its general partner, and Frances A. Villanova

Role:

These entities and Francis Villanova were involved in the conveyance of valuable real estate owned by Triton Realty Limited Partnership and Raymond Villanova for nominal consideration.

Claims:

Fraud

Their fraud included:

- conveyance of valuable commercial real estate for nominal consideration on June 13, 2003 in an attempt to hinder, delay, or defraud creditors of Triton Realty Limited Partnership, the owner of the Station nightclub realty at the time of the fire.

6. Denis P. Larocque, Fire Inspector; Anthony Bettencourt; Stephen D. Murray; and Malcolm Moore, in his capacity as Finance Director of the Town of West Warwick

Role:

Denis Larocque was at relevant times Fire Inspector for the Town of West Warwick and responsible for enforcement of the fire safety laws in the Town.

Anthony Bettencourt was employed as a police officer by the Town of West Warwick, Rhode Island.

Malcolm Moore was the Finance Director of the Town of West Warwick, Rhode Island.

Claims:

Negligence and, as to Denis Larocque, Violation of R.I.G.L. §9-1-2

Their negligence included:

As to Denis Larocque:

- failing to properly inspect the premises at 211 Cowesett Avenue;

As to Anthony Bettencourt:

- failing to monitor and enforce occupancy restrictions;
- permitting dangerous and unlawful overcrowding of the premises;
- failing to enforce Rhode Island's laws for the permitting and use of pyrotechnics; and
- failing to perform his functions intended to protect the patrons of the Station;

As to Stephen D. Murray

Role:

Stephen Murray was the building official for the Town of West Warwick who was responsible for inspecting the Station and enforcing the building codes.

Claims:

Negligence

His negligence included:

- failing to properly inspect the Station and enforce the applicable building codes, including
 - failing to enforce appropriate capacity limitations and exit requirements; and
 - failing to discover and order remedied highly flammable interior finish within the building;

As to the Town of West Warwick:

- failing to adequately inspect The Station for safety hazards and violations;
- failing to enforce fire safety laws, regulations, and standards;
- allowing unsafe numbers of persons on the premises during the performance;
- allowing the use of dangerous pyrotechnic devices during the performance at the Station;
- allowing a public nuisance and fire hazard to exist for an unreasonable period of time;
- failing to provide sufficient security and fire protection for a function at which they knew or should have known large numbers of people would be in attendance;
- knowing of numerous dangerous conditions and fire hazards at The Station and failing to remedy those conditions or ordering them to be remedied;
- failing to protect members of the public for the foreseeable risk of serious injury or death at The Station;
- failing to adequately oversee, supervise, monitor, evaluate, train and/or retrain those performing inspections of The Station; and
- allowing these failures through the actions and inactions of its "detail policeman" Anthony Bettencourt who was performing a non-governmental function typically performed by private security services on the night of the fire.

As to the State of Rhode Island**Role:**

The State of Rhode Island, through its deputy fire marshal Denis Larocque, was responsible for inspecting commercial structures such as The Station in the Town of West Warwick

and for enforcing fire code and building code laws of the State of Rhode Island with respect to such structures.

Claims:

Negligence

Its negligence included:

- failing to properly inspect the Station and enforce the laws of the State of Rhode Island;
- failing to enforce appropriate capacity limitations and exit requirements; and
- failing to discover and order remedied highly flammable interior finishes within the building, including, but not limited to, polyurethane and polyethylene.

7. **Anheuser-Busch, Incorporated and McLaughlin & Moran, Inc.**

Role:

Anheuser-Busch, Incorporated conducts business in Rhode Island through its distributor, McLaughlin & Moran. Anheuser-Busch owns the registered trademark "Budweiser" and through written and verbal agreements with agents such as McLaughlin & Moran, Inc. grants the right to use the Budweiser trademark under circumstances that it controls, including that the trademark not be used for or in support of an illegal activity, such as the ignition of pyrotechnics in an indoor environment before a proximate audience as occurred at the Station.

McLaughlin & Moran, Inc. was the exclusive Rhode Island distributor for Anheuser-Busch and acted as its agent in all matters, including with respect to agreements for the use of the Budweiser trademark to promote, sponsor, and endorse a concert by Great White at the Station on February 20, 2003.

Claims:

Negligence

Their negligence included:

- promoting, endorsing and sponsoring the Great White concert at the Station with knowledge that the band customarily used pyrotechnics;
- failing to make even a minimal inquiry sufficient to discover the dangers of Great White's performance; and

- substantially contributing to the dangerous overcrowding of the premises and the difficulty patrons experienced in trying to exit the Station

8. **Luna Tech, Inc., Luna Tech Pyrotechnik GmbH, and Luna Tech Euro GmbH, High Tech Special Effects, Inc.**

Role:

Luna Tech and its European subsidiaries manufactured the pyrotechnics used by the band Great White at the Station on February 20, 2003.

Claims:

Negligence, Strict Liability, and Breach of Warranty

Their negligence included:

- failing to use due care in the manufacture, sale or distribution of the pyrotechnics;
- failing to make or cause to be made reasonable research and/or testing as to the effects of the pyrotechnics;
- failing to otherwise adequately test the pyrotechnics before providing it, distributing it or selling it;
- failing to warn potential and actual users of the product of its potential hazards;
- failing to properly and adequately educate users about the use and hazards of the pyrotechnics;
- failing to provide adequate protection for persons coming into contact with the pyrotechnics, such as plaintiffs, from suffering the injuries which plaintiffs suffered; and
- failing to use due care in the design, manufacture, testing, inspecting, marketing, advertising, labeling, packaging, provision, distribution and/or sale of the pyrotechnics.

High Tech Special Effects, Inc.

Role:

High Tech Special Effects, Inc. sold to Great White the pyrotechnics that Great White used at the Station on February 20, 2003.

Claims:

Negligence, Strict Liability, and Breach of Warranty

Their negligence included:

- failing to use due care in the manufacture, sale or distribution of the pyrotechnics;
- failing to make or cause to be made reasonable research and/or testing as to the effects of the pyrotechnics;
- failing to otherwise adequately test the pyrotechnics before providing it, distributing it or selling it;
- failing to warn potential and actual users of the product of its potential hazards;
- failing to properly and adequately educate users about the use and hazards of the pyrotechnics;
- failing to provide adequate protection for persons coming into contact with the pyrotechnics, such as plaintiffs, from suffering the injuries which plaintiffs suffered; and
- failing to use due care in the design, manufacture, testing, inspecting, marketing, advertising, labeling, packaging, provision, distribution and/or sale of the pyrotechnics.

9. Joseph Lafontaine d/b/a New England Custom Alarms

Role:

Joseph Lafontaine and his company, New England Custom Alarms, were engaged by Howard Julian, who was then the operator of the Station, to design and install a fire alarm system at the Station.

Claims:

Negligence

His negligence included:

- failing to properly and adequately design and install a fire alarm system at the Station, including
 - failing to tie the alarm system in to the buildings HVAC system, lighting system, or sound system in this place of public assembly where loud music would be played.

10. Jack Russell, Jack Russell Touring, Inc., Paul Woolnough, Manic Music Management, Inc., Knight Records, Inc.

Role:

Jack Russell was the lead singer of Great White. Jack Russell Touring employed Great White to perform at the Station.

Paul Woolnough managed and controlled many aspects of Great White's performance, including its use of pyrotechnics, as the principal of Knight Records and Manic Music Management.

Claims:

Negligence and Violation of R.I.G.L. §9-1-2

Their Negligence included:

- Failing to use reasonable care and to comply with RI laws, including-
 - failing to obtain a valid certificate of competency from the State Fire Marshal for the possession and display of pyrotechnics,
 - failing to obtain a permit for the use and display of proximate pyrotechnics,
 - failing to comply with the Rhode Island Fire Safety Code for Fireworks and Pyrotechnics, and
 - failing to display pyrotechnics in accordance with the requirements of the National Fire Protection Association Standard 1126 concerning Use of Pyrotechnics before a Proximate Audience.

Daniel Biechele

Role:

He was the tour manager for Great White, an agent for Knight Records, Manic Music, and Jack Russell Touring, and the person who ignited the pyrotechnics at the Station on February 20, 2003.

Claims:

Negligence and Violation of R.I.G.L. §9-1-2

His negligence included:

- negligently igniting pyrotechnics before a proximate audience,
- failing to use reasonable care and to comply with RI laws, including-

- failing to obtain a valid certificate of competency from the State Fire Marshal for the possession and display of pyrotechnics,
- failing to obtain a permit for the use and display of proximate pyrotechnics,
- failing to comply with the Rhode Island Fire Safety Code for Fireworks and Pyrotechnics, and
- failing to display pyrotechnics in accordance with the requirements of the National Fire Protection Association Standard 1126 concerning Use of Pyrotechnics before a Proximate Audience.

Mark Kendall, David Felice, and Eric Powers

Role:

Mark Kendall, David Felice, and Eric Powers were members of Great White who were performing at the Station on the night of the fire.

Claims:

Negligence

Their negligence included:

- aiding and assisting in the use of pyrotechnics while failing to use reasonable care and failing to comply with the laws of the State of Rhode Island including:
 - failing to obtain a valid certificate of competency from the State Fire Marshal for the possession and display of pyrotechnics;
 - failing to obtain a permit for the use and display of proximate pyrotechnics;
 - failure to comply with the Rhode Island Fire Safety Code for Fireworks and Pyrotechnics; and
 - failing to display pyrotechnics in accordance with the requirements of the National Fire Protection Association Standard 1126, entitled "Use of Pyrotechnics Before a Proximate Audience."

11. **Polar Industries, Inc.; Celotex Corp. and its successors in interest, Knight-Celotex Lisbon Falls LLC, Knight-Celotex LLC, Knight Industries, Inc., Knight Industries, LLC, and Knight Industries I, LLC; and Home Depot U.S.A., Inc., Home Depot**

Role:

Polar Industries, Inc. manufactured and sold PolarGuard brand polystyrene insulation which was purchased by Howard Julian, who then operated the Station, and installed in the exposed ceiling of the drummer's alcove and elsewhere in the Station in early 2000.

Celotex Corporation manufactured, sold, and distributed Celotex SoundStop board which was sold to the Derderians by Home Depot and installed in the ceiling of the drummer's alcove and elsewhere within the Station.

Home Depot U.S.A., Inc. sold the PolarGuard insulation and Celotex SoundStop board that was installed at the Station.

Claims:

Negligence, Strict Liability, and Breach of Warranty

Their negligence included:

- failing to use due care in the manufacture, sale or distribution of the insulation and/or board;
- failing to make or cause to be made reasonable research and/or testing as to the effects of the insulation and/or board;
- failing to otherwise adequately test the insulation and/or board before providing it, distributing it or selling it;
- failing to warn potential and actual users of the product(s) of its(their) potential hazards, including but not limited to its(their) unsuitability for use as an exposed interior surface without proper thermal barrier susceptible to exposure to heat or flame;
- failing to properly and adequately educate users about the use and hazards of the insulation and/or board;
- failing to provide adequate protection for persons coming into contact with the insulation and/or board, such as plaintiffs, from suffering the injuries which plaintiffs suffered; and
- failing to use due care in the design, manufacture, testing, inspecting, marketing, advertising, labeling, packaging, provision, distribution and/or sale of the insulation and/or board.

13. Jeffrey Derderian, Michael Derderian, and DERCO, LLC

Role:

Owners and operators of the Station nightclub; Jeffrey Derderian was also an investigative reporter for WPRI-Channel 12 filming an investigative piece on nightclub safety on the night of the Station Fire.

Claims:

As to all three – Negligence and Violation of R.I.G.L. §9-1-2

As to Jeffrey Derderian – Negligence as an investigative reporter/agent for TVL or STC Broadcasting

Their negligence included:

- contributing to/allowing the Station to be overcrowded on February 20, 2003;
- installing and maintaining defective materials, including flammable foam and other interior finish, in the Station;
- failing to insure compliance with RI law concerning the permitting and use of pyrotechnics;
- failing to provide numerous fire prevention, detection, and suppression materials at a Station; and
- failing to provide proper means of egress and adequate and operable lighting to illuminate means of egress during the fire.

Jeffrey Derderian's negligence additionally included:

- failing to call attention to the issues within The Station while filming an investigative report on the night

13. Sealed Air Corporation

Role:

Manufacturer of polyethylene foam placed into the Station nightclub by a prior owner, Howard Julian in 1996.

Claims:

Negligence

Its negligence included:

- Failure to warn of the end use/final application of the foam and of
- The fast rate of burn, energy yield and toxicity of the foam.

14. ABC Bus, Inc. d/b/a ABC Bus Leasing, Inc. and Superstar Services LLC

Role:

ABC Bus, its associated leasing entity, and Superstar Services LLC provided transportation to Great White's personnel and equipment into and within the State of Rhode Island, including the transport of more than 25 kilograms of explosive materials (fireworks) into Rhode Island.

Claims:

Negligence and Violation of R.I.G.L. §9-1-2

Their negligence included:

- transporting into Rhode Island 25 kilograms of explosive pyrotechnics, without registration or permit; and
- allowing the same to be used by unlicensed persons in close proximity to the public within a confined, highly flammable space.

15. JBL Incorporated f/k/a James B. Lansing Sound, Incorporated d/b/a JBL Professional

Role:

JBL Incorporated and its associated entities manufactured the speakers/amplifiers that were used for the amplification of sound inside the Station. These speakers/amplifiers had, among other things, highly flammable foam on and within them that contributed to the combustion of the Station.

Claims:

Negligence, Strict Liability, and Breach of Warranty

Their negligence included:

- failing to use due care in the manufacture, sale or distribution of the amplifiers;
- failing to make or cause to be made reasonable research and/or testing as to the effects of the amplifiers;
- failing to otherwise adequately test the amplifiers before providing them, distributing them or selling them;
- failing to warn potential and actual users of the product of its potential hazards;
- failing to properly and adequately educate users about the use and hazards of the product;

- failing to provide adequate protection for persons coming into contact with the product, such as plaintiffs, from suffering the injuries which plaintiffs suffered; and
- failing to use due care in the design, manufacture, testing, inspecting, marketing, advertising, packaging, provision, distribution and/or sale of the product.

16. Howard Julian

Role:

Previous owner of La Villa Strangiato, Inc., which 211 Cowesett Avenue prior to it being leased by the Derderians and DERCO for the operation of the Station.

Claims:

Negligence and Violation of R.I.G.L. §9-1-2

His negligence included:

- installing and maintaining defective material, including interior finish, on the premises at 211 Cowesett Avenue that caused or contributed to fire spread at the Station on February 20, 2003

17. Anchor Solutions Company, Inc., Essex Insurance Company, V.B. Gifford & Company, Inc., Gresham & Associates of R.I., Inc., Gresham & Associates of Rhode Island, Inc., High Caliber Inspections, Inc., Multi-State Inspections, Inc., Surplex Underwriters, Inc., and Underwriters at Lloyds, London (Insurance inspection defendants)

Role:

Inspection of nightclub for insurance purposes.

Negligence:

Failure to identify hazardous conditions on the premises.
Failure to warn about them.

B. Formulation of Plaintiffs Theories Of Liability

Plaintiffs counsel and experts spent several months investigating the fire at the fire site. Daily visits and planning meetings were held. Seven hundred seventeen (717) artifacts were tagged, photographed and indexed for further inspection and testing. A warehouse was found and suitably

refurbished in Cranston to house these artifacts and the actual stage where the band Great White played and the pyrotechnics were lit.

Plaintiffs counsel worked closely with many experts from different scientific disciplines to develop plaintiffs' theories of liability. Multi-day meetings between plaintiffs counsel and their team of experts occurred.

Plaintiffs counsel formed committees and sub-committees which met regularly to develop theories of liability and pour through documentary evidence that had been obtained through formal and informal discovery and investigation. Plaintiffs counsel became involved as well into the Criminal Proceedings to preserve important foam evidence.

Miscellaneous petitions were filed seeking discovery relating to product identification and other essential elements of plaintiffs proof. Important documents were obtained before defendant Budweiser filed its petition to remove the case to federal court.

Plaintiffs counsel placed ads in newspapers across Rhode Island seeking photographs and videos of the inside of the Station Nightclub before the fire.

Plaintiffs counsel drafted a comprehensive master complaint. It was 249 pages long with 96 defendants and 133 counts in total.

C. Defense Motions to Dismiss

Many defendants filed 12b6 motions to dismiss plaintiffs' claims against them. Intensive legal research and comprehensive memoranda were prepared and filed by plaintiffs counsel. Multiple hearings were held. Plaintiffs counsel were successful in defending their theories of liability in most instances.

D. Defendants Motions of Summary Judgment

Defendants filed motions for summary judgment containing thousands of pages of memoranda and exhibits. Plaintiffs counsel researched both the law and science and consulted extensively with experts to be able to file Rule 56 (f) motions seeking summary judgment discovery. Multiple hearings were held on plaintiffs Rule 56 (f) motions. Court decisions were issued granting important summary judgment discovery. This raised the very real prospect for defendants that they were going to have to engage in complex summary judgment discovery.

The years in this case before the beginning of settlement negotiations and mediation were critical to our successful settlement efforts. The enormity of the task facing plaintiffs counsel was met with many hundreds

and collectively thousands of hours of work, many of it in developing novel theories of liability.

Plaintiffs counsel also spent countless hours working on committees appointed by the Court dealing with "discovery", "foam" and "settlement."

There has been no case paradigm for plaintiffs counsel to follow. A careful step by step approach was adopted. Critical additional momentum was gained with each step taken and accomplished.

All of the above efforts made defendants desirous of entering settlement negotiations. Without this effort, defendants would never have come to the settlement and mediation table as they have done.

II. Settlement and Mediation

A. Professor McGovern and Jeffrey Dahl.

An additional underpinning to the settlements and mediations discussed below was the work of Professor Francis McGovern who developed the distribution point system and of Jeffrey Dahl and his team of professionals who translated Professor McGovern's grid into precise points per plaintiff. Matt Garretson and his firm have worked with plaintiffs counsel to obtain compromises from Medicare and Medicaid, both of which subjects were very important to defendants and their counsel.