

## Plaintiff's Icy-Weather Experience Not a Factor in \$700K Slip/Fall Verdict

By Greg Land

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**A** woman who slipped and fractured an ankle on a patch of black ice outside an office park was awarded \$700,000 by a Fulton County jury, which turned aside defense arguments that the plaintiff, as a former resident of Chicago, should have had experience in recognizing and walking on frozen surfaces.

Layla Bitoy's attorney, James Rice, said he was concerned when three of his client's colleagues who were with her when she fell testified that they had seen the ice and didn't know why she hadn't avoided it.

They "basically threw her under the bus," said Rice, describing their testimony as, "Yeah, we knew it was cold and rainy, we knew there was ice, don't know why she didn't see it.' They were all very complimentary of her work, but they remembered differently from her. I was very worried about that."

The jury apportioned 80 percent of the liability to the property owner and management companies, Transwestern Commercial Services and Istar Financial Inc., and 15 percent to the security company servicing the building, Metropolitan Security Services, d/b/a Walden Security. The panel allocated 5 percent to Bitoy's employer, AllConnect Inc., which was not a party to the suit.

Stephen Schatz, who represented Transwestern and Istar along with Swift, Currie, McGhee & Hiers colleague Audrey Eschman, declined to comment on the case. Walden's attorney, Matthew Barr of Hawkins Parnell Thackston & Young, was not available for comment.

According to Rice and court filings, Bitoy, now 32, was attending a strategy session with her coworkers



**James Rice** (*John Disney/Daily Report*)

at the RiverEdge Summit office complex outside the Perimeter near the Chattahoochee River on Dec. 15, 2010, when sleet, freezing rain and snow began to fall in the early afternoon.

Temperatures had been at or below freezing all day, according to the defense portion of the pretrial order, and the Walden security officer on duty began to spread ice melt on the walkways and in the parking lot. At 4:55 p.m., a Transwestern official based in the building sent an email to its tenants alerting them to the inclement weather and advising them to stay on pathways that had been treated with the ice melt.

At about 6 p.m., Bitoy and others attending the meeting left. After Bitoy stepped off of the sidewalk she "claims she began sliding," but continued to walk across the parking lot and fell, the defense account said. Two of her colleagues sought out the security officer, Jerome Kimble, and asked where the nearest urgent care facility was so they could take Bitoy for treatment.

Kimble looked up the location and asked whether he should call a medical unit to the scene, but they declined the offer.

Bitoy underwent surgery to have a steel plate and screws inserted in her ankle, and another to have them removed, Rice said. Her medical bills totaled about \$60,000, he said.

In March 2012, Bitoy filed a premises liability suit against Transwestern and Istar in Fulton County Superior Court.

In October 2012, Transwestern and Istar filed a third-party complaint and cross-claim against Walden, bringing the security company into the litigation.

According to their portion of the pretrial order, Transwestern and Istar focused blame for the accident upon both Bitoy and Walden.

Their portion of order said Bitoy had attended high school in Chicago but, even so, “testified that she had never walked on ice before.”

Walden, it said, was required by its contract to spread ice melt “on any asphalt surface” once ice began to accumulate. The security company had also breached its contractual obligation to obtain liability insurance and have Transwestern and Istar added to the policy, and to indemnify them and pay their attorney fees for the litigation.

Walden’s portion of the order said it had fulfilled its duties to treat the sidewalk and walkways in front of the building, and that it had responsibility for the “literally thousands of parking spaces” in the building’s lot. Walden also denied breaching any contractual obligations owed to Transwestern and Istar.

During a mediation earlier this year, Rice said, “our walkaway number was \$200,000, and the highest they got up to—hypothetically—was \$100,000.”

Trial commenced Nov. 17 before Fulton County State Court Judge Myra Dixon, with Rice assisted by associate Stephen Carlson.

While the codefendants had formerly been at odds with each other leading up to trial, Rice said that changed at trial.

“The defendants had been fighting each other all during the litigation, then, on the day of trial, they switched gears and it turned into a love-fest,” he said.

“The owners said the security company did a bang-up job, and the security company said the owners did a bang-up job.”

“It took some work, but by the end of the trial we got ‘em fighting again,” he said.

In addition to questions of whether Bitoy should have seen the ice and been more careful, said Rice, other issues included the likelihood that she might need future surgeries, and whether the Transwestern officer in the building on the day of the ice storm should have alerted tenants earlier.

“We contended that Ms. Bitoy would need future surgeries; they contended she had not been to the doctor in two years, and that any future surgeries were all speculation,” he said.

The defense also said that Bitoy’s employer bore some of the blame for her injuries, Rice said, because the company had sent its other on-site employees home early while keeping the strategy session going.

There were no experts other than Bitoy’s treating physician, he said.

Rice said he asked for \$800,000 during his closing. While the jury was out, he said, he discussed entering into a high-low agreement with the defendants. Walden was “very interested,” he said, but Transwestern and its insurer were not interested.

“The highest offer we got from them was \$5,000,” he said.

After four days of trial, the jury took about 2½ hours to award Bitoy \$700,000, he said; minus the 5 percent apportioned to her employer, the total award comes to \$665,000.

In conversation with jurors afterward, Rice said some indicated that they doubted the Transwestern official’s story regarding his efforts to warn building tenants of the inclement weather.

“They also said they liked Matt Barr, who represented the security company—really liked him personally—and they liked the security guard,” said Rice. “Maybe that’s why they only got 15 percent [of the liability].”

The case is *Bitoy v. Transwestern Commercial Services*, No. 12EV014602.