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Community's automated guard gate abruptly drops onto exiting bicyclist causing severe injury

On November 5, 2017, Mr. and Mrs. Brown (names have been changed to ensure confidentiality) were riding their bicycles to visit a relative nearby in south Florida. Leaving the gated community of their relative, they approached an automatic guard gate that was owned and operated by the County. The gate's arm first opened for Mr. Brown to exit, and then it closed. As Mrs. Brown approached the gate, it opened again. As she biked through the gate, it abruptly closed, hitting her and throwing her off her bike and onto the pavement. A bystander called 911 and first-responders transported Mrs. Brown to a hospital. Her left humerus (elbow) was broken. Ultimately, she required three surgeries to repair the serious injury.

Following the emergency medical care, the Brown family contacted Searcy Denney attorney **Matt Schwencke** to investigate a claim against the County. The photo accompanying this article shows the exit gate at issue on the day following the incident. The investigation revealed that there was a roadway sensor in front of the gate arm that senses when a metal vehicle is present, triggering the gate arm to rise. As owner/operator of the gate, the County had a non-delegable duty to operate and maintain the gate in a reasonably safe manner and to warn users of potential dangers in its operation. There are tiny decals posted on the gate mechanism by the manufacturer which alerts the gate owner and users that no motorcyclists, bicyclists, or pedestrians should exit via the gate arm. On the gate arm itself, there is a small decal that states "automotive traffic only, one vehicle at a time." Despite the County's awareness of these minuscule warnings, it failed to sufficiently warn the public that it was dangerous to exit the neighborhood via the gate on a bicycle, motorcycle, or walking.

The County conceded that Mrs. Brown's significant and permanent injuries were causally related to the incident at the gate, and the County offered a meager \$20,000 settlement for Mrs. Brown's claim and \$20,000 settlement for Mr. Brown's claim of loss of consortium. Pressing for settlement, the County stated it would attempt to recover its attorney fees and costs in the event of a verdict on behalf of defense. The Brown family, trusting the advice of their attorney, elected to let a jury decide on a fair and just outcome.



**Mrs. Brown's
injured arm**



The case proceeded to trial with Mr. Schwencke leading and Searcy Denney attorney **Guy Murphy** assisting. The County took the position that the Browns should have used the "gap" to the right of the gate arm's mechanism and to the left of the curb and bushes at the exit. Further, the County claimed that the decals and gate arm sign were adequate warnings that the couple should not have exited through the gate. Mr. Schwencke's roadway operations expert pointed out that the tiny decals were insufficient warnings, and that the decals were, instead, warnings for the owner of the gate – the County. The plaintiffs' expert also noted that the "gap" between the gate mechanism and the curb were inadequate for safe exiting by bicycles and motorcycles. To further confirm his argument and to confront the County's expert, Mr. Schwencke presented the jury with a video of the defense expert himself exiting through the gate on a bicycle. The video clearly confirmed that the warnings on the gate box and arm were imperceptible in real time to a bicyclist.

After a four-day jury trial, justice prevailed when the jury found the County to be 100% negligent for Mrs. Brown's injuries. The jury awarded \$4,750,000 to Mrs. Brown for pain and suffering and awarded \$165,000 to Mr. Brown for his loss of consortium. ♦