The Agenda

Verdicts

Small Firms, Big Wins

The firms behind some of the largest jury verdicts of 2005.

By Karen Dean

Testing the waters with a mock jury and the use of enhanced trial technology were two themes that underlay some of the largest jury verdicts of 2005. Yet, while technology played a major role in refreshing or impeaching testimony, not to mention swaying juries, at least one firm demonstrated why toy cars and plain old physics can still win cases, too.

Estate of Cabrera v. Eller Media Co. The 1998 death of a 12-year-old Miami boy by electrocution resulted in a $65.1 million verdict against Eller Media Co., an outdoor advertising company and subsidiary of Clear Channel Communications.

Eller Media built and wired lighted bus shelters throughout Miami-Dade County. After arguing with his mother, Jorge Cabrera, Jr. left the house and sought refuge from a thunderstorm in one of those shelters. He was found dead the next morning, and had sustained small burns typical of electrocution.

The boy's divorced parents each brought a claim against Eller Media and the electrician responsible for the installation. The mother settled for an unidentified amount prior to trial.

The question of liability pitted the defendants against Mother Nature. Defense attorneys claimed the boy was struck by lightning, while the plaintiff successfully argued that his death was due to the shoddy workmanship of unlicensed electricians retained by Eller Media.

An investigation revealed a myriad of problems at the shelter; an improperly installed transformer and grounding rods, faulty wiring, and no fuses. In short, says plaintiff's attorney Ervin

Gonzalez, it was a "death trap."

There was no evidence of a lightning strike, but Gonzalez admits the theory caused concern. Eller Media committed to that theory and, according to trial testimony, spent at least $750,000 on expert expenses.

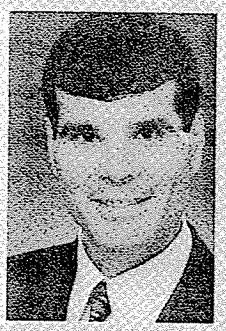
The plaintiff attorneys held a mock trial during the discovery phase, primarily to sharpen the theme and test the lightning theory. The 15-20 jurors responded well to the plaintiff's presentation, which, Gonzalez says, justified the $4,500-$5,000 cost.

The attorneys also decided to use local experts for the electrical and medical testimony. "We decided to go with the investigators who originally documented the problems," says Gonzalez. "They had seen the glaring violations firsthand." And, he added, this made a good contrast with the defendant's many outside experts.

For presentations, Gonzalez used TrialDirector software made by inData Corporation, based in Arizona. "I try to use a combination of visuals," he says. "If you only use one [type], no matter what it is, it can get boring."

After deliberating for a day and a half in June, 2005, the jury returned a verdict against Eller Media for $4.1 million in compensatory damages and $61 million in punitive damages. The defendant has indicated it will appeal the verdict.

Big Wins



Colson, Hicks, Eidson
Coral Gables, Fla.
Verdict: $65.1 million
Estate of Cabrera v. Eller Media Co.
Miami-Dade 11th Circuit Court
Plaintiff's Attorneys:
Ervin Gonzalez (left), Robert Martinez

Romanucci & Blandin
Chicago
Verdict: $17.7 million
Hudson v. City of Chicago
Plaintiff's Attorneys:
Antonio Romanucci, Stephan Blandin (left)

Nagel, Rice & Mazie
Roseland, N.J.
Verdict: $135.4 million
Verni v. Lanzaro
Bergen County Superior Court
Plaintiff's Attorneys:
David Mazie (left)

Advanced Medical Optics, Inc. v. Alcon Laboratories, Inc. A California jury received an education in ophthalmologic phacoemulsification. And, Alcon Laboratories, Inc., received a lesson in patent infringement that may cost much more than the nearly $95 million verdict.

Advanced Medical Optics (AMO) held a patent on a device that protects the eye during cataract surgery. Surgeons use ultrasound to remove cataracts through what is called phacoemulsification, the process of breaking up and removing the cataract. Liquids flow through the ultrasound device, keeping it cool. If these liquids become blocked during the process, there is a risk of burning the eye.

Alcon engineers proposed creating a similar product. Their lawyer advised against it, citing the patent. After what the Alcon lawyer described as "protracted negotiation" with the persistent engineers, he consulted outside counsel. He was told the patent was invalid, and the go-ahead was given for engineers to start development.

Two mock trials were held. Plaintiff's attorney Andrew Isbester says mock trial feedback helped them better plan trial strategy. "After hearing their opinions, we were able to restructure our time allotment on each of the issues and better allocate our resources," he says.

Following the verdict, Alcon claimed AMO failed to properly mark products with patent information. In June, a hearing was held on that issue. The judge subsequently reduced the jury's award from $94.8 million to $71.3 million on

that evidence. Then, in a stunning blow to the defendant, he ruled that the willful and intentional infringement activity of Alcon warranted additional damages. The verdict was adjusted to $213.9 million. Defendant plans to appeal.

Verni v. Lanzaro. Serving too much alcohol to a drunken fan was costly for a stadium beer concessionaire. Aramark Corp., a Pennsylvania corporation, was found liable in a post-game automobile collision, caused by an inebriated football fan, that left a two-year-old girl paralyzed from the neck down.

What's more, the jury found that Aramark showed a "wanton and willful disregard" for others by its actions. "We presented witnesses to show that they repeatedly and as a matter of policy served visibly intoxicated people," says plaintiff's attorney David Mazie.

David Lanzaro attended a National Football League game at Giants Stadium in October 1999. There was testimony that he was visibly intoxicated and slurring his speech when he bought beer at the stadium. When leaving the stadium, Lanzaro collided with the Verni family's vehicle. The mother was injured and her daughter Antonia was permanently paralyzed.

Testimony showed Lanzaro bought six 16-ounce beers during half-time and had a blood alcohol level of 0.266 percent at the time of the collision.

According to Mazie, the discovery process had plenty of unexpected twists. It was revealed that Aramark employees consistently served intoxicated patrons and, contrary to their claims, less than half of the employees had any formal training. The company maintained there was a two-beer per purchase limit, but there were few documented instances of vendors refusing to sell drinks.

Unsurprisingly, many of the defendant's employees were less than forthcoming at trial. In those situations, the plaintiff's team relied heavily on video deposition replay. "In one instance, a witness claimed I had intimidated him into a certain answer during the deposition," Mazie says. "We were able to call up that moment of the deposition on the replay. The tone and response was obvious to see. It got to the point where the jury was snickering at him."

The firm hired a technical consultant for trial, which Mazie feels was critical. "Technology really made the difference in this case," he says. "It's also the first time I used the video deposition replay so heavily. But it really paid off."

The jury found Aramark 50 percent liable for the collision. Compensatory damages were $60 million, with $75 million awarded in punitive damages.

Using video deposition, replay really paid off.

Hudson v. City of Chicago. In a courtroom filled with thousands of dollars in computer animation and video displays, the best evidence may have been $4 worth of plastic cars.

Grown men don't often get down on a courtroom floor to play with plastic cars, but that's what the attorneys for Vernon Hudson did. In the process, they crumbled the defense theory of the case.

In 2001, Hudson was driving on a Chicago expressway when he was struck by a city of Chicago police officer attempting to catch up to a high-speed pursuit. Hudson had been moving onto the shoulder of the road when struck. His car left the roadway and rolled several times. He sustained a severe cervical spine injury that left him a quadriplegic.

The city of Chicago invoked sovereign immunity. "Their underlying theme was they were chasing a bad guy and you have to let the cavalry come or it endangers citizens," says Stephan Blandin, plaintiff's attorney. "There's always a risk that the jury will ignore the physical evidence and accept that."

The investigation proved to be a challenge for the plaintiff's attorneys. The police report incorrectly identified the scene of the accident, and Hudson had no recollection of the collision. By a stroke of luck, a bystander had taken a photo of the scene. The actual location of the collision was eventually determined from this photo, and was three-quarters of a mile from what was stated in the report. That was significant, says plaintiff's co-counsel Antonio Romanucci, because the shoulder of Chicago interstates might vary in width and degree every few hundred feet.

Two mock juries heard the case, each with different evidence. "We always try to present the worst case scenario to the mock jury," says Blandin. "If there is questionable evidence that may not be allowed, we don't use it."

Computer animation, digital exhibits and enlarged photos all helped prove plaintiff's case. And then there was Romanucci's favorite demonstrative evidence – plastic cars. "We bought two toy cars and would roll them at each other at the same angle our expert said the accident happened," he says. "And by golly, if it didn't turn out the same way as the actual collision."

"We eventually got the doctor [testifying for the defense] to agree that the way we were pushing them together was the way it occurred, and it couldn't have happened the way he was suggesting," says Romanucci. "Thank goodness physics don't lie."

The city of Chicago has appealed. SFB

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