

CHICAGO LAWYER®

VOLUME 25
NUMBER 10

A PUBLICATION OF THE LAW BULLETIN

October ★ 2002

SETTLEMENT SURVEY

Three sexual assault cases among year's big settlements

by Kristi O'Brien

Three sexual assault cases listed in the Chicago Lawyer 2002 Settlement Survey drew settlements topping \$1 million, and one set the record for sexual assault settlements in the state.

Robert A. Clifford and Timothy S. Tomasik of Clifford Law Offices, with William H. Hooks of Hooks Law Offices, recorded a \$3.02 million settlement in the Girl X case, *American National Bank, as Guardian of the Estate of Girl X, et al., v. Digby's Security, Apollo's Detective Agency and CHA*, 97L 15263. That is the highest sexual assault settlement in the state, according to Jury Verdict Reporter records.

The case involved a 9-year-old girl who was abducted, sexually assaulted, strangled and poisoned on Jan. 9, 1997 in Cabrini Green.

Richard L. Pullano of the Law Offices of Richard L. Pullano garnered a \$1.55 million settlement in *Carolyn M. Dale v. Parliament Enterprises, Ltd.*, 97L 14338.

The case involved a female, 22, who allegedly was raped in her apartment by the building janitor's 16-year-old son. The lawsuit claimed the 16-year-old used the janitor's master key to gain entrance to the woman's apartment.

And, David C. Wise, then of Corboy & Demetrio and now with Burke, Mahoney & Wise; and Susan J. Schwartz of Corboy & Demetrio, secured a \$1.40 million settlement in *Terry Olson v. Merchandise Mart Properties Inc., et al.*, 97L 11589.

The case involved a female, 58,

who was attacked and sexually assaulted behind a showroom in the Merchandise Mart. The lawsuit alleged gaps in security.

The sexual assault cases are among the 219 settlements listed in the Chicago Lawyer 2002 Settlement Survey (see list of stories and charts, page 7).

The survey includes tort settlements of at least \$1 million in cases that were filed or eligible to be filed in Illinois circuit courts. Settlements had to have been published in Chicago Lawyer, the Chicago Daily Law Bulletin or Jury Verdict Reporter between July 1,

The bank's practice was

to hold surplus escrow funds.

2001 and June 30, 2002. All are publications of Law Bulletin Publishing Co.

All three cases were settled with building owners and/or security companies.

The lawyers involved say it's difficult to prove the owner of a public entity is liable for an individual's criminal acts.

"Two years were spent responding to motions to dismiss and repleading various causes of actions against CHA and the security companies prior to discovery and settlement," Tomasik said of the Girl X case.

Tomasik said he and the other

plaintiffs' attorneys were able to show that there were open, vacant units in the building kept in dilapidated condition.

"And, we established that [the CHA] consistently failed to properly clean and seal these units. We alleged that ... the toxic roach spray [used to poison Girl X] was obtained from an open and vacant apartment that had been found to have been in that condition on several instances prior to the criminal act," he said. "That made a criminal attack of this nature reasonably foreseeable."

The lawsuit alleged inadequate security in her Cabrini Green building.

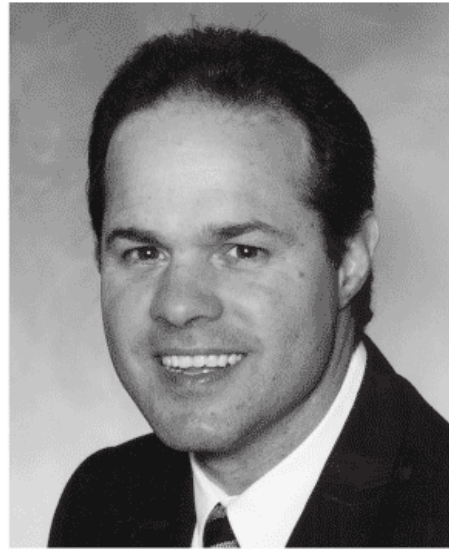
"Given the complex nature of the facts and circumstances surrounding the assault, and the immunities which insulate public entities from liability, especially for the criminal acts of others, we were pleased that the parties were able to reach a fair and reasonable settlement," he said.

Pullano, who settled the case against Parliament Enterprises, Ltd. for \$1.55 million, said it's sometimes difficult to secure high settlements, particularly more than \$1 million, in sexual assault cases.

"They're such heinous crimes when you deal with an emotional and psychological injury. But, I do not believe there is as much information out there to try to put a reasonable parameter on the case," Pullano said. "So, I think the interesting thing is you're dealing with somebody who doesn't have a physical injury, doesn't have nominal or significant medical expense, no wage loss, she can



Timothy S. Tomasik



Richard L. Pullano



David C. Wise

continue to work on a regular basis, but you have this overwhelming injury that significantly impacts my client almost on a daily basis.”

Pullano said in most settlements of more than \$1 million, one or both of two factors are present.

“There is significant future monetary loss, either in medical care or in lost wages, or you have an overwhelming amount of pain and suffering and/or a disability,” he said. “In the Carolyn Dale case, these are all internal scars. So, I think it’s a different way of presenting the severity of the injury.”

Yet Pullano was not surprised at the high settlement.

“I thought what she received was fair and reasonable based on what I think is every woman’s worst nightmare — to be in the sanctity of your home in the middle of the night sleeping, and to be woken up and assaulted by an intruder,” he said. “And while the attack may only have lasted three to five minutes, the residual affects will never go away.”

Pullano said the woman, who is single and lives alone, immediately moved to a different apartment complex. She now has extra security locks installed on her doors and windows.

Burke, Mahoney and Wise name partner David C. Wise, who was with Corboy & Demetrio when he worked on the sexual assault case against the Merchandise Mart, said security measures taken by the building owner were not sufficient to keep a building of that size secure.

“This is the third largest

building in world, square-foot wise. There were about a half a dozen guys marching around trying to keep things locked up at night,” he said. “There was no closed camera, no electronic security. It was so easy to get in there and hide.”

Wise said the assault happened after hours, when only those with proper identification were supposed to be in the building.

The perpetrator, now in prison, “testified he went in a locked door when someone was coming out. He got on a freight elevator being operated by a Merchandise Mart employee, and said, ‘Can you take me up?’ The employee said, ‘Yeah. Where do you want to go?’ ”

Wise said the defendant had been in the building before, looking for items to steal, and chose a floor he knew. When he saw the woman behind her showroom on that floor, the man attacked her, Wise said.

“He beat her to a pulp,” he said.

Wise said it was in the victim’s best interests to settle the case.

“She’s just the nicest lady in the world. If you put this on trial, she’s got to sit there and listen to what happen,” he said. “And, it was just brutal.”

The woman has since moved out of state, Wise said.

Other cases

Other cases from this year’s survey include a medical malpractice/product liability case, a product liability case involving a portable playpen and the Eric Morse case.

When Stephen D. Phillips of

John G. Phillips & Associates took John Laschinski’s case, he didn’t expect much out of the ordinary.

But, by the time it settled, the case that started as a product liability case had turned into a product liability and medical malpractice case — and had landed the victim a side job in the legal industry.

Laschinski herniated a thoracic disc when a rubberized pressure hose on a Brown thermoforming machine exploded, came off the fitting and struck him, Phillips said.

Then, when Laschinski underwent surgery for the disc herniation, Phillips said, the doctor operated on the wrong disc: “It’s crazy. He went in the wrong space. He looked at an X-ray and went in the wrong space.”

Laschinski suffers from some numbness and tingling in his hands and some loss of range of motion in his neck, Phillips said.

Phillips said it’s difficult to determine how much of his current condition was caused by the surgery and how much was caused by the injury from the pressure hose.

“It’s a single, indivisible injury. There was no way to separate the extent of the injury,” he said. “We knew both contributed to it, but it’s jury’s place to decide how much each defendant contributed.”

So, the case became product liability and medical malpractice.

“It’s pretty rare, but it does happen that a case can be listed as both,” he said.

The peculiarities of the case

don't stop there, Phillips said.

"This was a guy who would actually help out on his own case. He'd do research on the Internet, and he got some very germane information," Phillips said.

Phillips plans to get Laschinski's help with future cases.

"I told him I would like to hire when I have special projects. He's a very smart guy," he said.

Laschinski has since moved to Arizona because Chicago's cold, wet weather irritates his back.

John Laschinski v. Brown Machine, division of John Brown Inc. and Dr. Michael Rabin, 96L 12855.

Portable crib

Shawn S. Kasserman, of Corboy & Demetrio and David C. Wise, then of Corboy and now with Burke, Mahoney & Wise, settled a case involving a portable crib for \$3 million. *Linda Ginzler v. Kolcraft Enterprises, Inc., et al., 98L 7063.*

Wise said making public the manufacturer's name was the important part of the agreement.

According to the lawsuit, a 16-month-old male suffocated when a Playskool portable crib manufactured by Kolcraft Enterprises collapsed around the infant's neck.

Defense attorneys said the crib was involved in the deaths of six other children, and this settlement was the first that didn't include a confidentiality condition.

"[The defendants] wanted this one to be confidential; but we said, 'No, this has got to stop,'" Wise said. "When the others settled, they were still selling them after these kids got killed."

Wise said it was important to the infant's parents that the manufacturer's name be revealed.

"They are part of a charitable organization called Kids in Danger, and they wanted this to be a

Pullano: "I thought what she received was

fair and reasonable based on what I think

is every woman's worst nightmare — to

be in the sanctity of your home in the

middle of the night sleeping, and to be

woken up and assaulted by an intruder."

centerpiece for their program. And, the family was affluent enough that money wasn't a big issue. In this case, the issue was accountability."

Wise said the company did a voluntary recall of the portable crib,

which is no longer sold.

A child's death

Estate of Eric Morse, et al., v. Chicago Housing Authority, et al., 95L 5893, was a highly publicized case that ended in a hung jury, with 10 of 12 jurors saying the CHA was not responsible. The case settled prior to being retried, partly because of statements made by the CHA in depositions, according to plaintiff's counsel.

The lawsuit alleges a vacant apartment in a CHA high-rise was not secured properly, allowing two boys, 10 and 11, to drop Eric Morse, 5, to his death.

Lead attorney Karen Enright, partner at Winters, Enright, Salzetta & O'Brien, said a deposition of a CHA official between the first and second trial was a breakthrough.

"He said basically that the conditions were despicable, and he could see why this would happen. I think that was a big part of [the CHA decision to settle]," she said.

The case settled for \$2.98 million.

Since the settlement, Enright said, legislation was passed in Illinois requiring buildings of a certain height to have bars on the windows.

"We had an expert in this who pushed that legislation following the settlement," she said. "We feel that was done in part because of fact this lawsuit was brought."★