

CHICAGO LAWYER

A PUBLICATION OF THE LAW BULLETIN

VOLUME 29

NUMBER 10

October ★ 2006

Clifford: "It was an incredibly tragic event, dramatically altering the lives of really nice people, that ended about as successfully as civil litigation in the tort system would permit."

by Maria Kantzavelos

2006 Settlement Survey: The Hancock scaffolding collapse

Demetrio: "We were mentored in the same way; we were trained in the same way. For a legal catastrophe like this, we think the same way."

Considering the many players involved in the case stemming from the catastrophic scaffolding collapse at one of the tallest buildings in the world, the long climb toward a settlement involved more stories than the John Hancock Center itself.

On a windy Saturday afternoon in March 2002, a 100-foot-long suspended scaffold platform weighing several tons fell from the building's 42nd floor and sent massive chunks of steel debris onto cars stopped in traffic below. The crash killed three women and severely injured and traumatized several other people, triggering the start of one of the most complex cases for even the most experienced lawyers involved.

The \$75.20 million global settlement, reached in lengthy mediation sessions that brought together lawyers representing 13 plaintiffs, 14 defendants, and more than two dozen insurance carriers, was among the top settlements reported in the 2006 *Chicago Lawyer* Settlement Survey.

"It was an incredibly tragic event, dramatically altering the lives of really nice people, that ended about as successfully as civil litigation in the tort system would permit," said Robert A. Clifford of Clifford Law Offices, whose firm — in concert with Corboy & Demetrio — represented most of the plaintiffs in the case.

Survey results

The 12th annual survey counted 118 Illinois cases that settled for \$2 million or higher in the last year, up from the 114 settlements reported in the 2005 survey and more than the 97 settlements reported in the 2004 survey.

The 2006 survey counts settlements of \$2 million or more that were

published in the *Chicago Daily Law Bulletin*, *Jury Verdict Reporter*, or *Chicago Lawyer* — all publications of Law Bulletin Publishing Co. — from July 1, 2005, to June 30, 2006.

Topping the charts this year is a hefty settlement of thousands of asbestos-related claims against a Chicago-based building products company. The \$3.95 billion settlement brings the total dollar amount this year to an unprecedented \$4,606.25 million. The settlement resolved USG Corporation's current and future asbestos liability as part of a bankruptcy plan of reorganization.

All other settlements included in this year's survey amounted to \$656.25 million, a decrease from the \$672.21 million reported in the 2005 survey, but higher than the \$567.57 million reported in 2004.

Corboy & Demetrio raked in the most settlement money of any firm, with 15 settlements amounting to \$87.55 million. Clifford Law Offices had a second-place showing with 10 settlements totaling \$75.71 million. (In calculating the totals, *Chicago Lawyer* split the two firms' shared \$60.54



Timothy S. Tomasik of Clifford Law Offices, left, and Robert J. Bingle of Corboy & Demetrio. The two jointly represented plaintiffs in the \$75.20 million Hancock case.

million settlement amount stemming from their joint representation in the Hancock scaffolding case). Power, Rogers & Smith pulled in the third-highest amount of settlement money, with 12 settlements totaling \$56.84 million.

Pavalon, Gifford & Laatsch ranked fourth in the survey with just three cases, including this year's largest settlement for a single plaintiff: a \$35 million medical malpractice case.

Salvi Schostok & Pritchard also made a strong showing in this year's survey, with six settlements totaling \$26.10 million. Other firms posting three or more settlements of at least \$2 million included Motherway & Napleton with four settlements; and Costello McMahon & Burke, Jeffrey M. Goldberg Law Offices, and Dudley & Lake, all with three settlements.

Among individual lawyers, Clifford brought in the most money for his clients, appearing on the survey charts with other firm lawyers in four cases totaling \$55.52 million.

Top cases

Medical malpractice cases accounted for the majority of settlements reported in the 2006 survey.

Eugene I. Pavalon of Pavalon, Gifford & Laatsch brought in the largest

single settlement amount in a medical malpractice case. The \$35 million settlement was reached on behalf of Neveen Morkos, an Egyptian immigrant and mother of two children who suffered brain damage when her oxygen supply was cut off during surgery in May 2004 at Cook County-owned Oak Forest Hospital.

Morkos arrived in the hospital emergency room with extreme stomach pains. Physicians there had misdiagnosed a viral infection as appendicitis, and the woman was being prepared for an appendectomy when the anesthesiologist failed to secure and seal an intubation tube, Pavalon said.

"Before he taped the tube secure to her face, it came loose. He tried to reinsert the tube and he failed," Pavalon said.

Morkos was deprived of oxygen for about 10 minutes. She was in a persistent vegetative state for about four weeks, but has recovered some cognitive functioning and motor functions.

Pavalon said negotiations with the county proceeded up to the eve of trial.

"There were a number of offers I turned down," he said.

Unfolding the Hancock case

More than three years had passed since the March 9, 2002, scaffolding

accident at the Hancock high-rise before the parties in January reached a resolution in the case, *Linda Demo, administrator of the estate of Melissa Cook, deceased, et al., v. Shorenstein Management, Inc., et al.*, No. 02 L 3109.

The plaintiffs alleged that the defendants knowingly allowed a poorly engineered scaffolding system to remain inadequately secured at a midpoint of the building's exterior in severe wind conditions, when it should have been either raised to the roof or lowered to the ground according to operational standards.

Thomas A. Demetrio, principal in Corboy & Demetrio, said he and close friend Clifford — who got his start as a lawyer at that firm in the mid-1970s — were eager to bring their case to a jury trial that was set to begin in front of Cook County Circuit Judge William D. Maddux.

"We were mentored in the same way; we were trained in the same way. For a legal catastrophe like this, we think the same way," Demetrio said.

Timothy S. Tomasik of Clifford Law Offices played a significant role in developing the liability in the case. This involved more than 100 days of depositions and nearly 800,000 documents produced as part of a discovery

phase that lasted more than two years, Tomasik said.

“There were vastly different legal theories that applied to each and every defendant,” Tomasik said. “We were tasked with demonstrating a classic construction liability case against the general contractor; a products liability case against the manufacturer of the scaffolding; a professional negligence case against the individual architects and engineers; and a premises liability case against the owners and managers.”

The 14 defendants in the case included Beeche Systems Corp., the manufacturer of the scaffolding system, and AMS Architectural Technologies, the operator of the scaffolding, along with Shorenstein Realty Services and other related entities that make up the commercial owner of the Hancock Center, as well as 175 E. Delaware Place Homeowners Association, which represents the building’s condominium owners.

Two of the plaintiffs represented jointly by lawyers in the two firms included Linda Demo and Betty Semplinski, who were trapped in the back seat of a crushed car on Chestnut Street near Michigan Avenue after the scaffold collapse, with the dead bodies of their daughters, Melissa Cook and Jill Nelson in the front seat.

Both mothers suffered post-traumatic stress disorder as a result of the catastrophe; Semplinski also suffered a severe fracture to her right femur, lawyers said.

Robert J. Bingle of Corboy & Demetrio helped to work up the damages portion of the litigation.

“The two mothers endured what could only be described as an unimaginable experience of seeing your daughters crushed in front of you and being trapped for a half hour with parts of their body splattered about,” Bingle said. “It’s one thing to lose a child, but to lose them like this.”

Steel debris falling from the massive scaffolding system also smashed the car occupied by Michelle Whittaker and her mother Peggy Whittaker, who suffered catastrophic brain and spinal cord injuries that rendered her an incomplete quadriplegic. She died in 2005. Her daughter suffered injuries to her neck and back, and post-traumatic stress disorder.

The plaintiffs also included the women’s husbands, who filed loss of consortium claims, and Elyce Hanna, who filed a cause of action for mental suffering. Lawyers said Melissa Cook had stopped her car and waved to the woman, allowing her to cross the street moments before the scaffold plunged onto her vehicle.

Nanatta Cameron, 39, who was in another car, also died in the accident. Cameron’s estate was represented by James D. Montgomery, Mark Parts, and Thomas C. Marszewski of Cochran, Cherry, Givens, Smith & Montgomery. Joseph J. Miroballi and Albert E. Durkin of Miroballi, Durkin & Rudin, represented Kim Bohstedt, who also was injured in the accident. Michael Carbonara, another victim, was represented by Timothy P. Rhatigan of Goldberg, Weisman & Cairo.

“The instinct of everybody who had seen the devastation from the accident was that something must have gone wrong,” said Peter C. John with Williams Montgomery & John, one of the defense lawyers who represented Beeche Systems Corp., the company that designed, fabricated, and installed the scaffolding system and outriggers for the Hancock’s restoration project. “The issue became, what went wrong, how did it go wrong, and who was responsible?”

After more than two years of discovery, talks of turning to a mediator surfaced.

“The reality that a substantial verdict was imminent and that multiple defendants were responsible created an interest in pursuing mediation,” Tomasik said.

Many of the lawyers on both sides of the table could agree on one thing from the start: The construction case they were dealing with was far from typical. It wasn’t only the multitude of defendants and plaintiffs involved that made for a challenging task, but also the number of insurance companies at play, and the layers of coverage issues at hand, they said.

“I don’t think, in the 30 years of serving as a judge and a neutral, that I have ever seen a case with as many coverage issues as this case,” said Donald P. O’Connell, former chief judge in Cook County who mediated the negotiations.

Clifford came to the same conclusion.

“This was among the more complex cases you’d ever find in tort litigation, where there was an earnest debate between defendants to find out who had what percentage of liability,” Clifford said.

More than 80 lawyers and insurers were present for the first of many sessions to come, O’Connell said. Then he organized the process into smaller groups of sessions, starting with the defendants.

“The issues we had to work through were liability and coverage. Those defendants that appeared to have a potential for a higher degree of culpability were focused on first, except for those with extremely short insurance coverage and high culpability. Those were done at the end,” O’Connell said. “Each defendant had a different liability posture in the case, and each insurance company had a lot of coverage issues.”

The mediation process continued for many months. The parties also had to address property claims in addition to the tort claims. In addition to the \$75.20 million settlement, the parties eventually agreed to \$1.6 million for reimbursement of property damage and subrogation claims.

“There was such a multitude of defendants,” O’Connell said. “You overlay that with 29 different insurance companies with some very creative lawyers and you’ve got your hands full.”

A breakthrough in the talks came when plaintiffs’ attorneys agreed to establish a vehicle for joint, unified negotiations with respect to all the plaintiffs’ cases, O’Connell said.

“Insurers who represented the defendants were very reluctant to settle cases on a piecemeal basis without knowing what their total settlement expense would be,” O’Connell said. “It was through this device, where the plaintiffs agreed to negotiate as a group, that motivated the defendants to get serious in settling the cases.”

“That was the only practical way to settle the case,” O’Connell said. “Getting all the plaintiffs to agree to consolidate into one group, to negotiate the case with a unified front.”★