Sample Verdicts and Arbitration Decisions

SERVICES

Alternative Dispute Resolution
Construction Litigation
Environmental Litigation
Premises Liability
Transportation Law

RELATED ATTORNEYS

Thomas J. Fay

BUS AND TRUCKING

Trucking

Boyle | Shaughnessy Law attorneys, Thomas Fay and Ashley Berger received a defense verdict in a trucking case where the admitted Reptile plaintiff's counsel asked for $1.1M from the jury during his closing argument. The plaintiff claimed he suffered from post-traumatic stress disorder and a lower back injury. The case was tried in Suffolk Superior Court in Boston, Massachusetts. The jury deliberated for 12 hours in the nine-day trial before finding no negligence.

The plaintiff alleged that two Indiana based truck drivers, both defendants, negligently operated their oversize load, two modular classrooms, snagging a low-hanging cable wire. The drivers were part of a six-vehicle convoy at the time. As a result, the plaintiff alleged he became entangled in the wire after it fell to the ground, and was dragged between 15 and 40 feet. The plaintiff also initially filed suit against the company that allegedly owned the utility pole, the company that owned the wire, the company responsible for providing a route survey to the defendant trucking company, and the companies that provided escort services. Before trial, the plaintiff settled with all other defendants.

During a pre-trial hearing regarding a Reptile motion in limine filed by defense counsel, plaintiff's counsel declared to the court that he was the "Reptile." The "Reptile" strategy is utilized by some plaintiff's attorneys to present, not the merits of the case to the jury, but rather to play to a juror's sense of safety and fear. This tactic attempts to appeal to the primitive subconscious "fight-or-flight" component in each juror, instead of to the true cognitive abilities of a juror to make an informed decision based on the presented evidence. The trial judge was responsive to the defendants' request and advised plaintiff's counsel that he would not tolerate any "reptile"-like arguments. Despite this, the plaintiff's attorneys continuously used this technique during the course of the trial and the judge repeatedly had to instruct plaintiff's counsel not to do so. The trial judge emphasized the requirement of plaintiff's counsel to focus on the merits of his client's case.

Trucking

Boyle | Shaughnessy Law attorney, Thomas Fay successfully limited a plaintiff to a verdict of approximately $117,000 in a case arising from a trucking accident that resulted in allegations of permanent disfigurement and a substantial lost earning capacity claim, among other things.

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The plaintiff's demand had been well over $1,000,000. The plaintiff rejected a court recommended $325,000 settlement offer during trial. The case was tried before Judge Timothy Hillman of the U.S. District Court for the District of Massachusetts, Central Division (Worcester). The trial, including jury deliberations, lasted 5 days, and deliberation lasted approximately three hours.

The case arose from an accident that occurred on a highway near Worcester, Massachusetts, in which a wheel assembly detached from the defendant's tractor-trailer unit, bounced over the center divider, and struck the plaintiff's vehicle, causing a shard of glass to lacerate her left cornea. After an initial investigation, the defendants stipulated to negligence to limit the focus strictly to damages, succeeding in limiting litigation costs and minimizing the potential for a jury with a punitive mindset. The plaintiff claimed past medical expenses and probable future medical expenses totaling over $45,000, due to alleged increased risks of developing several potentially debilitating eye conditions. The plaintiff also claimed substantial pain and suffering and permanent impairment due to a partial loss of vision in her left eye.

The plaintiff, a young dentist, alleged at least $750,000 in lost earning capacity due to a claimed need to rest her eyes one additional day per week due to her injury. The defense's primary arguments were threefold: first, as supported by strong expert testimony from an ophthalmologist, the plaintiff's work habits and recovery since the accident contradicted her claim that she could not work an additional day per week; second, the testimony of the plaintiff's expert economist was not credible because, among other things, it was based solely on assumptions provided by the plaintiff's attorney, and it ignored various documents relevant to her work history, which suggested no decrease in earnings; and, third, the plaintiff's relevant medical and litigation histories implied a lack of credibility relative to her damage claim.

Bus

Transportation – Bus/Pedestrian Accident – Brain Injury

Boyle | Shaughnessy Law attorney, Tom Fay, received a defense verdict in a negligence suit involving an accident in which a motor vehicle struck a pedestrian-plaintiff who was crossing a crosswalk, allegedly after being waved across the crosswalk by the defendant's bus driver, in the course of her employment for the defendant-bus company. The case was tried before Judge Richard Moses in the New Bedford Superior Court in Bristol County. The trial, including jury deliberations, lasted three days; the jury deliberation lasted ten minutes. The primary issues were whether the alleged act of waving the plaintiff to walk in front of the bus caused the plaintiff's injuries, and whether such an action would amount to negligence.

The case arose out of motor vehicle accident that occurred on July 24, 2008, at the intersection of Ashley Boulevard and Coggeshall Boulevard in New Bedford, Massachusetts.

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The plaintiff alleged that she and her friend were attempting to cross Ashley Boulevard, a three-lane one-way street, in a crosswalk, when she was struck by a third-party vehicle while crossing the third and final lane. The plaintiff further alleged that the accident occurred, in part, because the driver of a bus stopped in the middle lane waved her across, leading her to believe it was safe to proceed into the third lane. The plaintiff suffered a closed head injury and was badly injured as a result of the accident, losing consciousness and allegedly sustaining permanent brain damage, though her eventual recovery was commendable. Pursuant to these injuries, the plaintiff submitted into evidence over $270,000 in medical bills at trial.

One of the defendant's primary arguments was that, because the plaintiff's brain injury left her with no memory of the precise sequence of events leading up to the collision, even if the driver was negligent in waving her across the road, the plaintiff could not say whether she relied on that wave in deciding to cross. Moreover, the defendant successfully argued that the testimony of the plaintiff's friend regarding her reliance on the bus driver's alleged wave was irrelevant and inadmissible to prove the plaintiff's reliance on the same. The defendant also argued that the plaintiff's comparative fault in proceeding into the third lane without sufficient caution outweighed any fault on the part of the alleged bus driver.

Trucking

Tom Fay received a defense verdict in a wrongful death suit involving a catastrophic highway trucking accident. The case was tried before Judge Dennis Curran in Middlesex County. The trial, including jury deliberations, lasted approximately one week. The primary issues were the cause of the accident and the cause of decedent's death. The defendants, represented by Boyle | Shaughnessy Law, successfully demonstrated that the decedent was negligent, and that he was more than 50 percent responsible for the accident, obviating a ruling on the cause of death.

The case arose out of a collision that occurred around 11:30 p.m. on March, 12, 2007, on I-90 westbound just west of the I-495 interchange. The defendant merged his car carrier onto I-90 westbound, and was in the process of pulling over to address a chain that was dragging from his vehicle, when the truck driven by the decedent collided with the carrier, ramping onto it and bursting into flames. Though the decedent's cab and trailer were severely burned, and several of the cars on the defendant's carrier erupted in flames as well, responding firefighters were able to extinguish the flames and the defendant was uninjured.

The plaintiff alleged that the defendant-operator had negligently caused the accident by not repairing the chain prior to merging onto I-90, slowing too rapidly, slowing by engine braking, not properly signaling, and continuing in the travel lane below the minimum speed limit. The defendant truck driver did testify that he drove well below the minimum 40 m.p.h. speed limit, m.p.h., just prior to the crash, in violation of state regulations. This argument was supported by

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expert testimony from an accident reconstructionist. The plaintiff also argued that the decedent's death was caused by an aortic dissection that was traumatically induced by the impact. This argument was supported by expert testimony from the Director of Lahey Clinic's Interventional Cardiovascular Medicine and Cardiac Catheterization Laboratory. Additionally, the plaintiff-widow herself provided understandably emotional testimony lending towards the issue of damages.

The defendants' primary argument was that, but for the decedent's negligence, the accident would not have happened. This argument was bolstered by reference to various regulations and statutes pertaining to safe passing and maintaining safe distances. This argument was also supported by testimony from the lone third-party eyewitness, aerial photos, and expert testimony from the on-scene accident reconstructionist (complete with computer-simulated accident reconstruction videos). The defense also maintained that the defendant had not been negligent in the operation of his vehicle, but even if he had been, it was outweighed by the comparative negligence of the decedent. Finally, corroborated by the decedent's autopsy report, the death certificate, testimony from the performing coroner, and the decedent's relevant medical history, the defendants argued that decedent had died a natural death from a spontaneous aortic dissection, prior to the collision. The defendants argued that this provided one possible explanation for why the decedent did not brake or attempt to change lanes before colliding with the defendant. The defendants had also arranged for expert testimony from the head cardiac surgeon at Massachusetts General Hospital to support this argument, but strategically declined to call him at trial, opting to concentrate the jury's focus on non-medical issues related to the decedent's truck operation.

The plaintiff claimed damages of well over $1,000,000, including damages for conscious pain and suffering, and lost earning capacity. Besides his wife, the decedent left four children. The jury found the defendants 49 per cent negligent and the decedent 51 per cent negligent, resulting in no recovery for the plaintiff.

CONSTRUCTION DEFECT

An arbitrator found no negligence, no breach of warranty and no G.L. c. 93A violations in a large construction defect case defended by shareholder Thomas J. Fay and shareholder Aaron White. The claimant sought hundreds of thousands dollars due to alleged building envelope defects.

The subject project involved late 1970's precast steel reinforced concrete within multi-story structures located on the Weymouth, Massachusetts waterfront. Water penetration, occurring over a 15 year period, resulted in the need for extensive repairs. The claimant sought money damages for defective repair work, suing architects, engineers, contractors and various

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manufacturers. We defended a contractor who applied waterproofing products as part of the repair project. Effective expert testimony was critical to establish that the products were applied in accordance with requirements, specifications and consistent with ASTM standards. The arbitrator found for our client.

ENVIRONMENTAL

A Superior Court jury found for our client concerning an environmental oil spill at a public school in a case tried by shareholder Thomas J. Fay. The municipality refused to contribute towards the cleanup of the spill despite evidence that it was negligent. A jury disagreed with the town and found that the municipality was at fault, forcing it to contribute to the cleanup costs.

PREMISES

A Superior Court jury returned a defense verdict in a slip and fall on ice case tried by shareholder Thomas J. Fay. The plaintiff sought $125,000 due to personal injuries, including a rotator cuff claim. A helpful witness testified about the icy conditions that should have been clear to the plaintiff.

PREMISES

Shareholders Thomas Fay and Timothy Scannell recently obtained judgment as a matter of law in favor of their client, a national grocery chain, in an action filed in Providence Superior Court.

The plaintiff in this case alleged that she was injured as a result of the grocery chain's failure to maintain a refrigerated display case. According to the plaintiff, the poorly maintained case had a loose panel, which presented a danger to customers. She further contended that the grocery chain should have known about the loose panel before this incident and taken steps to repair it, but failed to perform reasonable inspections that may have led to its discovery.

On the day of her alleged injury, the plaintiff claimed that she was shopping for an item in the display case when her foot became lodged under the loose panel. When she attempted to free herself, the panel allegedly trapped her foot. The plaintiff claimed that because her foot remained stuck beneath the panel, she twisted her body and sustained significant injuries, including permanent numbness and pain down her entire left leg from a damaged disc at her L4 vertebra.

Attorneys Fay and Scannell successfully argued that the plaintiff's Complaint should be

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dismissed as a matter of law under Rule 56, because there was simply no evidence that the loose panel existed before this accident. Moreover, attorneys Fay and Scannell convinced the Court that, even if the panel was loose for a significant period of time prior to the plaintiff's injury, there was no evidence to suggest that the grocery chain failed to perform reasonable inspections of the store that may have led to the discovery and repair of the defect. As a result, the Court determined that plaintiff's Complaint could not be sustained and dismissed it with prejudice.

CONSTRUCTION

A Federal Court jury returned a defense verdict in a construction site accident case tried by shareholder Thomas J. Fay. The plaintiff sought $500,000, claiming a herniated disc in his back after falling at a work site. Two key witnesses testified that the plaintiff did not actually fall to the ground. Also, we deposed the plaintiff's treating physician who admitted he was asked to change his report by the plaintiff. Needless to say, this did not go over well with the jury.

BOATING

A District Court judge found for a defendant charter boat owner, awarding the plaintiff no damages, in a case tried by shareholder Thomas J. Fay. The plaintiff alleged the charter boat owner was somehow negligent when the plaintiff broke his right hand while gaffing a shark on the defendant's deep sea fishing boat off of Cape Cod. The judge rejected the plaintiff's negligence argument, despite testimony from Whitey Bulger's nephew, William Bulger, Jr., who was a witness to the incident and testified for the plaintiff.

MOTOR VEHICLE

A Superior Court jury returned a defense verdict in a rear end collision case tried by shareholder Thomas J. Fay, in which the plaintiff claimed a resulting brain injury and sought $100,000 in damages. While our client did rear end the plaintiff, both vehicles suffered minimal damage. In addition, the plaintiff was involved in eight prior auto accidents, all of which we were able to introduce into evidence at trial.

In a separate matter, a Superior Court jury returned a defense verdict in another rear end collision case tried by shareholder Thomas J. Fay. Despite evidence suggesting the New Jersey plaintiff suffered a herniated disc and a neck injury, the jury chuckled when learning that her chiropractor was in the same office as her New Jersey attorney. The jury found no proximate cause. The plaintiff sought $50,000.

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Also, in a separate case, a Superior Court jury returned a defense verdict and found against a plaintiff who was seeking $250,000 in damages after being struck by our client's vehicle while walking to his car at night. This case was also tried by shareholder Thomas J. Fay. Key testimony included the plaintiff's admission that he did not see our client's illuminated headlights prior to being struck, evidence that he was not paying attention after leaving a nearby bar. The plaintiff also admitted to playing golf after the accident despite his alleged serious back injury.

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