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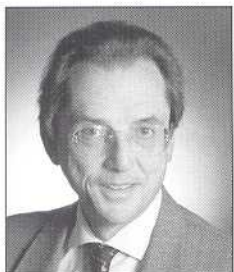
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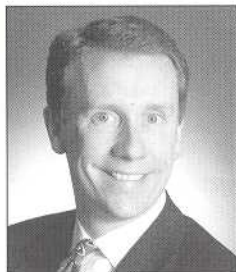
MONDAY, OCTOBER 13, 2003

■ WISCONSIN ■

\$94 million crane-collapse award erased



JOHN W. BELL



KEVIN G. OWENS

John W. Bell and Kevin G. Owens of Johnson & Bell served as Mitsubishi Attorneys.

By Dee McAree
STAFF REPORTER

A MILWAUKEE APPELLATE court has overturned a \$94 million punitive damages award—one of Wisconsin's highest—and raised the bar for plaintiffs' lawyers seeking to recover punitive damages in personal injury cases.

Robert Habush of Habush Habush & Rottier in Milwaukee, the plaintiffs' attorney who argued the case, called the Wisconsin Court of Appeals decision a death sentence for punitive damages awards for personal injuries.

Under a "tort reform" measure approved by Wisconsin in 1995, a plaintiff may recover punitive damages only if there is proof that a defendant acted "maliciously" or with "intentional disregard" for the rights of the plaintiff.

The appellate ruling "has eliminated punitive damages in civil cases involving injury or death for the most outrageous conduct," said Habush, "unless you can prove that there was a specific intent to injure or kill."

Fatal crane collapse

The original verdict was Wisconsin's second-largest punitive award and the nation's fifth-largest verdict in a wrongful death action in 2000, according to *The National Law Journal's* annual ranking of top verdicts.

It was the result of a lawsuit over the fatal collapse of a 47-story crane, known as "Big Blue," during the construction of Miller Park, home of the Milwaukee Brewers baseball team. On July 14, 1999, Big Blue broke while attempting to lift a piece of the park roof. Three iron workers were in a basket being lifted up to bolt the roof in place. Big Blue toppled and struck the arm of the crane holding the iron workers. The three men fell to their deaths.

Their wives sued Mitsubishi Heavy Industries of

America, one of the dozens of subcontractors that were hired for the Miller Park project. Mitsubishi's job was to build the stadium roof. Mitsubishi, in turn, had leased the crane and crew from another subcontractor. The widows sued multiple defendants, alleging that the decision to proceed with the lift during hazardous weather amounted to negligence and a disregard for worker safety.

A Milwaukee jury on Dec. 1, 2000, awarded the widows \$5.25 million in compensatory damages and \$94 million in punitives. It attributed 97% fault to Mitsubishi and 3% to the company that supplied the crane. *Wischer v. Mitsubishi*, No. 99 CV 6553 (Milwaukee Co., Wis., Cir. Ct.).

During the trial, the parties argued over the interpretation of Wisconsin's 1995 punitive damages statute, Wis. Stat. 895.85(3), which limited recovery of punitive damages to those who could prove maliciousness or intentional disregard for the rights of the plaintiffs.

All parties conceded that Mitsubishi's behavior was not "malicious," therefore arguments before the Court of Appeals hinged on the interpretation of "intentional disregard."

The plaintiffs asserted that "intentional disregard" requires only a general disregard for worker safety and no specific intent to harm the victim. In a brief to the court, Habush argued, "We don't have to prove that the [defendant] intended to kill these guys. This is not a criminal case."

But the appellate court disagreed. It reasoned that the Wisconsin Legislature, in enacting the statute, had wanted to "heighten the standard for the recovery of punitive damages." The court wrote, "To conclude otherwise would lead to unreasonable results and expand rather than narrow the scope of cases where punitive damages may be awarded."

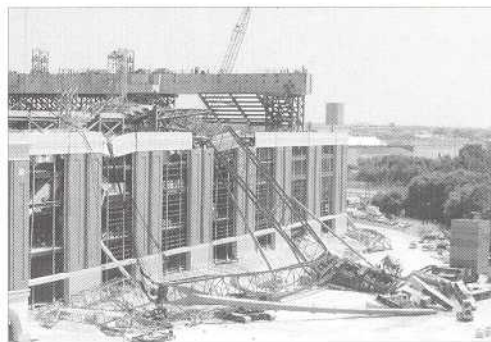
Mitsubishi's lawyer, John W. Bell of Chicago's Johnson & Bell, said the court correctly interpreted the Legislature.

"You have to remember that the management was also in the zone of danger," said Bell. "We had some chief engineers on the roof. There was no contemplation that this was an unsafe act about to cause an accident."

Bell said that the court properly rejected a plaintiffs' interpretation of the law that would open the door for punitive awards in every negligence case.

Habush contends that it is an unreasonable standard.

"In *Miller*," he said, "I would have to prove that the Mitsubishi superintendent who made the decision to do the lift in windy conditions intended



CARNAGE: A giant crane lies on the ground on July 15, 1999, after collapsing at Miller Park in Milwaukee, killing three iron workers.

to kill these three guys and that is plain crazy."

Two justices on the three-judge appellate panel voted in favor of overturning the award, while one dissented. Habush is preparing an appeal to the Wisconsin Supreme Court. Mitsubishi's appeal will be handled by Bell's co-counsel, Ralph A. Weber of Milwaukee's Reinhart Boerner Van Deuren and Colleen Ball, a solo appellate specialist in Milwaukee.

Weber said that the court is not slamming the door on punitive damages. Instead, he said, the court's opinion rejects the role of the corporate defendant as a source of "endless free money" and reinforces the Legislature's intention to scale back lotterylike awards. **NLJ**

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