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JOHN W. BELL

## THE BEST DEFENSE

By Margaret Cronin Fisk



WILLIAM G. BEATTY

*The NLJ names Johnson & Bell's victory in Grove U.S. LLC case one of the top defense verdicts of 2000*

IN ANY GIVEN year, some of the biggest victories in civil cases go to the defendants. But few of them reach the headlines. A \$10 million jury award generally gets more attention than a \$100 million verdict averted.

Yet the lawyering involved in thwarting efforts to recover substantial judgments is often equal to the level of ability, exertion and creativity shown by the plaintiffs' attorneys who win the big ones.

At times, the obstacles to winning are even greater for the defense lawyers. "It's a whole lot easier to throw a skunk in a room than to clean up the mess," says William Slusser of Houston's Slusser & Frost.

For 11 years, *The National Law Journal* has attempted to shine a spotlight on the usually unheralded efforts of the nation's defense litigators by publishing a list of the top defense verdicts for the year.

This year, as in the past, the lawyers who won these cases prevailed despite substantial hurdles.

■ The list includes only jury verdicts. No summary dismissals or bench trials are included.

■ The amount at risk must be substantial. The demand for damages has to have some measure of reality.

■ The win must be complete. Moral victories, such as a plaintiff seeking millions but winning only a few thousand, do not count.

■ The jury's decision must still be valid, with no reversals or remands for new trials, though cases that have since been settled are acceptable.

■ The plaintiff should have had a reasonable chance of winning, as indicated by the settlement by a co-defendant, the defense offer of a substantial settlement before the verdict, previous plaintiffs' wins in similar cases or the representation for the plaintiff by highly regarded counsel.

### **Not responsible for 'horrendous injury'**

CASE TYPE: *products liability*

CASE: *Catron v. Grove U.S. LLC, 4:99 CV-13AS (N.D. Ind.)*

PLAINTIFF'S ATTORNEYS: *J. Lee McNeely and M. Michael Stephenson of Shelbyville, Ind.'s McNeely, Stephenson, Thopy & Harrold*

DEFENSE ATTORNEYS:

*John W. Bell and William G. Beatty of Chicago's Johnson & Bell*

DATE OF VERDICT: *July 12, 2000*

JOEL CATRON was working for an outside contractor at the A.E. Staley Co. grain processing plant in Lafayette, Ind., when he drove an aerial work platform scissors lift onto a freight elevator.

After reaching the first floor of the plant, Mr. Catron attempted to open the elevator door. But, said defense attorney John W. Bell, "he tried to open the door while staying within the basket of the scissors lift." Mr. Catron inadvertently activated the lift switch and the work platform rose and squeezed Mr. Catron between the ceiling of the elevator car and the railing of the platform.

Co-workers initially did not realize he was being crushed and when they did discover him were unable to turn the lift off. "They wound up getting an acetylene torch to cut him out," said Mr. Bell. By then, he said, Mr. Catron had gone "at least 10 minutes without oxygen." This oxygen deprivation caused severe, permanent brain damage. Mr. Catron is now a "locked-in quadriplegic," said Mr. Bell.

Mr. Catron sued Grove U.S. LLC, maker of the scissors lift, charging that the toggle switch on the aerial work platform should have been better protected, preventing someone from inadvertently activating the lift. There had originally been a guard on the switch, but it had been displaced; the plaintiff charged that Grove's guard was inadequate.

In addition, the plaintiff charged that Grove did not place an emergency release valve in an easily discernible and available location. Mr. Catron also sued A.E. Staley and other defendants; these defendants settled before trial for a total of \$5.5 million. Grove offered the plaintiff \$1 million to settle, Mr. Bell reported, but the plaintiff rejected the offer. The plaintiff's lowest settlement demand was for \$3 million, he said.

As with any case involving such massive injuries, Mr. Bell noted, "we had to overcome the naturally overwhelming sympathy for the plaintiff."

The cost of caring for Mr. Catron was enormous, he added. The life-care plan presented by the plaintiff's attorneys called for more than \$20 million and the numbers were not unreasonable, he said. While other defendants had settled, Mr. Bell said, "the jury doesn't know that he's already gotten \$5.5 million."

To counter, the defense focused on its contentions that whatever the injuries, Grove was not responsible. "We acknowledged that this was a horrendous injury, but told the jury we sold a safe piece of equipment," he added. There were no design defects in the switch or the emergency release valve. The accident was caused, not by Grove, but by negligence by A.E. Staley, the plaintiff's employer and the plaintiff himself.

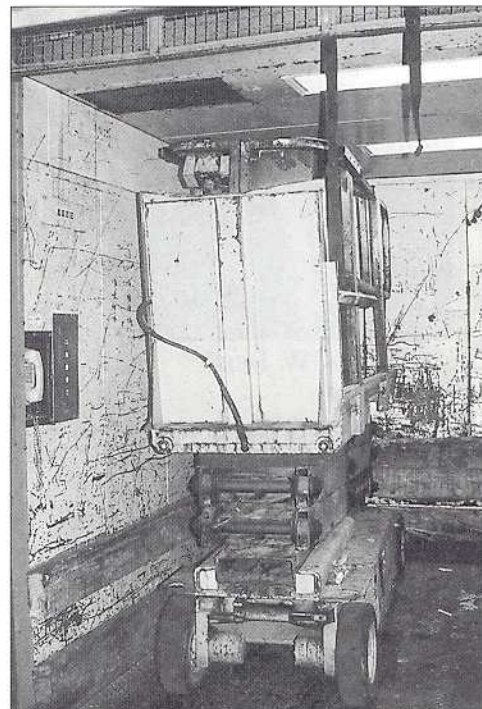
A.E. Staley was at fault, Mr. Bell said, for failing to maintain and inspect the scissors lift. "We had a guard [on the switch] but it's required that it be maintained." Mr. Catron's employer was responsible, he said, for failing to

train Mr. Catron in the proper use of the machine. And Mr. Catron was responsible as well for failing to select "safe alternatives" in working with the scissors lift.

Blaming the plaintiff can backfire, but the defense used a video at trial taken by an inspector of the accident scene that showed that the aerial platform would not have been activated if Mr. Catron had walked the scissors lift into the elevator, said Mr. Bell.

The failure of Mr. Catron's coworkers to rescue him, Mr. Bell added, was not caused by the placement of the release valve, but by the position of the lift in the elevator. "The valve is at ground level, but they couldn't see it because it was in the elevator. They were panicked and couldn't get to the controls."

At trial, the plaintiff's attorneys asked the jury for \$38.64 million. But, on July 12, the Lafayette, Ind., jury found no defects and no liability.



**Scissors lift:** A mishap involving the lift in a freight elevator rendered plaintiff Joel Catron a "locked-in" quadriplegic.

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