

THE LARGEST JURY VERDICTS OF 1997

Chain Snaps, Leg Breaks And Inspector Must Pay 'Minor' Injury Develops Into Something Serious

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\$6.6 MILLION

SALGADINHO, ET AL. v. INTERSTATE ELECTRICAL SERVICES CORPORATION

Middlesex Superior Court,
No. 94-05852

Date of verdict: April 22, 1997

Plaintiffs' attorneys: John C. Prescott Jr. and John P. Fulginiti, Taylor, Ganson & Perrin, Boston

By KELLY M. FITZSIMMONS

The old adage "patience is a virtue" certainly held true for Boston attorneys John C. Prescott Jr. and John P. Fulginiti last year.

They represented a worker who had been injured when a chain broke and metal castings fell on his leg, and then sued the inspector who, days before the accident, had found the chain in proper working condition.

"Generally you want to move a liability case along quickly so that the parties are compensated immediately for their injuries," says Prescott.

But this case was different because the extent of the plaintiff's injuries was not immediately apparent.

What at first appeared to be a straightforward broken leg turned into a more serious case of reflex sympathetic dystrophy for which the plaintiff and his wife were ultimately awarded \$6.6 million by a Middlesex County jury.

Fulginiti calls his client's deterioration "the most dramatic changes [to the extent of the injuries] we've seen in a case."

Prescott praises his client's persistence in the face of considerable pain.

"[The plaintiff] was living in horrible conditions ... but was willing to listen to us when we said not to settle for 10 cents on the dollar," Prescott notes.

Damages, however, were but one element of a case in which the defendant vigorously contested everything, including liability, Prescott and Fulginiti note.

Broken Leg To RSD

The plaintiff in this case, Charles L. Salgado, had been at work on the day of the accident operating an electrically driven chain hoist, loading baskets of metal castings onto a trolley.

While performing this work, the chain of the hoist broke and the castings fell on the plaintiff's leg, fracturing the leg and rupturing his hamstring. He received workers' compensation.

After the plaintiff's orthopedic injuries

began to heal, he started suffering from increased leg swelling and complained of pain and dysfunction which wasn't consistent with the fracture.

"Pain had never limited him before," comments Prescott, who notes that his client had a history of hard work and athletic prowess before the accident.

The pain proved, however, to be unrelenting and the orthopedist ultimately sent the plaintiff to a neurologist who diagnosed reflex sympathetic dystrophy.

According to the plaintiff, the accident had been caused by a seriously worn chain that failed when lifting a load below its designated capacity.

Ironically, the chain hoist had been inspected five days earlier by defendant International Electrical Services Corp., which had been hired by the plaintiff's employer. The inspection report issued by the defendant indicated that the chain in the hoist was in good condition.

The plaintiff, whose recovery from his employer was limited by the workers' compensation exclusivity provision, sued the inspection company for negligence. The plaintiff, only 23 years old at the time of the accident, was married with three young children.

Chain Of Evidence

In defending the suit, the defendant claimed that the chain the plaintiff had placed in evidence was not the chain that had been inspected just before the accident. According to the defendant, the plaintiff's employer had replaced the inspected chain with a worn one.

The defense went to a great extent to bring in experts, as Fulginiti quips, "to put on a smoke and mirrors defense."

Although the plaintiff's counsel deemed many of the facts to be obvious, the aggressive defense went toe-to-toe on every evidentiary issue — presenting a battery of liability experts with lofty credentials.

The plaintiff countered with demonstrative evidence and what his lawyers consider common sense.

"We decided to have a model — to have a display of the actual chain — and video, where we took the measurements of the chain on the video," explains Fulginiti. "We were clear that, once the jury knew that we had done every measurement, the facts would support themselves. ... We knew that the only way we could lose was if the jury became confused."

One of the defense liability experts backfired, Fulginiti says, when the lawyer illustrated some chain miscalculations. At the close of cross-examination, the defense expert admitted more likely than not that the plaintiff had introduced the right chain, Fulginiti states.

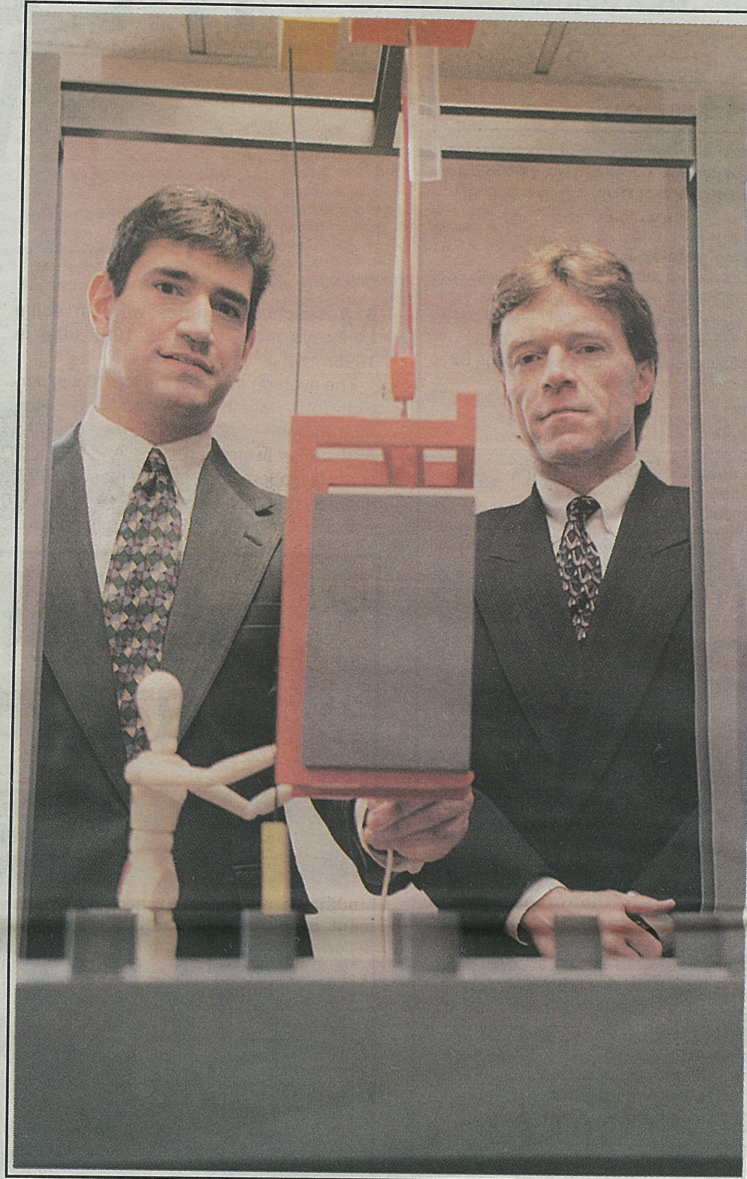


Photo by Dan Fellini

JOHN P. FULGINITI and JOHN C. PRESCOTT JR.
A model of the chain was successfully used at trial to clarify the case for the jury.

"At that point in time there was a visible reaction from the jury that the case on liability was over," boasts Prescott, noting that the plaintiff had also successfully attacked the inspector's conflicting testimony regarding his inspection.

Proving liability, however, was merely the first hurdle.

To challenge the plaintiff's damages, defense counsel brought in a renowned physician who had been published in medical journals around the globe.

"The expert said that our client had a pre-existing psychiatric condition and that our client's injuries were a result of failure to follow through on medical plans for him," says Prescott, who notes that the expert had never met the plaintiff and his testimony was based solely on hypotheticals.

War Of Experts

Presented with a case they knew would be dominated by expert testimony by both parties necessitated simplicity of fact, organization and a clear presentation for the jury, the plaintiff's lawyers note.

"We spent a lot of time working with experts on the types of questions and also the organization of the examination was important," comments Fulginiti, describing the plaintiff's tactics to tie in the model, a

video and diagram displays of the chain.

The plaintiff's lawyers also proceeded with their direct examination of their experts at a fast pace, recognizing the inconvenience that a long trial would pose for the jury.

"The case lasted five weeks primarily because of the defense counsel's efforts and legitimately so to confuse the jury," says Prescott.

Before the trial had even started, the hopes of the plaintiff's lawyers had been put on edge by conversations with court officers who told of recently empaneled juries "giving out a lot of doughnuts."

But the fear of a defense verdict wasn't enough to convince the plaintiff to accept a \$1.5-million settlement proposal made during the first day of trial. The decision proved to be a wise one.

The jury instead awarded \$5.5 million to the plaintiff, compensating him for lost earning capacity, future medical expenses and pain and suffering. Another \$1.1 million was awarded to the plaintiff's wife for loss of consortium.

"I don't think [the jury award] was outrageous and I don't think it was overly conservative," comments Prescott. "The jury award in the case was right on. ... It was a perfect case, with a sympathetic client, tragic injuries and great experts."

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