



1 of 2 DOCUMENTS

Copyright 2006 ALM Media Properties, LLC
All Rights Reserved
Further duplication without permission is prohibited

THE NATIONAL LAW JOURNAL

The National Law Journal

December 18, 2006 Monday

SECTION: Vol. 29

LENGTH: 1473 words

HEADLINE: A CREATIVE FLAIR RISING IN LAWSUIT SETTLEMENTS;
CASH DIVERTED TO EDUCATION, TRAINING

BYLINE: Peter Geier Staff Reporter

BODY:

CASH DIVERTED TO EDUCATION, TRAINING

In March 2005, Eva Rowe's parents, James and Linda, were killed in a BP refinery explosion in Texas City, Texas disaster that killed 13 others and injured 170.

She sued the company on behalf of herself and the estates of her parents. Last month, her attorney struck a settlement that has a rare twist: More than \$32 million is not going to Rowe.

BP Products North America Inc. pledged \$32 million to five medical and educational institutions. The deal also includes as much as \$6 million in additional matching funds. **Arenazas v. BP Products North America**, No. 05-CV-0337 (Galveston Co., Texas, Dist. Ct.). Rowe received a confidential settlement.

Civil actions ending in creative settlements that do more than put money into the pockets of plaintiffs and their lawyers are unusual, but attorneys are starting to see more of them.

In October, for instance, an accidentally paralyzed plaintiff, his family and lawyers in Tampa, Fla., pledged all of a medical malpractice jury's \$100.1 million punitive damages award part of the largest med-mal verdict in state history to

the Miami Project to Cure Paralysis at the University of Miami Leonard M. Miller School of Medicine. **Navarro v. Austin**, No. 02-6154 (Hillsborough Co., Fla., Cir. Ct.).

Lawyers involved in settling cases that result in charitable donations acknowledge that parties in some instances gain in improved public relations and financial benefits such as tax breaks. They also note that the prospect of a defendant's gaining any such advantage can discourage plaintiffs from charitable settlements.

Typically, a plaintiff is trying to find an acceptable resolution of a traumatic event, according to Rene M. Haas of Perry & Haas, a boutique practice in Corpus Christi, Texas, which, she said, now handle four to 10 cases a year involving people killed or maimed in industrial accidents.

Most of the time, what we end up working with is a client who really wants something good to come out of a bad situation, said Haas, who is also a former Texas district judge.

One of Haas' clients, a widow who lost her husband in an oil refinery accident, set aside \$1 million of her confidential settlement and counsel set aside its fee on that portion to help fund a plant safety academic program and a scholarship at Texas A&M University-Corpus Christi, she said. **Wright v. Citgo Petroleum Corp.**, No. 99-4396-C (Nueces Co., Texas, Dist. Ct. 2002).

In another case a post-trial settlement in which a refinery worker who was permanently disabled by a blast won a \$30 million punitive damages award against an oil company the client agreed to forgo the punitive damages award if the company instituted a new safety program, Haas said. The program will be paid for by the company but monitored independently to ensure compliance. **Caballero v. Esenjay Petroleum Corp.**, No. 95-6629-A (Nueces Co., Texas, Dist. Ct. 1997).

Punitive damages pledged

The \$100.1 million donation in the Tampa medical malpractice case in October came at the end of a trial in which a jury had already returned a \$116.7 million compensatory damages award in favor of Allan Navarro, whose misdiagnosed stroke resulted in his paralysis.

C. Steve Yerrid of the Yerrid Law Firm in Tampa, one of Navarro's lawyers, said that Navarro decided before the jury returned its punitive damages verdict to give the full amount of whatever the jury awarded to an institution that serves people with neurological and spinal cord injuries.

Jeffrey M. Goodis of Thompson, Goodis, Thompson, Groseclose & Richardson in St. Petersburg, Fla., a lawyer for the defendants, declined to discuss a case pending appeal. But he pointed out that in pledging the punitive damages award, the plaintiffs are donating something they don't have.

Goodis said that an extra motivation for plaintiffs to agree to these creative settlements is that they must pay full taxes on punitive damages, as must the attorney on his or her 25% to 40% contingency fee.

Yerrid said that in questioning a grievously injured plaintiff's motives, the defense deals in an area of thought that I cannot even begin to engage in. He said the judge in the **Navarro** case has already denied all of the defense's post-trial motions. The defendants' last chance is the state appeals court.

We have a judgment I think that's pretty valid, though of course there's always the problem of collecting a judgment, Yerrid said.

In another case Yerrid handled, the family of a man who died when surgeons operating on a cancerous kidney accidentally cut his aorta and vena cava agreed that, in addition to a confidential cash settlement, the hospital would fund a pair of \$5,000 nursing scholarships for minority candidates for 20 years. **Greenway v. St. Joseph's Hospital**,

A CREATIVE FLAIR RISING IN LAWSUIT SETTLEMENTS; CASH DIVERTED TO EDUCATION, TRAINING
The National Law Journal December 18, 2006 Monday

No. 03-11667G (Hillsborough Co., Fla., Cir. Ct.).

Roland J. Lamb of Morgan, Lamb, Goldman & Valles in Tampa, who represented the hospital in the **Greenway** case, confirmed that the scholarships were part of the settlement but declined to comment on it.

Dan D. Kohane, president of the Tampa-based Federation of Defense & Corporate Counsel and a partner at Buffalo, N.Y.'s Hurwitz & Fine, said that he is seeing more of these kinds of settlements, especially in lower-profile cases.

Insurance companies and self-insured defendants would rather contribute to a public good than pay money to an individual.

But the public seldom hears about the contributions because defendants do not want their payments to appear to be admissions of liability, which they are not, Kohane said.

Sometimes you can find a creative solution or a remedy that is not just money in someone's pocket, Kohane said. It can be any kind of thing: an apology or a change of character, a scholarship, a park, putting up a statue, a drunk driving program, he said.

The outcome of the BP case had a lot to do with the client, said attorney Brent W. Coon of Brent Coon & Associates in Beaumont, Texas, who represented Eva Rowe.

The client in this case was the differencesome clients just want to take the money offered and put the case behind them, said Coon, adding that he has made small charitable deals in other cases, but nothing anywhere near the magnitude of this.

More cases scheduled

Ronnie Chappell, a spokesman for BP America, would say only that the company is deeply sorry for the loss that Ms. Rowe and others suffered from this terrible industrial accident. He added that BP is working to ensure that it does not happen again, and is committed to avoiding long and protracted litigation and to resolving all claims in a fair way.

The case settled last month as jury selection was beginning in what would have been the first group of cases to be tried. Coon noted that he has settled less than a third of the total of 150 to 175 BP refinery explosion cases that he has. His next trial group of five cases is set for trial in February 2007.

The amount BP paid in fees to Rowe and Coon is confidential.

The company will donate \$12.5 million to the Truman G. Blocker Burn Unit at University of Texas Medical Branch at Galveston; \$12.5 million to the Mary Kay O'Connor Process Safety Center at Texas A&M University; and \$5 million to the College of the Mainland in Texas City for safety and process technology training for refinery and chemical plant workers, all in memory of the 15 people who died.

The company also has pledged a potential \$6 million in matching funds for donations to each of these institutions made in the six months following the settlement, up to \$2 million per institution.

BP also earmarked \$1 million donations to two other institutions that Rowe designated in her parents' memory, according to Coon's office.

In another element of the settlement, BP has agreed to the release of documents and deposition testimony related to the case, which will be posted on the Web site www.texascityexplosionmedia.com, Coon said.

Cases 'under the radar'

A CREATIVE FLAIR RISING IN LAWSUIT SETTLEMENTS; CASH DIVERTED TO EDUCATION, TRAINING
The National Law Journal December 18, 2006 Monday

Richard W. Mithoff of the Mithoff Law Firm in Houston said that he does about one settlement a year for a client who really wants to make a difference in a way besides just trying to recover money.

I've had clients set up scholarship funds, clients who lost a child in an accident and were awkward about recovering money for a dead child, he said. He also represented a surgeon in a medical malpractice case in which the surgeon was injured.

Part of the settlement required the hospital to set up a teaching/research fund in [the surgeon's] name. He was in his 60s when he sustained the injury, well respected and not in need of money. He and the hospital had a real interest in a teaching fund and scholarship fund, Mithoff said, declining to identify his cases.

Medical cases are not headliners. A lot of it's under the radar screen because a lot of cases are settled confidentially, though hospitals are happy to set aside money for scholarships and research funds, he said.

LOAD-DATE: April 30, 2011