

Three lawyers collaborate to win \$13.2M for parents' loss

By Sylvia Hsieh
Staff writer

In one of the largest loss of consortium verdicts in history, the parents of a 31-year-old man killed in a highway accident were awarded \$13.2 million by a federal jury purely for their noneconomic losses after the man's wife and children had already settled their claims.

Matthew Bachrach was killed when his car hit a tractor trailer that had overturned on an interstate highway.

The trucking company, Covenant Transportation, settled lawsuits brought by Bachrach's widow, Brenda, their three children and another driver whose car also hit the overturned big rig, reportedly for a total of \$9 million.

But when Covenant offered Bachrach's parents, Carrie and Randy, \$625,000 to settle, they decided to take it to a jury.

Among the challenges for the plaintiffs' lawyers was the fact that the parents had been divorced for 35 years and Randy had a rocky relationship with his son and had not seen him in the year before he died.

"Randy's case was certainly a challenge. We spent a lot of time figuring out how best to present that. ... There were some heated discussions a week before trial asking, 'Why doesn't Randy settle his case? Is it going to drag Carrie's case down?' But Randy said, 'I want my day in court,'" said lead plaintiffs' attorney Michael Leizerman, managing partner at E.J. Leizerman & Associates.

Recognizing that Randy's potentially weaker claim could pose problems for

Carrie's claim, Leizerman decided to split the representation of the parents, bringing in Kenneth Levinson to help him represent Randy and Christopher Stombaugh to represent Carrie.

The three lawyers met at Gerry Spence Trial Lawyers College in 2005 and had helped each other on cases along the way, but this was their first time trying a case together.

Under Arizona law, parents can sue for the loss of an adult child.

Trying the parents' case for loss of consortium as a sole claim was not necessarily a negative, Stombaugh said.

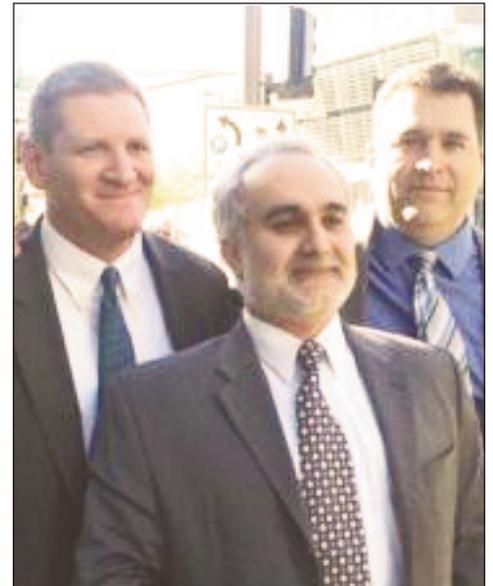
"Jurors paid far more attention to the nature of the loss of both parents than when they typically get five or six areas of damages and can't devote as much cognitive real estate to really evaluate it," he said.

Defense attorney Timothy Casey, who represented Covenant Transportation, did not return a call seeking comment for this article.

Ebb and flow

The plaintiffs' team decided put Randy's case on first for two reasons: they anticipated a greater defense challenge to what they believed was the weaker of the two cases and they wanted to end on a stronger note with Carrie's case.

Addressing the strained relationship between Randy and Matthew, Stombaugh's theme was that Covenant robbed the 62-year-old father of the opportunity to repair his relationship with his son.



Winning attorneys Kenneth Levinson, Michael Leizerman and Christopher Stombaugh (from left to right).

Matthew's parents divorced when he was two years old, but during his teenage years when his mother could not handle him, she sent him to live with his father, Stombaugh said.

When he died, Matthew had not seen his father for nearly a year.

"The relationship had an ebb and flow, but it was definitely in the ebb period [when Matthew died]. It was just their cycle. As his Dad explained, Matthew always came around and every time [he did] it would be stronger," said Stombaugh a partner at Laufenberg,

Stombaugh & Jassak in Milwaukee.

Strombaugh portrayed a son who was a musician, artist and “dreamer” who got into some financial problems with real estate, and a father who was a disciplinarian during Matthew’s teenage years and dispenser of practical business advice to his adult son.

Stombaugh said the reason the two had not seen each other before he died was related to Matthew’s embarrassment about his financial problems and the fact that he had not followed his father’s advice.

“Everyone understood what this kind of loss would mean to a family. Fathers and sons have complicated and often difficult relationships,” he said, hoping to connect with the mostly middle-aged and older jurors.

During Carrie’s case, Leizerman drew on stories that showed the quality of her relationship with Matthew, not his life.

“We focused on the value of the loss of love and affection, not the value of the loss of life, because the estate had already settled,” said Leizerman, who authors the blog truckaccidents.com.

Arizona law also allows damages for grief, sorrow and shock in a loss of consortium claim.

Carrie was at Matthew’s

house with her daughter-in-law when they received the news that Matthew had been killed.

“Our point was it’s your child and it doesn’t matter if you’re 80 and your child is 60. It’s a horrible loss to go through,” said Levinson, a child injury attorney and partner at Joseph, Lichtenstein & Levinson in Chicago.

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— **Kenneth Levinson**

The jury also heard about how Carrie and Randy had lost another child to SIDS before their divorce.

“Any time parents lose a child it has a tremendous impact. What’s worse than losing a child? Having lost two,” said Stombaugh.

Country lyrics

A defense strategy to admit liability and fight to keep out evidence of the trucking company’s negligence caused the plaintiffs’ team to regroup.

In particular, Leizerman was hoping to tell the jury about how the trucking company had hired inexperienced drivers with poor safety records, but the judge did

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- The verdict is one of the largest loss of consortium verdicts in history.
- One challenge for the plaintiffs was that the decedent’s father had a rocky relationship with his son and hadn’t seen him in 35 years when he died.

not let any of that evidence in and granted summary judgment to Covenant disallowing punitive damages.

“It’s very clear the defense wanted to avoid talking about those issues because they were very damning,” said Stombaugh.

Instead, the judge read a statement to the jury that said the trucking company was negligent in hiring and retention.

That statement opened the door for the plaintiffs’ attorneys to argue to the jury that their verdict had meaning – to make the roads safer.

Although Leizerman asked the jury to award \$12 million, the jury awarded \$9.5 million to Carrie, which included \$5 million for loss of love and affection, \$2.5 million for past grief and sorrow and \$2 million for future grief and sorrow.

In closing arguments, Stombaugh quoted lyrics from a song by country singer

George Strait: “When I became a father in the Spring of ’81, there was no doubt that stubborn boy was just like my father’s son. And when I thought my patience had been tested to the end, I took my daddy’s secret and I passed it on to him. ... Daddies don’t just love their children every now and then. It’s a love without end, amen.”

Reducing Stombaugh’s request for \$5 million, the jury awarded Randy a total of \$3.7 million, including \$2 million for loss of love and affection, \$875,000 for past grief and \$843,000 for future grief.

Plaintiffs’ attorneys:

Michael Leizerman of E.J. Leizerman & Associates in Toledo, Ohio and Kenneth Levinson of Joseph, Lichtenstein & Levinson in Chicago for Carrie Bachrach; Christopher Stombaugh of Laufenberg, Stombaugh & Jassak in Milwaukee for Randy Bachrach.

Defense attorney: Timothy

Casey of Schmitt Schneck Smyth Casey & Even in Phoenix.

The case: *Bachrach v.*

Covenant Transportation; March 13, 2012; U.S. District Court for the District of Arizona; Judge Garr King.

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