

WINNING | A SPECIAL REPORT

Our request was simple: Tell us a story. We asked our readers to nominate litigators who prevailed during 2012 before a bench or jury trial. It helped if they had overcome tough odds and high financial stakes or a principle or precedent was at risk. We hereby share the five tales we liked the best.

Attorney Cleared Crane Owner in Deadly Collapse

He acceded to state's bid for a bench trial—and argued prosecutors failed to deliver on promises.



PAUL SHECHTMAN

TRIAL TIPS

1. Don't be afraid to consider a bench trial; on occasion, one dispassionate judge can be a better fact-finder for a defendant than 12 impassioned jurors."
2. Sometimes a prosecution witness can be a defendant's ally in the courtroom. Ask yourself: Can I elicit testimony from this witness that helps my cause?"
3. If the prosecutor overpromises, don't let the judge or jury forget it.
4. Above all else, keep your credibility. If the judge or jury distrusts you, they are unlikely to trust your client."

ZUCKERMAN SPAEDER LLP

WINNING

BY SHERRY KARABIN

When a crane accident on New York City's East 91st Street in May 2008 killed two workers, seriously injured a third and caused extensive damage to a nearby building, city residents were understandably alarmed—especially considering that the accident happened less than three months after another crane collapse 40 blocks to the south killed seven people. As *The New York Times* reported, “[I]t left many New Yorkers pondering an unsettling question: This again?”

The ensuing crackdown resulted in resignations and indictments. In the East 91st Street accident, New York Crane & Equipment Corp. and J.F. Lomma Inc. were indicted along with James Lomma, who owned both companies, and mechanic Tibor Varganyi and were charged with manslaughter, criminally negligent homicide, assault and reckless endangerment. Although the East 51st Street incident also involved a crane from Lomma's company, he was not accused of wrongdoing there.

Zuckerman Spaeder's Paul Shechtman was asked to join the case by Andrew Lankler of Lankler Carragher & Horwitz, who represented Lomma. A former assistant U.S. attorney in the Southern District of New York and state director of criminal justice under Governor George Pataki, Shechtman had handled plenty of high-profile cases over the years. This time he represented Lomma's companies.

“I brought Paul in when it became clear to me that the Manhattan district attorney's office was going to charge Lomma's companies,” Lankler said. “Paul is what I call a complete lawyer. He has a great understanding of the law and is one of the most spectacular trial attorneys I've ever met.”

The prosecution's case centered on the replacement of a damaged turntable in the crane tower. Before the accident, the defendants purchased the part from a Chinese bearing manufacturer, RTR Bearing Co. Ltd., after receiving estimates from two other turntable manufacturers promising much longer delivery times. The indictment charged them with deviating from industry standards, hiding

potential problems and failing to comply with city Department of Buildings rules in an effort to avoid a long delay on the project.

Complicating matters even more, Varganyi pleaded guilty and agreed to testify against his former boss and the companies. In preparation, Shechtman immersed himself in New York City's construction code and guidelines.

“The prosecution alleged that the owner of the crane company and its employees did not do their due diligence to ensure that the new turntable was properly welded,” he said. “They never looked beyond the turntable. But what really occurred was operator error—what experts call ‘two blocking,’ the force created when the end of the crane's cable is pulled into the tip of the crane boom—which tragically caused the crane to collapse.”

The attorneys opted to forgo a jury trial, instead laying their case before trial judge Daniel Conviser, presiding in New York County, N.Y., Supreme Court. The choice proved a winning formula—the defendants were acquitted on all charges in April 2012.

“When the jurisdiction allows it, an attorney should never be afraid to ask the question of whether the case is better tried by a judge,” Shechtman said. “In some cases, emotion can trump reason, and one is better off without a jury. This strategy does not always work in your client's favor, and I had one bad experience, but it is worth serious consideration.”

Still, the trial was far from a breeze, lasting almost two months and including dozens of witnesses.

Shechtman cross-examined current and former directors of the Cranes and Derricks Unit of the Department of Buildings along with the agency's former chief inspector, Michael Carbone.

“The witnesses all gave different interpretations of what the rules and regulations required,” Shechtman said. “In the end, the judge agreed with us. It helped our case that the judge was a former counsel for the New York State Assembly's rules committee and was used to reading codes.”

There were other key moments, including Lankler's selection and preparation of a “winning” expert witness named Jim Wiethorn. “A successful case can hinge on finding the right expert,”

Shechtman said. In this case, the prosecution's expert had been involved in only two cases, including Lomma's, while Wiethorn had a whopping 600 under his belt.

“Our expert made it clear that it was operator error and not Lomma's negligence that caused the accident. It was some of the most brilliant testimony I've ever heard, and I have no doubt it contributed to our victory.”

Perhaps the most difficult part of the case, he said, was the cross-examination of former employee Varganyi. “I took a nonconfrontational approach that focused on how he had devoted his life to cranes and how an earlier accident had heightened his concern about safety. I made the point that if he thought the turntable was defective he would not have tested it himself in the way he did.

“I thought the cross-examination went as well as it could, and some might have left the court wondering if he was a witness for the defense, not the prosecution.”

For his part, District Attorney Cyrus Vance Jr. said the litigation “has put increased scrutiny on the construction industry as a whole, and has had a cascading effect on safety practices.”

Looking back, Shechtman said that attorneys too often look at witnesses as “good” or “bad,” when in reality witnesses never fall into one category or the other. “Even an accomplice witness can give testimony that significantly advances the defense's case,” he said.

Attorneys must never lose credibility by “underpreparing or overpromising,” he said. In fact, Shechtman said, he used the prosecution's opening statements against it, arguing that the state had not delivered on its promises.

“I went point by point, explaining what they said they would prove and what their evidence actually showed,” he said. “It proved to be a very effective tactic.”

Sherry Karabin is a freelance reporter.

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