



Model Mediation Yields Settlements

Some Middletown blast injury cases may be harder to resolve

By THOMAS B. SCHEFFEY

It took just a week to settle five out of six wrongful death cases arising from a Middletown natural gas explosion in a process that left lawyers' egos checked at the door and survivors feeling "respected."

And that's the way Middletown Superior Court Judge Robert Holzberg wanted it. Holzberg set an ambitious schedule as he attempted to mediate claims resulting from the Feb. 7, 2010, explosion at Middletown's Kleen Energy power plant.

The judge allotted time for 28 cases in a solid week of negotiations, some involving multiple defendants and settled the five death cases by Wednesday, Nov. 9. Settlement amounts were not disclosed, by agreement, but need to be approved in probate court, where records are open.

Richard Kenny, of Hartford's Kenny, O'Keefe & Usseglio, represented the estate of Ronald J. Crabb, of Colchester, and Crabb's widow, Jodi, who received a loss of consortium settlement that was 50 percent of the wrongful death amount. Others whose estates were settled are Christopher Walters of Florissant, Mo., and Kenneth Haskell, of New Durham, N.H. Both were represented by James Bartolini of RisCassi & Davis in Hartford.

M. Hatcher "Reese" Norris settled the case of Peter Chepulis, of Thomaston. **Paul Slager**, of Stamford's **Silver Golub & Teitell**, settled the wrongful death case of Roy Rushton of Hamilton, Ontario, but has not yet settled a case involving an injured client. Both Rushton's wife, Patty, and the injured worker, Adam Young, were present throughout the mediation.

"I did not have high expectations going in, but I felt that Judge Holzberg dealt with

a very difficult situation in a really effective way," Slager said. "I think she [Patty Rushton] felt respected in the process. I don't think the case would have resolved if she didn't feel that way."

In July, Holzberg began meeting with survivors of the blast and the widows of the men who died. This was before either side had started any real discovery. Taking a hands-on approach, Holzberg made a point of familiarizing himself with those still suffering the most from the tragedy.

Like a surgeon conferring with family in the waiting room, Holzberg took time throughout the week to explain the progress to family members. Lawyers for both sides were impressed with his ability to make the talks productive and leave the plaintiffs with a good impression of the process.

After Holzberg met with plaintiffs last summer, he concluded all insurers and defendants needed to agree to create a settlement fund. The lead defense lawyer for Torrington contractor O&G Industries, Jeffrey Blueweiss, helped coordinate the defense and insurance interests.

The layers of coverage and differing views between insurers about their contractual obligations made the process extremely complex, Blueweiss said. Another lawyer close to the case added, "There were many insurance policies covering the multiple defendants, and as is often the case in these disputes, the insurance carriers themselves had some issues as to which policy was primary, which was excess, whether there should be co-insurance. It's like a law school exam."

Insurance company lawyers had flown in from around the country: California, Washington State, Georgia and Pennsylvania. Each company was required to be rep-



Contributed Photo

Paul Slager, of Silver Golub & Teitell in Stamford, settled the wrongful death case of Roy Rushton, of Hamilton, Ontario. Judge Robert Holzberg interviewed Rushton's widow last summer and kept her informed throughout the successful mediation.

resented by people with settlement authority. The objective was to make decisions on the spot, without a need to have insurers and defense lawyers pause for two-hour huddles.

The lawyers took over two floors of the Middlesex courthouse, arriving at 8:15 a.m. and working as late as 7:30 p.m. Even on Nov. 11, Veterans Day, they adjourned to a local hotel because the courthouse was closed.

"Judge Holzberg worked extremely hard, and was very empathetic towards the various plaintiffs," said Bartolini.

He predicted that the cases may become harder to resolve for injuries that are not

as clear-cut and final as the death cases. "Some remaining cases have physical injuries, some have post-traumatic stress without injuries," he noted.

In addition, some are lost wage claims without bodily injury and some are property damage claims, such as cracked foundations of Middletown buildings. The Stratton Faxon firm in New Haven has a group of plaintiffs claiming property damage, and Robert I. Reardon in New London represents a group of uninjured claimants for lost wages, in addition to several injured plaintiffs.

A second round of mediation for the remaining injured plaintiffs is in the process of being scheduled for December.

One death case, Raymond Dobratz, 58, of Old Saybrook, did not settle. Joel Faxon and Michael Stratton, of New Haven, represent the estate.

"The idea going in was that we were go-

ing to try to settle all the cases," Faxon said. "When we got there it was fairly clear that they didn't have an interest in doing that. So we didn't settle anything."

He added, "We didn't even begin talking cases other than our death case, the Dobratz case. That doesn't mean that we'll never settle, but we haven't crossed the bridge of being able to resolve everything."

Faxon said too little time was allocated to the process to complete all settlements in one week.

On one level, Faxon said he would like to see discovery begin. "If there were financial bonuses available that would cause the company to shortcut safety measures, then you're getting into a higher degree of culpability. You're getting into a recklessness standard," he said.

For purposes of the mediation, the defense and insurers all but conceded liability. "If we devoted 1 percent of time to liabil-

ity, that would be a lot," said one plaintiff's lawyer.

The mediation was more like a hearing in damages. Those who settled seemed happy with the results. Hartford lawyer Emmanuel Ciccello commented, "The one thing I can say is, you can't put a value on these things. The settlement was a sufficient value to represent his losses. He was satisfied not only with Judge Holzberg, but also with the result."

Blueweiss, speaking for the defense, said the most difficult part of the negotiations lies ahead. Unlike the death cases, injured plaintiffs are still being treated for their injuries, and those with post-traumatic stress symptoms have injuries that are more difficult to quantify, he said.

Kenny's reaction was characteristic of those who settled: "I think what we got was fair. Obviously it's a horrible situation, but my client's pleased with how this went." ■