

AL DURKIN

The More Complex the Case, The Better for this PI Litigator

by Laura Fletcher

On April 28, 2008, the day before their case was to go to trial, survivors of the gruesome fire that killed six people at 69 West Washington Street in Chicago were awarded more than \$100,000,000.00, one of the largest civil settlements in Cook County history.

Albert "Al" Durkin of **Miroballi, Durkin & Rudin** represented the only one of the 22 plaintiffs who lacked physical injuries. His client suffered from post traumatic stress disorder.

A seasoned personal injury lawyer who has distinguished himself in cases involving traumatic brain injury (TBI) and psychological injuries resulting from exposure to trauma, Durkin explains that cases like his client's are especially difficult "because their injury won't show up on an X-Ray, MRI or a CAT scan... [PTSD] is a psychological injury that sometimes may coexist with a TBI and, if chronic or long term, may cause organic changes in the brain."

The fire, which occurred on October 17, 2003, might have been a forgotten incident if not for a series of gaffes that led to the death of six employees who worked in the government building and the injuries of 16 more.

Beginning with the building engineer's ill-advised decision to totally evacuate the 35-story high rise, and followed by firemen's instructions to evacuees to return back up the southeast stairwell once they reached the 12th floor where the fire was being fought, events turned to the horrific when workers discovered that the stairwell doors on each floor had locked automatically behind them.

State and county workers found themselves trapped, making panicked 911 calls as they clutched the hands of colleagues who were breathing their final moments.

Durkin's client called an ex-spouse to instruct the spouse on what to say to the client's children if she died.

For months afterward, the client suffered from flashbacks, irritability, and depression. When the management in her office changed, she lost her position. Like many who suffer from PTSD, she shies away from discussing the full extent of her condition, for fear it could affect her current employment.

'Bulldog' On the Case

"I think they [the legal experts and the defendants involved] didn't really care about my case because my client's lost time and



medical was very little," Durkin says.

For this reason, Durkin participated on all 250 depositions held in the four-and-a-half years between the fire and the settlement, leading those involving mental health specialists. In a case with awards ranging from \$159,000 to \$11.7 million, Durkin won his client a settlement of \$1.8 million.

Durkin's clients refer to him as a "Bulldog" who won't give up fighting for those he has chosen to represent.

"There are softball questions, and there are hardball questions, and he asks the latter," says Alice Dolan of Alice E. Dolan and Associates, LLC, a fellow personal injury lawyer and long-time friend.

Durkin says his approach with a jury takes cues from his two mentors, smooth-talking Donald Carr and "bull-in-a-china-shop" A. Dennison Weaver, and is peppered with his "regular guy" sense of humor.

"One of the things that defines Al as a cross-examiner is his ability to put legal questions in a logical story form that makes it easy for a jury to follow and hard for a witness to fight. And he does this really well," says Dan Boho of Hinshaw & Culbertson, LLP, who defended the 69 West Washington Management Company in the settlement.

"Instead of the dry lawyerly questions, they are much livelier story-related questions... There

are no holes in the story, and then you follow the story, and the jury is forced to do the same."

Where Durkin really excels, however, is building liability for serious injury cases where none seems to exist.

Manny Sanchez, of Sanchez, Daniels & Hoffman LLP, who has defended a number of cases against Durkin, says, "The more complicated the liability challenge, the better he is."

Durkin describes a client who sustained a severe brain injury when he had a head-on collision with another car on a stretch of road that was under construction. Through his critique of the way the construction barricades were established, Durkin was able to secure several million dollars for his client's long-term care.

Victims of debilitating brain injuries will typically require life-care plans with expenses in the millions, according to Durkin. Another client, whose golf cart swerved into a wall in McCormick Place, has been in hospitals and nursing homes since the accident took place in July of 2007.

Workers' compensation has already paid over \$3.5 million for his upkeep. Durkin will fight to obtain a situation that re-creates, as fully as possible, the client's life before the event to minimize the psychological deterioration that can follow such injuries.

Champion for Brain Injury Victims

For those who suffer traumatic brain injuries are simply not the same people afterwards. Even a mild traumatic brain injury (TBI) can turn a life upside-down. Durkin says that while a mild TBI may not obviously affect a client's intellectual capacity, it could cause personality changes, causing fits of rage or prolonged depression in a person who previously had a sunny disposition.

He often finds that clients for whom he wins awards will call him months later to ask for advice in handling a divorce or other personal difficulties.

"There's a significant increase in divorce, suicide, and nobody thought much about it until the last few years. Now you read about all the football players with the chronic traumatic encephalopathy... Well, that's been going on for years with people who've had a concussion."

Sixteen-year-old Emily Celarek suffered a traumatic brain injury when her friend's car collided with a fire truck as they were driving home from a high school volleyball gathering.

While her friend walked away with a broken arm and some scratches, Emily broke her left hip, fractured her wrist, and spent three weeks in a coma. When she returned to consciousness, it was discovered that her frontal lobe had been injured, leaving her with complete memory of her family and personal life but no understanding of how to perform basic daily functions such as brushing her teeth or combing her hair. She literally had to "re-train" for life.

"You realize how much you were taking things for granted," Celarek says. "You think of all those times when you said, 'I'm too tired to walk up the stairs,' or 'I don't want to clean my house right now.' You've gotta think, 'What if you didn't have the ability?'"

Celarek, now 29, still has trouble remembering phone numbers and initiating tasks like sending mail. During the months of her recovery, she assisted Durkin in a presentation on the effects of traumatic brain injury. Durkin has published a number of articles on the topic and regularly speaks to the Illinois State Bar Association and other bodies about this and various aspects of trial law.

Serving the Underrepresented

Durkin was born on the South Side of Chicago but grew up in Oak Forest. His father, whom he describes as a gifted speaker who read the thesaurus and had "distinguished" white hair, intended to become a lawyer before World War II interrupted his education; Durkin's career fulfilled his father's wish. In 2005, after decades of honing his skills at other firms, Durkin partnered with personal

injury lawyers Joseph Miroballi and Scott Rudin to form MDR.

Growing up in a close-knit Irish-American household, Durkin's grandparents required that he and his siblings entertain the family on Sunday evenings, and it was in this manner that Durkin learned that he could both sing and hold his own in front of a crowd. The self-possession he developed would later serve him well in front of juries, as would the singing: he still croons Sinatra tunes at social events. His favorite song is "That's Life," a tribute to the roller-coaster turns that both he and his injured clients have experienced in their encounters with the law.

Durkin is currently completing his third elected term as the Cook County Representative to the Illinois State Bar Association's General Assembly. He relishes the camaraderie of other lawyers from different disciplines and enjoys his status as a veteran legal practitioner in the group, a status that garnered him an appointment as co-chair of the ISBA Judicial Evaluation Committee (JEC).

The JEC is a screening board that provides what Judge Russell Hartigan of the Cook County Circuit Court deems "an important service to society" by logging countless volunteer hours to screen candidates for various judicial offices, giving voters, who often lack knowledge about judicial candidates, "a benchmark to guide them."

Says Judge Thomas Hogan of the Cook County Circuit Court, Durkin "practices and has practiced in front of so many judges for so many years... He has a better idea than most of what it takes to be a good judge."

Durkin counts his service on the committee as one of the proudest accomplishments of his career because it affords him the chance to "give back" to the community, but he is also part of the push to increase the diversity of the ISBA. An active member of the Illinois Women's Bar Association, he is inspired by his daughter, Jessica Durkin, like him a graduate of DePaul Law School, who joined his firm as an associate in July of 2010.

Sanchez says that it is no surprise that Durkin is an aggressive advocate for this noble cause.

"He rises to the level of challenges very, very fluidly... A successful Caucasian plaintiff's attorney doesn't have to go there, but he does, and that's again to his credit." ■