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How a Billion-Dollar Dispute Became an \$18K Verdict

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Baker Donelson achieved a stunning result in Shelby County, Tennessee, limiting potential liability for our client from \$1.2 billion to \$18,108. A complicated class action involving multiple defendants and co-counsel, this case presented a number of challenges throughout the month-long jury trial. We prevailed through effective trial management, consensus on key issues and the skill to understand when and how to adjust our defense strategy.

This high-profile case arose from the mishandling of approximately 1,200 sets of human remains at a cemetery in Memphis, Tennessee. The plaintiffs' class was comprised of all who executed a contract for the funeral of a set of those remains, along with all who qualified as legal "next-of-kin" for those remains, buried at the cemetery within the class period. The defendants, the cemetery and a number of local funeral homes, were not put in a class. Baker Donelson's client was the owner of three of those funeral homes.

Several facts were not in dispute: that the cemetery kept poor records, such that remains could not be located at a particular place in the cemetery; that the cemetery was operating without proper authorization by the state; that caskets were buried in swampy areas and under walkways; and that some caskets were stacked four or five-deep in a single gravesite. The cemetery ultimately was closed by the state.

The plaintiffs alleged that while the cemetery committed the mishandling, the funeral homes knew or should have known, not to take remains there for burial. Extensive discovery was taken over a period of years, and there were two interlocutory appeals.

The plaintiffs' class was so large, and public interest so high, that Shelby County constructed a temporary courtroom that took up an entire floor of an office building. The Chancellor's bench for the trial was a leftover movie prop from one of the movies filmed in Memphis from a John Grisham novel. The Chancellor allowed TV news cameras in the courtroom, and there were hundreds of spectators every day.

One big difficulty we faced was the management of the trial, as the defendants were not in a class and each had their own lawyers. We had to present a coherent, effective defense without contradicting each other, while dividing up trial tasks amongst the lawyers fairly. We did that by achieving consensus on all major issues (albeit with some spirited debates).

We made an early key decision to not contest that the cemetery was a bad actor. Rather, we decided to take the opposite approach by deflecting liability onto the cemetery. That helped to achieve a 99-1 percent split of liability.

Another key issue was whether to suggest a number to the jury for damages. Many of my co-counsel were adamantly opposed to this, believing it was better to request a defense verdict, i.e. \$0. I argued that we should suggest a number; I am old enough to remember what happened in *Pennzoil v. Texaco*.

We also adjusted our strategy on the fly. For example, we decided to emphasize an argument that the defense team had not believed was all that strong after we realized in voir dire that it was having a powerful effect on

the prospective jurors. During trial, we also made adjustments as we observed opposing counsel. Once it became clear that the plaintiffs' lead cross-examiner was very effective, we drastically reduced the number of client reps we used as witnesses, lest we risk having them weakened on cross. We made the same decision for an expert witness.

After about a month of trial, the jury found our clients liable for one percent of fault, for damages of \$75 per body. For the 241 bodies our clients were responsible for, plus a pro rata share of some that are unclaimed, at \$75 per body, the total damages were \$18,108 in total, rather than the \$1.2 billion sought by the plaintiffs from our clients.