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Fireworks injury nets \$4.75 million *Mortar for grand finale zoomed into audience*

BY PETER VIETH

The deafening explosion of a wayward fireworks rocket caused devastating injuries for a Fairfax County mother and led to a \$4.75-million jury verdict against the fireworks company that staged the 2007 Independence Day show in Vienna.

The verdict for Kathryn Hollis came after a four-week trial involving extensive use of video and PowerPoint presentations in one of the new high-tech courtrooms in Fairfax County, according to Hollis' attorney, Scott A. Surovell of Fairfax. He said he used 160 slides in his rebuttal closing argument.

Surovell said there's another pending claim on behalf of Hollis' son, Max, now 7, who also suffered traumatic brain injury in the blast. The son's claim may target not just the fireworks company, Schaefer Pyrotechnics of Pennsylvania, but also the town of Vienna and Fairfax County, localities that were involved in presenting the annual holiday fireworks display.

Hollis, 39, was injured when a box of linked fireworks fell over, sending a mortar zooming into a crowd of people watching the fireworks show at an elementary school. The rocket carried a powerful charge designed to make a loud boom as part of the fireworks grand finale. The rocket hit one man, knocking him over, and then exploded next to Hollis as she held 3-year-old Max on her lap.

The blast broke Hollis' arm, impaled shrapnel into her arm and shoulder, blew out her eardrums, and left her with burns and brain damage.

Surovell's case against Schaefer included allegations that the company failed to take heed of reports of similar problems with defective fireworks. The claim centered on the use of so-called "finale boxes," where up to 25 rockets are clustered in one container and wired together with timed fuses.

Similar accidents involving the same type of fireworks box occurred at about 30 other Schaefer shows on the same night, four of them in Northern Virginia, Surovell said. The incident in Vienna was the only one to result in serious injury, according to news reports.

Surovell said he sought data about previous accidents at Schaefer displays before filing suit. He said he used more than 70 Freedom of Information Act requests to document problems with fireworks and the way they were used by the company run by owner Kimmel Schaefer. "Our position was that he knew these boxes blew up a lot, and, because he knew they blew up a lot, he should have taken additional measures to protect the crowd from them," Surovell said.

Surovell said there had been earlier incidents and warnings that should have led the local governments to move the fireworks show to a safer location. He said flaming debris fell in the Vienna crowd in 2002 and firefighters urged leaders to move the crowd farther back in 2004, to no avail. "The documents we got from FOIA showed the fire department had been complaining for years about the safety of the site," he said.

Surovell said the verdict should send a warning to those who put on fireworks shows. "I think it says to the industry



SUROVELL

that their primary concern is safety, not maintaining local traditions," Surovell said. "No matter how a sponsor wants you to do a show, you still have to do it as safely as possible. I think it also says to the industry that if they're going to use these finale boxes that are inherently unpredictable and incredibly dangerous, that they need to be extremely careful with how

they're used, if they're used at all.

"It's basically a choice of convenience over safety," he said.

Regardless of the evidence of fireworks carelessness, Surovell said the jury's verdict was driven by the evidence of injuries to his client. "Katy" Hollis endured a broken arm, ruptured eardrums, seven surgeries, and traumatic brain injury that left her unable to remember ordinary household procedures.

"This is someone who used to be an event planner who now can't make an appetizer without someone holding her hand every step of the way," Surovell said.

Hollis' medical bills and lost earning capacity were estimated at \$1.9 million. Surovell said he asked the jury for \$7 million. In addition to the \$4.75-million verdict for Kathryn Hollis, the jury awarded \$45,000 to her older son Alex. He had been slightly injured in the blast, with medical bills of around \$2,500.

Surovell said he has not heard any mention of a possible appeal. A call for comment to Francis J. Prior Jr., counsel for Schaefer, was not returned as of press time.

Joseph Cammarata, a Washington, D.C., attorney who represented another family of victims of the 2007 fireworks mishap, said he settled his clients' claims for amounts he declined to disclose. Neither involved brain injury or multiple surgeries, he said.

Surovell had sued not just Schaefer, but also the Chinese manufacturer of the fireworks and the two localities involved in the annual display. He waived his right to a jury as to the claim against the manufacturer and voluntarily dismissed the claims against the localities, so the jury heard only the claims against Schaefer. The claim against the manufacturer was taken under advisement by Fairfax County Circuit Judge Bruce D. White.

Surovell said he still is considering whether to refile Kathryn Hollis' claims against the town and county, but he has a definite plan to sue those localities on behalf of Max. Max, who was 3 when the accident occurred, took the



Fireworks image from a video that captures errant mortar zooming overhead on its way to Ms. Hollis and her son.



A "finale box" of 25 mortars designed to be lit once.

force of the blast in his face, Surovell said. Doctors induced a coma for three days to treat his brain injury. The extent of the damage won't be known until his early teens, according to Surovell.

Surovell said he made extensive use of diffusion tensor imaging (DTI), a medical study that produces color images of the brain to illustrate his client's brain injuries for the jury. He said the process showed areas of Hollis' brain where there was no longer any neural activity. He said a physician presented a 10-minute video "where he walked the jury through my client's brain."

"It was high-tech stuff, very persuasive," he said. "This is going to affect her for the rest of her life. That's what made it significant."

Plaintiff's attorney: Scott A. Surovell, Fairfax

Type of action: Personal injury

Injuries alleged: Traumatic brain injury, broken arm, perforated ear drums, compound fracture of arm, burns to face, arms and torso

Name of case: Hollis v. Schaefer Pyrotechnics Inc.

Court: Fairfax County Circuit Court

Case no.: 2009-2346

Name of judge: Bruce D. White

Verdict or Settlement: Verdict

Date: Nov. 12, 2010

Special damages: \$480,000 in past and future

medical expenses, \$680,000 in life care expenses, \$731,000 in lost earning capacity

Demand: \$7,000,000

Highest offer: \$2,000,000

Plaintiff's experts: John Steinberg and William Ofca - liability; Anand Kasbekar - photogrammetry; Gregory C. O'Shanick MD and Joseph C. Wu MD -

brain injury; Stephen Gunther MD - orthopedics;

Bryan McKenzie MD and Jay Lucker PhD - ear;

Susan Otero MD - plastic surgery; Mark Gardner

LCSW - trauma therapy; Sharon Reavis RN, Peder

Melberg and Thomas Borziller - life care plan and

economic damages