

Jenny Blackburn: Welcome to the Steamship Mutual podcast. Today we'll be looking into a fascinating and complex case from the Fifth Circuit involving a huge damages award, the reasons behind the appeal, and the ultimate reversal of that verdict. I'm your host, Jenny Blackburn. And joining me is Steamship Mutual's claims director, Paul Brewer.

This case centres around Jesse Henson, who was working at a coal fired power plant owned by Westar Energy in Kansas. A pressure relief valve failed, leading to a release of steam that caused severe burns and ultimately resulted in Henson's tragic death. Jesse's widow, Kelli Most, filed claims against Team Industrial Services and Westar energy.

So, Paul, can you explain the initial claims that she brought forward?

Paul Brewer: Yes, certainly. So, Kelli Most brought claims on behalf of the deceased and the estate. And amongst these, she was seeking damages for pain and suffering, disfigurement, mental anguish, and so on. And on top of that, she was also seeking punitive damages. At the trial, the jury heard the evidence, and they came to the decision to award 90% against Team Industrial services, with the remaining 10% being held against Westar Energy. And can you guess how much the jury awarded Jenny?

JB: No, go on.

PB: \$222 million.

JB: A substantial amount. However, I understand that Team Industrial services challenged this award. And what was the basis of their appeal?

PB: Yes. They argued that the trial court erred in its judgement, claiming the damages awarded were excessive and influenced by improper arguments. Essentially, they felt that the plaintiff attorney employed improper tactics to anchor the jury to an unreasonably high amount without any rational basis connected to the actual evidence.

JB: So, this brings us to the concept of anchoring. Can you explain what unsubstantiated anchoring is and how it played a role in this case?

PB: Yes. So this is where a claimant attorney will make reference to an object or an item or something similar in nature, and put that value before the jury, and then try to use that to influence them to make an award that is far in excess of that, and in essence, to maybe distort the facts of the case to get a higher judgement than perhaps is justified.

JB: And what would an example of unsubstantiated anchoring be?

PB: They might reference a valuable piece of art and how much it was sold for on auction, or they might talk about the value of a mansion down in Beverly Hills and use that to influence the jury. And that is exactly what happened in this case. The claimant attorney referenced a painting that had sold, I believe, for \$350 million and was used that to say to the jury, well, if a painting is worth \$350 million, you know, what is a human life worth?

JB: And so how did the court of appeal respond to these anchoring tactics and the excessive damages award?

PB: Basically, they determined that the jury's decision lacked proper guidance and was based on emotional responses rather than rational evidence. And this led to the Court of Appeal reversing the damages award and reminding the case for a new trial.

JB: That is a significant decision in the court. And how does this compare to previous court decisions, particularly something like the Gregory vs Chohan case?

PB: Well, in Gregory versus Chohan, that case set a precedent for appellate courts to ensure that non-economic damages are rational and grounded in evidence. That case really emphasised the point that unsubstantiated anchoring of the type that we saw in the case we're discussing does not really assist juries and is not helpful in making sure that that we get to a fair and reasonable judgement...

JB: Such as referencing a multi-million-dollar sports contract as a comparison to their client.

PB: It's precisely that although this may be a fair comparison depending upon who the claimant is, the key really is to ensure that where anchoring occurs, that it has actual relevance to the case. And the Court of Appeal in Team versus Most echoed this sentiment and really reinforced the the idea that it is very important that there is a rational connection between the evidence submitted and the amount that ultimately is awarded.

JB: It sounds like this case serves as a crucial reminder for both plaintiff and defence attorneys. What key takeaways, Paul, should they keep in mind moving forward?

PB: Well, I think attorneys should ensure that the damages they seek are firmly grounded in the evidence and avoid relying on irrelevant and emotional arguments. Defence Counsel should be vigilant and prepared to challenge any excessive awards that appear to stem from improper anchoring. I think this case that we've been discussing really underscores the critical importance of presenting a rational and evidence-based argument for damages. Otherwise, you run the risk of having your hard-fought damages award overturned on appeal.

JB: Thank you, Paul, for breaking down this complex case for us. It's clear that the implications of this decision are far reaching for future litigation.

To read Paul's full article, which goes into more details, visit the link in our episode notes. Thank you for joining us for another Steamship Mutual Podcast. Be sure to subscribe and tune in next time as we continue to explore more hot topics from the world of P and I.