

The Cases We Remember: "MGM Grand 'Retroactive' Insurance Case"

One of the most unforgettable lawsuits I experienced occurred when the MGM Grand Hotel sued a multitude of insurers and its insurance broker after the carriers refused to reimburse the hotel for claims it had settled as a result of the disastrous 1980 Las Vegas fire.

Following the tragedy, MGM discovered that it was inadequately insured, and -- believe it or not -- the company purchased a large retroactive policy that provided it with \$120 million in coverage. The insurance companies were willing to sell this unique retroactive coverage because, although they were certain the fire had occurred, the financial extent of the loss and the length of time for the payout were still unknown.

The retroactive carriers figured they could earn enough investment income on the huge premium until those two factors were resolved. The premium amounted to almost \$40 million, an astonishing sum. The coverage involved approximately 30 carriers in 4 different insurance layers.

The MGM Grand Hotel was anxious to settle all claims quickly for business reasons. But the insurance carriers obviously wanted to drag things out. So the hotel took matters into its own hands and directly settled all the claims arising out of the 84 deaths and 1,500 injury claims for about \$69 million. The carriers refused to reimburse MGM, claiming, among other things, that the hotel had paid too much to settle the claims even though a federal court found the settlements were reasonable and approved the payout. When the retroactive carriers refused to pay, MGM hired me as a trial counsel to file a bad faith case against them asking for full reimbursement plus punitive damages.

I became associated with MGM's regular corporate counsel, a large Los Angeles law firm. Attorney Patty Glaser was heading up the firm's team to work in the case and would be my co-counsel at trial. She is a brilliant lawyer and a tireless worker who has since gone on to fame by winning substantial judgments in Los Angeles.

There were so many lawyers representing the 30-some insurance companies on the other side of this case that no courtroom in Las Vegas was large enough to accommodate the trial. Judge Paul Goldman quickly found a solution to this problem. He ordered the various parties to pay \$5,000 each into a special fund so that there was \$150,000 available to build a courtroom that would be constructed in the Las Vegas Sports Arena, which would be large enough to hold the trial.

Accordingly, a large trial facility was constructed, which included, at the judge's insistence, a covered garage for his car.

Lawyers flew in from all over the country. The judge required each carrier to also hire local counsel. This so packed the courtroom with lawyers that signs had to be put up over each attorney's station so that the judge could recognize which ones were talking during the proceedings.

The MGM gutted the 16th floor of the hotel to make room for our office. For two months of pretrial proceedings, all our files, secretaries, and a bedroom for me were located right above the casino floor, which made my working habits a little more difficult.

Just before the trial was about to commence, I happened to be in the executive offices of the MGM discussing jury selection strategy when the phone rang. It was the judge. He explained that high winds had

torn the roof off his garage at the newly constructed courthouse, and he would not be ruling on any pretrial motions until his roof was fixed. Needless to say, all of us were amused but quickly ordered the judge's garage roof to be fixed so that we could proceed with the motions.

The scene was then set for one of the largest trials ever to take place in the United States, from the standpoint of the number of lawyers and parties involved. Because of the size and complexity of the case, Judge Goldman was obliged to keep things in line with some strict rulings.

For example, just before the start of the trial, one insurance carrier made a motion to exclude a key piece of evidence. Before the judge ruled, he asked if any other carriers wanted to join in the motion. Sensing the judge was looking favorable on the motion, several other carriers told the judge they wished to join. Much to their surprise, he immediately announced that he considered the motion to be frivolous, and after fining the maker of the motion \$3,000 for bringing it, he also fined the other carriers \$2,000 for joining in the motion.

He really got tough a few days before jury selection, when he fined another party \$25,000 for not properly marking and identifying its documents to be used during the trial. I think that it was his strict handling of the matter that created the climate for settlement.

As I started to select jury members, the attitude of the insurance companies began to soften, and they offered substantial sums to avoid a full-blown trial. Right after jury selection, a settlement was reached.

The settlement itself was quite an occasion. There was a big signing ceremony, after which the judge brought in a band for a celebration. The local Las Vegas Sun reported it this way:

The MGM Grand Hotel insurance megatrial ended Wednesday at the Thomas and Mack Center in a festive mood, as District Judge Paul Goldman approved the \$87.5 million out-of-court settlement.

Champagne, rock music, and laughter filled the special courtroom at the center after the judge adjourned the proceedings, having just received a T-shirt inscribed in Latin with You can never have too much insurance from all the lawyers on the case&

In the settlement, MGM will receive \$87.5 million for nonpayment of retroactive insurance, believed to be the largest settlement in an insurance case ever. It will receive the money from Las Vegas insurance broker Frank B. Hall, Del Webb Corp., and 30 carriers for companies that sold retroactive insurance to MGM in the wake of the Nov. 21, 1980, fire that took 84 lives and hospitalized 400.

The MGM litigation was the first and last retroactive-insurance case. Because of the huge loss the insurance carriers suffered, retroactive policies are no longer sold.