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Panel upholds award in juror misconduct case

By **KELLEY QUINN**

Law Bulletin staff writer

A state appeals panel on Thursday upheld an \$8.85 million jury award to the family of a 17-year-old girl killed when she was struck by a car on Interstate 55.

The 1st District Appellate Court affirmed the verdict after finding that a Cook County judge correctly granted a new trial in the case because juror misconduct had tainted the original court proceedings.

In its ruling, the 4th Division also rejected several contentions made by the defendant, Greyhound Lines Inc., including that the verdict and damages were against the manifest weight of the evidence.

"It's unfortunate that we had to take 13 years to obtain justice," said attorney Mark E. McNabola, who represented Penny Brettschneider's family. "All along Greyhound has never offered one cent and refused to settle ... it shows their callous disregard for the legal process."

Penny Brettschneider and her family were traveling southbound on I-55 in 1991 to their new home in Houston when one of the family cars broke down. The family pulled over to the side of the road.

As a Greyhound bus and a car approached the Brettschneiders, the bus crashed into the car, which then hit Penny Brettschneider. She was running up an em-

bankment in an attempt to reach safety, Justice Allen Hartman wrote in the decision unpublished under Illinois Supreme Court Rule 23.

Her family filed a wrongful-death suit against Greyhound, and during the first trial, the jury returned a verdict in favor of the defendant.

However, the first initial vote during trial was 10-2 in favor of the family, with the two votes for Greyhound coming from black jurors. One juror repeated stated that he was the "token" black on the jury and would not allow jurors to leave until they found defendant, whose bus was driven by a black driver, not guilty, Hartman wrote.

"Despite the initial vote, the jury returned a verdict in favor of defendant," he added.

After the trial was over, McNabola, of Cogan, McNabola & Dolan, started calling jurors at home. That's how the juror misconduct allegations first surfaced, McNabola said, who tried the case with partner Alice E. Dolan.

McNabola filed a post-trial motion based upon the misconduct of the juror and, attached to the motion, included affidavits from five jurors which described racial tension and threats of physical violence made by the juror.

Circuit Judge Deborah M. Dooling held an evidentiary hearing, but did not consider any testimony regarding the mental processes of the jurors, and admitted only

portions of the affidavits. Dooling determined that the affidavits showed that the juror directed physical intimidation toward his peers, and when the affidavits went uncontradicted, ordered a new trial.

The appeals court rejected Greyhound's contention that the incidents of misconduct occurred eight days before deliberations, only two threats were made, and no physical violence actually occurred.

"The only way a verdict may be impeached thereafter is to reveal physical intimidation or excluded events brought to the jury's attention, without showing how these events affected the jurors' reasoning," wrote Hartman citing *Palanti v. Dillion Enterprises Ltd.*, 303 Ill.App.3d 58, 71, 707 N.E.2d 695 (1999).

Dooling was correct when she refused to admit into evidence portions of the affidavits showing the juror's influence on the panel's decision-making process, Hartman wrote.

"The court was circumspect, and accordingly confined the evidentiary basis for its decision to excerpts of the affidavits," he wrote. "It found the verdict tainted and, in the absence of evidence to the contrary, decided a new trial was necessary to ensure justice was accomplished."

The reviewing court also found that the jury's verdict was not against the manifest weight of the

evidence because its decision was supported by evidence presented at trial.

Greyhound also disputed the amount of the jury's award, which, after a set-off was \$8.49 million. Because of interest, that amount is now \$10.27 million.

"Defendant contends that 'plaintiffs produced no evidence that they sustained any loss, other than that for loss of society, which scarcely supports such a gross verdict,'" Hartman wrote.

An appeals court cannot upset an award unless the verdict resulted from passion or prejudice, or bears no reasonable relationship to the loss suffered, he noted.

"[T]here is no indication that (this) award resulted from passion or prejudice, or that it was unrelated to the loss," he wrote. "Giving substantial deference to the jury, no basis exists to conclude that the award was against the manifest weight of the evidence."

Justices Patrick J. Quinn and Alan J. Greiman concurred.

Attorney Michael W. Rathsack of Chicago handled the appeal for the Brettschneiders. During the second trial, Greyhound was represented by John W. Patton Jr. of Rusin, Patton, Maciorowski & Friedman, and Stephen R. Swoford of Hinshaw & Culbertson on appeal.

Ralph Brettschneider, special administrator of the estate of Penelope Brettschneider, deceased, et al., v. Greyhound Lines Inc., No. 1-02-2221.