

*After the MGM Grand Hotel and Hyatt Regency, disaster litigation may change. But will it change for the better?*

## Slicing the damage pie

By Jeff Blyskal

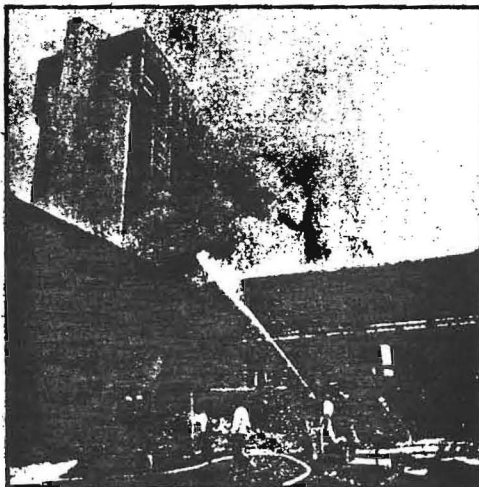
**W**HEN TWO SKYWALKS in the Kansas City Hyatt Regency Hotel collapsed in 1981, 114 people died. The year before, a fire at the MGM Grand Hotel in Las Vegas killed 84 people. Within hours of each disaster, lawyers around the U.S. were on the telephone scrambling for clients and a piece of the inevitable jackpot.

Kansas City's local lawyers managed a rare coup. They almost entirely squeezed such biggies as San Francisco's Melvin Belli and Washington's Irving Younger out of the game. Well, it amounted to a coup for the Kansas City bar, perhaps, but what about their clients? The answer depends on how you look at the settlements. The one pending in the Hyatt case may be \$80 million. Because that will cover injuries as well as deaths, the average of \$700,000 a death in a sense misleads. But it is not unfair to contrast it with the MGM settlement, which also covers injuries. The families of victims there stand to share in perhaps \$160 million for an average of more than \$1.9 million a death. Why the wide discrepancy in the value assigned to human suffering?

One reason is undoubtedly this: Sniffing the scent of green Treasury ink, the kings of torts who lost Kansas City made it to court in Vegas. There are lessons to be learned. Especially in the MGM case, the future of disaster litigation may already be here. That case is an example of how sophisticated lawyers, slick financial types and high-tech computer programs can milk catastrophe for all it's worth.

Or, at least, for all it's worth in Las Vegas. Melvin Belli did share in the legal action there. "In Las Vegas," he

says, "we had ten of the best personal injury lawyers in the country." "Without knowing the Hyatt attorneys," says fast-working Judge Louis Bechtel, who presided over the MGM case, "the experience of the lawyers could have made a difference in the settlements. Highly skilled lawyers



*The MGM Hotel ablaze in 1980  
"We overwhelmed the bastards."*

can often obtain larger awards for their clients, and the MGM case had some very good attorneys."

How those very good attorneys latch on to a lucrative suit is another story. It's simple. Whenever they hear of a disaster or a flawed product that seems damaging, they drop everything else to corral at least one plaintiff and be among the first through the courthouse doors. The publicity alone may attract more plaintiffs, maybe enough to earn the lawyer the role of lead counsel. It's not necessarily prestige that makes that job so attractive. Instead, it's the higher fees.

Belli did not even have a crack at the lead counsel spot in Kansas City,

though Younger did snap up a client who had suffered minor injuries. Younger filed a federal class action and was interested in leveraging that by forcing local lawyers with more serious injury and death cases to join it. Instead, the Kansas City lawyers brought their own class action—the main case—in state court.

The MGM case, however, was not a class action. That's important. It meant each lawyer kept his own clients without, in effect, sharing them with a lead counsel. And it meant fees needn't be approved by the judge, as they are in class actions. So each lawyer could strike his own deal with his clients for contingency fees, usually running 25% to 35% of damages. "You hit the big casino if you win a contingency case," says Harvard Law Professor Arthur Miller. "In a class action the lawyers form a pyramid, with lead counsel at the top and everyone else below in descending order. If you're at the bottom of the pyramid, you don't get the hours [of work] your fee is based on."

And horrors: Class-action judges are getting stingier with fees. "Class actions looked like God's greatest gift to lawyers 10 to 15 years ago," Miller says, "but it has been overused and abused. Now judges are making fees reflect work actually done." Federal Judge Richard Freeman of Atlanta, in an \$11.8 million antitrust settlement four years ago, blasted a bunch of class-action lawyers for the "embarrassingly exorbitant" fee they requested and cut it from \$1.1 million to \$367,000.

But while the MGM case was a collection of individual suits, fact-finding and the establishment of liability could be resolved collectively, as in a class action. Settlements or awards remain to be bargained individually. All this gives lawyers the best of both worlds. "It tends to provide the plaintiff with a higher award," says John Cummings III, a New Orleans lawyer in 29 MGM death cases and 100 injury cases. The lawyers do well, too.

The MGM case, he thinks, is the closest thing yet to emerge as a judicial ideal for handling mass disasters—"something between individual lawsuits and a class action." Cummings, an expert, is also in litigation involving the Ocean Ranger North Sea drilling rig disaster, the New Orleans Pan Am airliner crash and the Hyatt case.

In the MGM case, the ten leading plaintiffs' attorneys advanced \$25,000 each to finance the costly discovery,

or fact-finding, process. "The high-tech business practices used in this case were unlike those in any other," Cummings says. In collecting, indexing, filing and retrieving the facts, the lawyers had electronic help: word processors, computers and audio tapes. (By contrast, some lawyers are less than enamored of electronics. See p. 154.) A device called the Beron Machine let the lawyers retrieve all references in testimony to such specific matters as, say, fire sprinklers. Small wonder computers helped. The lawyers produced 3.5 million documents, all microfilmed, duplicated and filed. "We turned the tables on them," Belli says. "We overwhelmed the bastards with depositions. Usually that's a tactic defendants use to intimidate the plaintiffs."

The settlement didn't arrive with electronic speed, but it is approaching fast enough—in little more than two years—to create the presumption of a record. It came fast also because of the expertise of MGM's insurance and financial men. They early calculated MGM's ultimate liability, which let MGM, several months after the fire, buy retroactive insurance against its ultimate settlement.

But when all is said and done, what is a human life worth? That's what these cases were all about, and the judgments arrived at would horrify a humanist. Coldly, financial and insurance experts calculated the economic values of the lives lost in both tragedies by, in effect, discounting the future earnings of the victims.

The Las Vegas victims as a group were younger and richer—executives, doctors, computer professionals—than the Hyatt victims. And there was less doubt, in the MGM case, about who the defendants should be, though 112 were dragged in. At Hyatt, a considerable dispute arose over who was liable: Hallmark Cards, the owner; Hyatt Hotels, the operator; or the much less affluent architectural, design and construction firms. "The lawyers in Kansas City," Miller says, "may well have decided, 'Rather than risk getting a big award from a small pocket, let's get everyone to settle and bargain with them.'"

In that case, and the MGM one, too, all parties agreed to tradeoffs, suggesting a pattern for future litigation. Big corporations and insurance companies will, in effect, pay a discount for quick settlement. That means plaintiffs will get less, but they will get it sooner. The lawyers will get their money fast, too, and that should make them especially happy. ■