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RICHARD MITHOFF
FIGHTING FOR AN
EMOTIONALLY CHARGED
VERDICT IN LOUISIANA

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EXCEPTIONAL CASE

EMOTIONALLY CHARGED VERDICT
IN LOUISIANA

For Houston attorney Richard Mithoff, landing one of the largest jury verdicts in the United States last year—\$31.8 million for a horrific traffic accident in which two children burned to death on their way to Walt Disney World—was a major victory. Yet, at the same time, it was one of the most emotionally challenging of his storied career, involving two fatalities, two young adults badly burned and scarred for life, and a family so devastated by the tragedy they couldn't discuss it until the day they took the stand.

"It's probably the most intense case I've ever tried because of the emotion," says Mithoff, who has numerous large verdicts to his name, and perhaps is best known as one of the lawyers who orchestrated Texas's \$2.2 billion settlement against the tobacco industry a decade ago.

The accident occurred in July 2003, as a couple from Harlingen, TX—Guadalupe and Amelia Guerra—were driving to Orlando with their two daughters, a nine-year-old cousin, and a young male friend of one of the daughters. Two lanes of traffic were at a complete standstill on Interstate 10 near Lafayette, Louisiana, when a driver for Allied Van Lines, going 65 miles per hour, plowed his tractor-trailer into the line of cars. The Guerra's SUV went airborne as it was hit directly by the tractor-trailer, then caught on fire, and landed on the highway in the opposite direction.

One of the Guerra's daughters, Cindy, 18, died at the scene, as did the little girl, Jennifer Garza. The Guerra's other daughter, Lisa, 20, was burned over 65 percent of her body. Her friend, Joe Alfaro, 20, was burned over 85 percent of his body, including his face, arms, and torso, and has had several toes and fingers amputated. The Guerras themselves, who were in the front seat of their SUV, were relatively uninjured. The driver for Allied Van Lines was killed.

The plaintiffs sued Allied Van Lines, which admitted liability shortly before trial. The defense lawyer, Edwin Preis of Preis & Roy in Lafayette, Louisiana, did not return phone calls seeking comment. Mithoff says the trial judge denied a motion to reduce the verdict, and the case is on appeal in the Fifth Circuit Court of Appeals, primarily on issues related to the size of the award.

Mithoff says that the defense made several savvy strategic moves, including successfully petitioning to have the case removed from the state court in Texas into federal court in Louisiana: that state, unlike other jurisdictions, doesn't provide for punitive damages in most car accident cases. As well, stipulating to liability meant the plaintiffs were blocked from presenting any evidence on why the accident happened.

For Mithoff, this was a blow, as his theory—which his team's accident reconstruction experts were waiting to explain—was that the driver was operating the vehicle in a negligent manner and the defendants should have known it.

"That meant we were hindered at the outset," says Mithoff. "We wanted to communicate to the jury what really happened because that's how you communicate a sense of outrage."

However, some of that evidence from the accident eventually was admitted because the defense—in an effort to eliminate any damages for conscious pain and suffering—contested the cause of death of the two youngsters, claiming they died

immediately from the impact and did not burn to death, as the plaintiffs argued.

"So we were able to reconstruct the accident and suggest to the jury that the cause was probably related to driver error," says Mithoff.

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Mithoff had each of the survivors of the accident tell their stories on different days of the trial, to keep them separate in the jury's minds and to reiterate the human aspect of the case. Neither of the surviving parents had ever discussed the accident before their testimony, not even with Mithoff, because they were too traumatized, he says. Hearing the experts describe how the accident happened, and being able to describe its impact on them, was "cathartic" for them, he says.

"We had to take numerous breaks," says

Mithoff. "It was emotional for everyone in the courtroom: for the family, the judge, court personnel, and certainly for the jury."

Other key witnesses for the plaintiffs included the doctor who treated Lisa Guerra and Alfaro at the burn unit at Baton Rouge General Medical Center, where they were hospitalized for months, and an expert on sleep deprivation. Mithoff also called to the stand an expert on burns and amputations, who gained his expertise working with soldiers from the Iraq and Vietnam wars, who predicted that Alfaro may face future surgeries including more amputations.

—Elaine McArdle