



2022 INTERNATIONAL CLIENT SEMINAR

MARCH 3-6, 2022

The Story's Already Been Told: How News Reporting Can Impact Defense and Trial Strategy

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At 1:22 a.m. on June 24, 2021, the 12-story Champlain Towers condominium in Surfside, Florida stunningly collapsed without warning while its owners and tenants slept.¹ Ninety-eight (98) occupants perished and those that survived did so with little more than the clothes on their back.² The building's north portion completely collapsed, and the remaining structure was unstable and uninhabitable. After an extensive search and rescue mission, on July 4, 2021, the remaining portion of the building was razed completely.³

The collapse of the Champlain Towers not only impacted the immediate Surfside community in Miami-Dade County, Florida, but the story drew nationwide – even international – coverage. Though natural disasters that wreak havoc and cause unfortunate human loss are a somewhat regular occurrence, rarely – especially in the developed world – does a structure the size of the 12-story Champlain Towers collapse. Indeed, arguably no such similar event had occurred since 1981 when the Hyatt Regency Skywalk collapsed during a party inside the Hyatt Regency hotel in Kansas City, Missouri, killing 114 people and injuring over 200 others.⁴

In the immediate aftermath of the collapse, focus turned to the cause. Most prominently, the local and national media offered camera time to forensic consultants, structural engineers, witnesses, and others to hypothesize as to the cause of the collapse, initially without basis, and definitely without

¹ <https://abcnews.go.com/US/biden-approves-florida-emergency-declaration-deadly-building-collapse/story?id=78482598>

² Id.

³ <https://www.cbsnews.com/news/surside-condo-demolition/>

⁴ <https://www.kshb.com/news/local-news/hyatt-regency-skywalk-collapse-40-years-later/hyatt-regency-skywalk-collapse-40-years-later>

consensus.⁵ That the building was razed in the days following the collapse and the debris removed only intensified the speculative nature of the proverbial search for fault.

Beyond cause, compensation to the survivors and the estates of the deceased became the prevalent conversation. Miami-Dade Circuit Court Judge Michael Hanzman was appointed to preside over the cases arising from the collapse. Judge Hanzman then appointed a receiver to oversee the condominium association's finances and a mediator to try and resolve suits and potential claims of survivors and estates with wrongful death claims.⁶ Currently, it is believed that there is at least \$170 million in potential compensation, funded through \$50 million in insurance coverage tendered by the Champlain Towers Condominium Association and \$120 million anticipated to be raised through the sale of the property.⁷ Other targets, including the Association's engineering consultant, the Association's law firm, and the developer of the condominium tower built on an adjacent parcel between 2016 and 2019 are still potential sources of damages through claims under consideration.⁸ Yet, some plaintiffs' lawyers have estimated it would take \$1 billion to fairly compensate all of the victims of the collapse.⁹

⁵ See, e.g., <https://www.washingtonpost.com/investigations/interactive/2021/pool-deck-condo-collapse/>;
<https://www.npr.org/2021/08/26/1031245430/surfside-condo-collapse-corrosion>;
<https://www.constructiondive.com/news/lawsuit-construction-next-door-cause-champlain-towers-south-surfside-florida-condo-collapse/610749/>; <https://www.local10.com/news/local/2021/06/29/did-navy-blast-cause-surfside-condo-collapse/>
⁶ <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article252527958.html>;
<https://miami.cbslocal.com/2021/10/06/judge-mediator-to-sort-surfside-condo-collapse-claims/>
⁷ <https://www.miamiherald.com/news/local/community/miami-dade/article255150752.html>
⁸ <https://abcnews.go.com/US/wireStory/lawsuit-florida-condo-collapse-triggered-building-work-81227165>
⁹ <https://www.wsj.com/articles/surfside-condo-collapse-lawsuits-are-a-fight-over-just-50-million-11627561747>

When a local, national, or international headlining story occurs, it forces attorneys to consider potential parallels between the tragedy in cases they are managing for clients. Counsel have to assume potential jurors in their jurisdiction are aware of the story and may have developed biases as a result. This is particularly true if a case has any similarities with a nationally or locally significant story. As but one example, the author faced this circumstance just months after the Champlain Towers collapse while litigating a case involving a 12-story condominium building fully occupied with owners and tenants with evidence of structural degradation of the building's reinforcing steel and concrete structure. It was apparent in pretrial motion practice that the plaintiff, the condominium association suing for construction defects, was going to try and analogize what happened in Surfside with what could happen to his client's condominium building, unless the jury were to award them the full value of their damages needed to repair the building to their experts' specifications.

The Surfside collapse immediately impacted the litigation the author was involved in. Settlement figures increased. The condominium association began to provide notice of additional structural integrity inspections and express concerns from unit owners that, until the Surfside collapse, had never expressed any concerns with their condominiums whatsoever. In one email, a unit owner reported a leaking kitchen sink to the condominium manager and expressed that, if not repaired quickly, she was concerned the building might collapse due to the leak. Though there was no rational basis for such thinking, the stigma of Surfside was apparent.

With settlement prospects becoming more difficult, and the likelihood of the association prevailing under their theory of fault increasing due to the Surfside media coverage, trial became a

realistic possibility mere months after the Surfside collapse. One pretrial debate for the contractor and subcontractor defendants became whether it was best to try and completely prohibit any reference of the Surfside tragedy during voir dire and trial via Motion in Limine, arguing the parallels between the two were superficial. After all, no expert was prepared to testify that, absent the association's specified repairs, the condominium was under threat of collapse. But by prohibiting any reference of the Champlain Towers collapse, it would necessarily preclude counsel from exploring possible biases developed by potential jurors as a result of the collapse. And certain questions needed to be asked. Which potential jurors were persuaded by media coverage that Florida's building codes and statutory condominium inspection requirements were insufficient, even if followed by the contractor? Which potential jurors would implicitly believe the condominium might collapse if millions of dollars were not awarded to the association against the construction team to make repairs? And, from the association's perspective, which potential jurors might favor the contractor's defense that the association had failed in their statutory duty to maintain the condominium building, as has been alleged against the Champlain Towers condominium association?

Ultimately, the decision was that the Surfside collapse had to be discussed in voir dire and perhaps, even become a central tenant of voir dire. Floridians inundated with daily stories of the tragedy had to be asked what they heard, read, and maybe concluded from the media coverage the tragedy received. This was particularly the case on the issue of the perceived cause of the collapse, which is arguably speculative even today given that no engineer or other forensic consultant was permitted to undertake an investigation of the building before it was razed.

Once the decision is made to voir dire potential jurors the following strategies were developed to identify potential bias or influence given the media coverage, which areas may widely apply to any litigated case where media or news coverage may unduly influence potential jurors:

Confront the obvious. Given that the venire would be given a summary of the case from the Court in advance of voir dire, the decision was made to ask the panel, by show of hands, “who among you believe this case may be another Champlain Towers?” From there, we would be able to identify those potential jurors that became consumed by the news and may have already drawn conclusions versus those that may have heard of the story, even followed the story, but had not been overly influenced by the punditry.

What have you heard or read? After confronting the obvious, the next series of questions was going to focus on what the potential jurors heard about the Champlain Towers, and from what source. Any seasoned trial attorney knows certain newspapers or cable news networks suggest political leanings and mindsets, which, generally speaking, can predict certain attitudes on liability and damages.

Keep the jurors talking. Jurors with particularly strong feelings are more apt to discuss them than those that have no such feelings. We planned to identify “the talkers” by engaging the entire venire in conversation. In a case with similar elements to Champlain Towers where causation was disputed, if five potential jurors all gave a different theory of causation that they heard somewhere regarding Champlain Towers, some causes would immediately sound more ridiculous than others. Perhaps one of the most ridiculous will be the theory promulgated by the plaintiff in our case and the less ridiculous would be more akin to the defense’s theory of causation.

Use voir dire as a steering mechanism. For a case involving potential structural damage due to defective construction, it seems obvious that we had to find out which jurors have a background in architecture, engineering, or construction. Those that do would likely require additional questioning to identify bias for or against our client. But for those that have no such background, we planned to ask who among them would like to hear from an expert on the subject. Potential jurors will almost universally respond affirmatively to this question, and, lo and behold, we had one to testify in the days ahead. Beyond this, and this is jurisdiction dependent, we also planned to steer potential jurors to our position by reviewing certain aspects of the case from our perspective during voir dire.

As lawyers, rarely might we be confronted with a case drawing international attention similar to the Champlain Towers disaster. But in a world of an ever-increasing, constant news cycle on television

and online – often sensationalized at that, it is likely that you might become involved in a case that received at least some modicum of media coverage. In such cases, understand that confronting the coverage in voir dire is typically the best, if not the only, opportunity to identify potential bias in the jury pool and to ensure your client can tell its story and receive the most fair, impartial, jury as may be possible in the circumstances.