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# \$8M verdict for shoulder injury on boat

By **LAURAANN WOOD**  
LAW BULLETIN STAFF WRITER

A Cook County jury awarded \$8 million to a man who sustained severe shoulder injuries when a passing barge collided with his stationary work boat on the Chicago River.

Plaintiff Anthony Fonte sued American River Transportation Co. in August 2012, alleging three months earlier that the crew on the defendant-owned boat the Dale White failed to stop the vessel or switch its direction before crashing into his craft and causing the injuries to his right shoulder.



Clifford W. Horwitz

The jury's award on Thursday is the highest reported in Illinois for a shoulder injury in an adult male, said John L. Kirkton of the Jury Verdict Reporter, a division of Law Bulletin Publishing Company. The previous record was a \$3.8 million verdict awarded in 2006.

Fonte, 56 at the time, was working for James McHugh Construction Co. on a safety boat stationed at a construction site near the Adams Street Bridge, when the northbound 100-foot Dale White barge struck Fonte's boat.

Fonte jumped out of his boat as it was capsizing, said Clifford W. Horwitz, a partner at Horwitz, Horwitz & Associates who represented Fonte.

"As he did, his hand got caught up in a chain that wrenched his shoulder and tore his rotator cuff," he said. "He ended up having three surgeries and complications resulting from his injuries and the surgeries."

After muscle and tendon tears, Fonte now lives with "significant dysfunction" and a five-pound lifting restriction in his arm, Horwitz said.

"He can't touch his nose or touch his back," he said. "His arm is very limited in its movement, and he's got chronic pain."

American River Transportation denied the allegations in Fonte's lawsuit. Instead, it contended in a third-party lawsuit that his employer was at fault for the incident. The company alleged McHugh Construction failed to properly position the boat in the water, train and supervise Fonte and warn him about foreseeable dangers.

"[Fonte] was a safety guy watching the work, but they're claiming he should have been tied up to the shore, that it is too risky to be on the

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Robert J. Franco, a partner at Franco & Moroney LLC who represented McHugh, said the transportation company's foreseeability argument didn't have much weight to it, as an expert who was retained for the case testified Fonte would have had fewer than four seconds to react once the barge started to move toward him.



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He also said McHugh contended the safety boat — whose position had been known for weeks before the incident — was located in the safest spot that followed both Occupational Safety and Health Administration and labor-union requirements. Fonte had received ironwork training before he was hired for the underlying construction job, he said, and a McHugh safety director had surveyed the work site several times before the day of the collision.

"This wasn't an instance where we missed something," Franco said.

Andrew C. Patton, a partner at Franco's firm, also represented McHugh.

After four weeks of trial before Circuit Judge Joan E. Powell, the jury found American River Transportation 95 percent liable and Fonte's employer 5 percent liable for the incident. It also rejected the transportation company's contention that Fonte's damages should be limited to the value of the boat — \$513,551 — under the federal Limitation of Liability Act.

Instead, the jury awarded Fonte \$2 million for loss of a normal life experienced, \$1.65 million for future loss of a normal life, \$1.2 million for pain and suffering experienced, \$1.65 million for future pain and suffering, \$75,000 for disfigurement, \$280,000 for incurred medical expenses, \$200,000 for future medical expenses, \$500,000 for earnings lost and \$500,000 for future earnings lost.

Franco said he and his client believe the liability found against McHugh was "unwarranted because, if anything, the trial showed just how good the McHugh safety program was.

"Juries often feel like they need to award something," he said. "We view 5 percent as a vindication of our safety program."

But Fonte's biggest relief on the case came when he saw the jury found no percentage of liability against him in the incident and awarded him his full lost-wage claim, Horwitz said.

"The defendant was attacking him as really enjoying his career," he said. "[Fonte] could not find any decent employment until he became an ironworker, and he just loved it. They were making light of that, and I think he felt validated that the jury recognized all that he worked hard for."

Horwitz partners Michael D. Carter Jr. and Jay R. Luchsinger also represented Fonte.

The case is *Anthony Fonte v. American River Transportation Co.*, 12 L 9115.

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