

Client's Use of Appellate Counsel at Trial Shaves Nearly 50% Off Verdict in Post-Trial Settlement

AUTHOR: MICHAEL LECINSKI

Several months ago, shortly before a personal injury trial was set to begin in the Circuit Court of the City of St. Louis, one of our firm's clients retained Appellate Team Leader Tim Sansone to attend the trial and work with trial defense counsel to preserve important issues for any future appeal. Although the trial resulted in a high six-figure verdict (reduced from a low seven-figure verdict due to plaintiff's comparative fault), Tim worked with trial defense counsel on the post-trial motions and began preparing the appeal. When the mediation judge at the Missouri Court of Appeals reached out to Tim and plaintiff's counsel about the prospect of using the appellate mediation process, Tim persuaded plaintiff's counsel to use that process (in lieu of direct negotiations), which ultimately resulted in shaving nearly 50% off the verdict in a post-trial settlement facilitated by the court's mediation judge. The issues preserved for appeal through the teamwork of Tim and trial defense counsel were crucial in convincing plaintiff and his counsel that (1) the all-or-nothing risk of proceeding with the appeal (i.e., because some of the defenses if successful would result in judgment as a matter of law, and thus \$0 for plaintiff) was too high; and (2) settlement was a better option, even if plaintiff's chance of success on appeal was better than 50%.

This scenario illustrates the value of involving appellate counsel earlier in the litigation process, well before the post-trial and appellate stages. The client's investment in Tim's efforts was a mere fraction of (1) the significant reduction in the verdict; (2) the attorney's fees already incurred through trial defense counsel; and (3) the attorney's fees that would have been incurred if the appeal continued.