

## \$67M Verdict: Florida Attorneys Outline Voir Dire, Video Strategy

By Annie Mayne

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**M**artin County jurors returned a \$67 million Florida verdict for a quadriplegic man injured at an off-road trucking event, after the defendants' insurer allegedly refused to tender its \$100,000 policy.

One of the South Florida attorneys who secured the eight-figure verdict took Law.com's Daily Business Review inside the win, from his firm's voir dire strategy to the key role video evidence played in the case.

Litigant Justin Nesselhauf was at the annual 2023 "Muddy Valentine" event at PlantBamboo: a 600-acre Okeechobee venue offering mudding, camping and other agritourist activities. Nesselhauf was swimming on the property when he jumped into an unexpectedly shallow mudhole and suffered a severe cervical spinal cord injury.

PlantBamboo argued the area where Nesselhauf was injured was not designated for swimming, so it didn't need to post nearby signs warning of the dangers of diving. It also claimed the risks of jumping headfirst into muddy water should have been obvious, and no one forced Nesselhauf to make such a dive.

But Nesselhauf's attorney, Pike & Lustig partner Robert Johnson, said his team was able to use a rare piece of evidence it had uncovered: bystander video footage that captured their client's fateful jump.



Credit: Pawel Michalowski/Adobe Stock

When played side-by-side with online video advertisements of the event, Johnson said jurors saw Nesselhauf's behavior was in line with the kind of experience that had been sold to him.

"Not only did they fail to warn, fail to create rules that somebody shouldn't do what he did—they instead actually encouraged the exact conduct that happened here. ... Some of the clips that they purposefully chose to advertise these events were strikingly similar to what he did in this case," Johnson said.

Knowing that those videos were the closest they'd get to a smoking gun, Johnson said he and partners Michael Pike and Daniel Lustig went into voir dire looking to fill the jury with people who bought into the idea that advertisements play a significant role in affecting consumer behavior.

The plaintiff team asked prospective jurors about past experiences with advertising and their own ability to be swayed by marketing campaigns, looking to weed out anyone who wasn't open to the idea that advertising works.

"The very point of marketing and advertising is to encourage conduct, whether it's an event or a product. That's why companies spend millions and millions of dollars on marketing every year. It's because marketing works. Marketing affects how human beings act," Johnson said. "We simply wanted jurors who were open to that testimony, who could fairly weigh that testimony, because that's really what this case was about."

Jurors returned the \$67,250,000 verdict after roughly three hours of deliberation, finding PlantBamboo or C&C Underhill Inc. 60% to blame, while Nesselhauf was 40% at fault.

Three other named defendants were not found liable at all: two trusts tied to the family that owns PlantBamboo and TGW Productions Inc., a marketing and productions company that promoted Muddy Valentine.

TGW Productions' attorney, Scott A. Smothers of Smothers Law Firm, did not return a request for comment.

The PlantBamboo defendants are represented by Wicker Smith partner Kurt Spengler, who was in trial Wednesday and unavailable for an interview by publishing time. In an email, Spengler said PlantBamboo plans to challenge the verdict, claiming Nesselhauf signed a waiver that should have gotten the case tossed out long ago.

"While the Underhills greatly sympathize with Mr. Nesselhauf, they disagree with the jury verdict, and will be filing post-trial motions," Spengler wrote. "Mr. Nesselhauf made the decision to run and dive headfirst into obviously shallow water/mud. It was very clear that the water was not deep. The jury verdict seems to have been driven by sympathy, which is understandable given the emotional nature of the damages, but is nevertheless improper."

PlantBamboo filed a motion for directed verdict last week, arguing no reasonable jury could have found it liable.

Tuesday, defendants filed an alternative motion for a new trial, along with a motion for final judgment.

Meanwhile, Nesselhauf filed a motion for a \$40 million final judgment last week, accounting for the jury's assessment of his liability.

Circuit Judge William L. Roby has yet to enter his ruling.

Johnson said one thing parties never debated was the severity of Nesselhauf's injuries or the fact that his life was forever altered by the jump.

An 18-year-old high school senior at the time, Nesselhauf saw his graduation put on hold and his dreams of being a collegiate athlete dashed, his attorney said. At 21, he lives with his parents in Palm Beach County, and relies on round-the-clock care for his most basic needs.

"He's not even able to feed himself, to bathe himself, to drink water on his own. He can't use the restroom on his own. There's not much he's able to do without help," Johnson said. "He's effectively stuck."

Johnson said it's likely there will be a bad-faith lawsuit against PlantBamboo's insurer, Prime Insurance Company, to collect on the verdict. He said for months after his client's injury, Prime Insurance refused to tender its insured's \$100,000 policy, prompting Nesselhauf to sue for damages.

"From a human perspective, this case is a tragedy in the sense that the plaintiff is permanently injured and that his injuries should have never happened. But from a legal perspective, this case also presents a tragedy in the sense that the insurance company failed to fulfill its obligations and tender its policy of \$100,000. And had they done so, this trial would have never happened," Johnson said. "This is not the story of the runaway jury who returned a verdict not based on the evidence. ... Instead of protecting its insured and tendering its extremely low policy in this case, the insurance company decided to gamble."