

And The Defense Wins

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On Tuesday, May 29, after more than seven weeks of trial in the alleged catastrophic personal injury case of *Gavin Cox v. MGM Grand Hotel LLC*, a Las Vegas, Nevada, jury returned defense verdicts for **Selman Breitman** clients MGM Grand Hotel LLC, Magician David Copperfield, and David Copperfield's Disappearing, Inc., finding that neither Copperfield, his company, nor the MGM Grand Hotel were liable for plaintiff Gavin Cox's accident. Additional defendants in the case, Backstage Employment and Referral and Team Construction were also found not liable. The jury further determined that Mr. Cox was the 100 percent cause of his own accident. The trial was bifurcated into liability and damage phases. This verdict was in the liability phase—thus, plaintiffs cannot pursue any damages.

“We are obviously very happy with the jury’s verdict,” said Elaine Fresch, Selman Breitman partner and attorney for David Copperfield and his company. “In the courtroom, Mr. Cox needed assistance walking. However, surveillance videos we had taken during the last two years clearly showed Mr. Cox able to walk fully on his own. The evidence put into question Mr. Cox’s credibility.”

Attorney for MGM Grand, Selman Breitman partner Jerry Popovich stated, “MGM Grand Hotel is grateful to this dedicated jury that participated in the trial for over seven weeks... MGM Grand Hotel never wants a person to be injured at its property, so we are pleased that the jury determined that MGM did not cause Mr. Cox’s fall.”

David Copperfield and David Copperfield's Disappearing, Inc., were represented by DRI member [Elaine Fresch](#) (Los Angeles and Las Vegas); MGM Grand Hotel LLC was represented by DRI member [Jerry Popovich](#) (Orange County).

In November 2013, plaintiff Gavin Cox and his wife visited Las Vegas to celebrate his birthday. He went to the David Copperfield show at the MGM Grand Hotel. He then volunteered to be a participant in Copperfield's Thirteen illusion, the finale to the show. During the illusion, Mr. Cox was made to “disappear” along with 12 other participants from a raised platform. While moving to his reappearance location at the back of the theatre, he fell and claimed a shoulder injury, with neck and brain injuries as well. His claimed medical damages totaled more than \$1,000,000. He sued Copperfield, MGM Grand Hotel, Backstage Employment and Referral (the stagehands), and Team Construction (which had a construction dumpster in the area of the fall) for negligence, seeking over \$20,000,000 in damages. The only settlement demand made to all four defendants was for \$20,000,000. Offers of Judgment were made on behalf of Selman's clients, Copperfield, his company, and the MGM Grand, which will provide the clients the ability to seek attorneys' fees and costs pursuant to Nevada law.

Cox's attorney argued that neither Copperfield nor the MGM Grand Hotel properly warned of the potential dangers in participating in the Thirteen illusion.

Selman Breitman attorneys Elaine Fresch and Jerry Popovich supported by the testimony of the executive producer of the show and Mr. Copperfield, argued that the route the participants take is not chaotic and that nine stagehands guide the 13 participants through the route. A stagehand also controls the pace. They further argued that Cox simply tripped and fell on a flat concrete area, which was supported by the analysis of an expert in accident reconstruction and biomechanical engineering. Additionally, evidence that more than 55,000 people had participated in the illusion at the MGM over a 13-year span was presented before Cox participated.

After closing arguments, the jury deliberated for just two hours, finding in favor of all defendants, and specifically finding that Cox was the proximate cause of his accident and was 100 percent responsible.

At the start of trial, certain portions of the illusion details were revealed in open court, including to the press, but Nevada's Appellate Court, due to Ms. Fresch's petition, issued a Writ of Mandate to keep the illusion's secrets confidential as a trade secret which, at least, prevented further disclosure. Mr. Copperfield's celebrity status and the reveal of a portion of the Thirteen illusion, as well as the popularity and draw of the MGM Grand Hotel, attracted the attention of a global audience, with coverage throughout by *Law360*, CNN, NBC News, ABC News, Fox News, NPR, BBC, *The Washington Post*, Law & Crime Network, and numerous other legal and mainstream media sources internationally.

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