

# Despite Model Client, Lawyer Faces Uphill Battle In Burn Suit

## Jury awards boilermaker millions in gas explosion

By Correy E. Stephenson

[correy.stephenson@lawyersusaonline.com](mailto:correy.stephenson@lawyersusaonline.com)

In 30 years of practice, Robert I. Feinberg has never had a more likeable client than Amedeo Galotto.

“He was right out of central casting,” the Boston lawyer says. “To listen to him is to believe him.”

Feinberg says his client’s credibility, coupled with his positive outlook in spite of the obstacles he faced, helped persuade a jury to award the boilermaker more than \$5 million after a water heater exploded and scalded his body in July 2007. His wife and son received \$450,000 for loss of consortium, bringing the total verdict, with interest, to nearly \$7.8 million.

Galotto spent weeks in a hospital burn unit, underwent three skin-graft surgeries and suffered from post-traumatic stress disorder.

Despite the horrific injuries, Feinberg says he found himself faced with an unexpected challenge: When the case recently went to trial in Middlesex Superior Court in Woburn, his client no longer looked disfigured. In fact, he looked downright good.

It was not the only hurdle Feinberg would have to overcome.

“For four years I was told by the defense that this was a no-liability case,” says Feinberg, who tried the matter with his Feinberg & Alban colleague Matthew G. Venezia and Boston attorney John B. Johnson. “But the jury didn’t buy that.”

David R. Bikofsky, a partner at Gillis & Bikofsky in Boston who was not involved in the suit, says the size of the verdict shows “the system” worked in Galotto’s case.

## VERDICT SPOTLIGHT

“There is a current climate where plaintiffs are not offered full value on their injuries, and even in cases where there is liability and extensive damages, juries expressing empathy and applying the law as it should be applied to compensate plaintiffs and make them whole is not as common an occurrence as it should be,” Bikofsky says.

Christopher P. Flanagan, a partner at Wilson, Elser, Moskowitz, Edelman & Dicker in Boston, represented the defendants at trial. He did not return a call requesting comment.

### Conflicting stories

Despite Feinberg’s faith in his client, he says he was concerned about the case after taking the depositions of the property manager and the trustee of the condominium complex where Galotto was injured.

Both men stuck to the same story: Galotto and his partner arrived at Parkview Condominiums in Winchester on July 11, 2007, at 7 a.m., and grew annoyed waiting for the water heater to drain before they could begin repairs on a leaking gasket. Though the condo officials warned Galotto that the tank was still under pressure, he was impatient to get started and opened the unit too soon, resulting in hot water shooting out and throwing him against the wall.

The defense’s “strong and consistent” stories contradicted Galotto’s version of the morning’s



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events, Feinberg says.

Galotto claimed he and his partner arrived at 9 a.m., and were taken to the boiler room where they were assured by the property manager that the 1,200 gallon tank had been drained of water and the pressure released.

Galotto also reported seeing a hose attached to the tank running to a drain, suggesting that the water had been emptied out. He checked the thermometer, which read 70 degrees, and the PSI gauge, which indicated that the pressure in the tank was negligible.

Feinberg says he rebutted the defendants’ account on several fronts.

First, he was able to show jurors documentation to support Galotto’s timeline. Work records indicated that Galotto and his partner were at another job in Peabody prior to their arrival at Parkview Condominiums, and phone records revealed that Galotto had talked to his wife just before 9 a.m. She testified that, when they spoke, he had not yet started the second job.

Galotto also avowed that he would never open a tank under pressure and that, in his 20 years as a boilermaker, he had walked away from dozens of jobs when informed that a unit was under pressure.

The defense had also attempted to use a statement made by Galotto’s partner during his deposition. He had said the repair team was told that the tank was under pressure, which, the defense claimed, meant Galotto had been warned and yet impetuously opened the water heater anyway.

“But ‘under pressure’ could mean one of two things,” Feinberg explains.

In addition to pressure within the water heater, there was also pressure in the pipes going to the 318 condominium units heated by the tank. Just before Gallotto and his partner — who was not injured in the accident — began to work on the unit, Parkview employees released the pressure in the outgoing pipes, which supported the second interpretation, Feinberg says.

### Straining credulity

Feinberg also had concerns after OSHA cited Gallotto's employer, Kendall Boiler and Tank Co., for the accident.

But the OSHA report ended up working to the plaintiff's advantage. Because Massachusetts does not allow the findings of an administrative agency to be introduced at trial, the jury did not learn to whom OSHA assigned fault for the accident.

However, Feinberg was able to introduce factual findings made by OSHA, including that the thermometer on the machine was off by more than 100 degrees. That comported with Gallotto's reading that the tank was at 70 degrees before he opened it, when in reality it was over 200 degrees.

The thermometer and other gauges had not been replaced since the unit was installed in 1966, Feinberg says, further evidence of the defendants' propensity to do things on the cheap. For example, Parkview did not have an outside service contractor maintain the water heater. One employee testified that because it did not have "moving parts," it did not require regular maintenance.

And Feinberg told jurors that the defendants had a running problem with maintaining hot water for all the units in the building. To keep the residents supplied with enough hot water for their morning showers, the tank was not drained all the way prior to Gallotto's arrival.

"They knew it would be hard to backfill [the

tank], so they left 300 or 400 gallons in," Feinberg says. "They cut corners a little bit."

The defense also strained credulity when it argued that Gallotto's burns were not the major cause of his post-traumatic stress disorder, but merely a "contributing cause," Feinberg says.

A burn unit psychiatrist who had evaluated Gallotto testified that he believed PTSD, in general, was over-diagnosed. But he told the jury it was clear the first day he saw Gallotto that he was suffering from the disorder.

Gallotto, who comes from a family of boilermakers, attempted to return to work in 2008 despite his continuing pain and psychiatric issues.

"He begged the doctors to let him try, but he suffered from all kinds of physical manifestations when he worked," including sweating and nausea, Feinberg says, adding that Gallotto's doctors agreed that he had made a good-faith attempt but could not return to the job.

### Survival

At mediation, the defense offered \$200,000, a sum that did not change until after trial started and Gallotto took the stand.

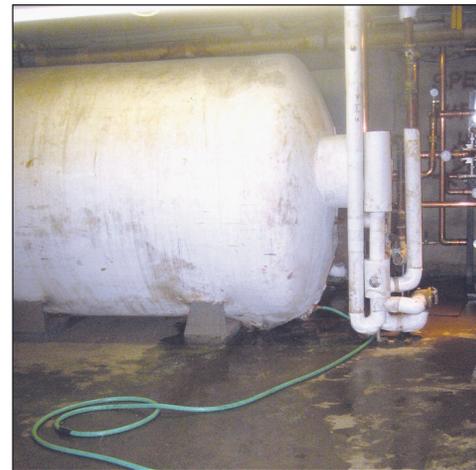
He proved to be a model witness, according to Feinberg.

"His emotion and his decency came through, as did his knowledge as a boilermaker," he recalls.

That knowledge could have been a double-edged sword, Feinberg says, with jurors believing that he should have realized the tank still had water inside and was under pressure.

"But he did a great job explaining his job and what the gauges told him. In a way, he was his own best advocate," Feinberg says, noting that after Gallotto's testimony, the defense upped its settlement offer to \$300,000.

Following the week-long trial, the jury deliberated for less than six hours before returning



The 1,200-gallon tank that spewed scalding water on Robert I. Feinberg's client

with a \$5.75 million award, which it reduced by 10 percent for comparative negligence. Jurors awarded Gallotto's wife and son loss-of-consortium awards of \$250,000 and \$200,000, respectively.

Boston lawyer Thomas E. Peisch, past president of the Massachusetts Defense Lawyers Association, says the sizeable verdict was likely due to the amount of special damages such as medical expenses and earning capacity.

He also says that burn victims can produce "emotional reactions" in jurors that other injuries do not.

Noting that Massachusetts is not known for big verdicts, Feinberg calls the award "fantastic."

"This was a triumph of the little guy," he says.



Plaintiff Amedeo Gallotto

## FEINBERG & ALBAN, P.C.

ATTORNEYS AT LAW

BROOKLINE OFFICE  
1051 BEACON STREET  
BROOKLINE, MASSACHUSETTS 02446

TELEPHONE: (617) 232-5950  
FACSIMILE: (617) 277-8862

BOSTON OFFICE:  
141 TREMONT STREET  
4TH FLOOR  
BOSTON, MA 02111

PLEASE REPLY TO  
BROOKLINE OFFICE

[www.feinbergalban.com](http://www.feinbergalban.com)