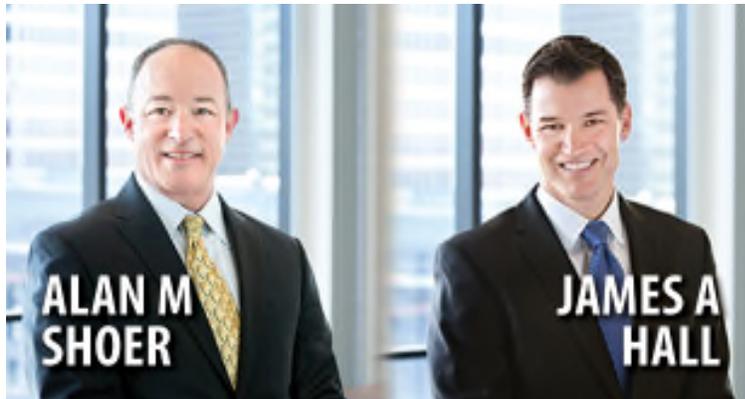


Lawyers help ferry disruptor win new Block Island service

A quick word with ... Jay Hall and Allan Shoer

By: R.I. Lawyers Weekly Staff October 27, 2016



Entrepreneurs often take pride in their ability to succeed on the strength of their business ideas and their self-sufficiency.

But anyone looking to take on an entrenched competitor in a highly regulated market needs more than a good idea and elbow grease. Without good legal representation, that party is taking a knife to a gunfight.

Adler, Pollock & Sheehan shareholders James A. "Jay" Hall and Alan M. Shoer take great satisfaction in helping disruptive businesspeople with superior ideas win such duels. Thanks to their efforts and those of associate Nicole M. Verdi, summer visitors to Block Island will have an additional high-speed ferry and new point of departure from which to choose.

The Providence lawyers helped convince the Rhode Island Division of Public Utilities and Carriers to approve the new high-speed ferry between Quonset Point and Block Island despite the objections of the incumbent in-state provider, Interstate Navigation, which operates a variety of ferry services to Block Island year-round from Point Judith, Newport and Fall River; a provider embarking to Block Island from Connecticut; and the town of New Shoreham, which is co-extensive with the island.

The team represented Charles A. Donadio Jr. and his Rhode Island Fast Ferry business before the PUC. Hall and Shoer recently spoke with reporter Brandon Gee about the case and its relevance to the greater Rhode Island economy.

Q: *Why is this decision important?*

SHOER: It shows that there's more and more consumer demand for options and for the opportunities that come from traveling on a high-speed ferry as opposed to being forced to go with one traditional slow

boat service or having to go to one port. Customers like options. This is a situation where you have built in infrastructure already in place at Quonset Point. It was a natural way of utilizing the infrastructure that's there to accommodate those people who would like to get to Block Island through a port that's maybe more easy to get to, or more attractive to some people, than going down to Port Judith, particularly on hot summer days when traffic might be a concern.

Q: What is unique about practicing before the PUC versus traditional courtrooms, and what lessons did you learn from this case specifically?

HALL: Be prepared. There's a lot of expertise with regard to this subject matter within the division. When it comes to hearings, particularly on an application like this that was objected to amply, we went through about three years of struggles, including appeals and being sent back down to the division for additional hearings — hearings that are very similar to trials, which I am more accustomed to, where there's an application of the rules of evidence and you need to make a record so that you can preserve your victory, in this case on appeal. Oftentimes you'll see people aren't prepared or they think it's a regulatory hearing where they don't think it will be similar to a trial. At the division, it's very close to a trial — almost an exact replica.

Q: What was the most challenging aspect of the case?

HALL: The toughest thing to overcome is really related to the ability to perform. Whenever you're making an application like this ... there's no boat that's being built yet or specific vessel to point to. There's generally plans for dockage, but certainly no one has invested millions in dockage at that point and millions in a vessel. Those are the more difficult things to overcome in a case like this. That's the nature of the beast. ... No one is going to be able to propose a full service where a boat has been built or retained or facilities have been built prior to the issuance of a license. The other objections [were] certainly not something that was difficult to overcome or that we didn't expect. In fact, in this particular instance, overcoming those objections was certainly easier given the convenience of the facility at Quonset.

Q: What is the most important thing to underscore when arguing an application before the PUC?

HALL: The PUC is there for the benefit of the public as a whole and not necessarily Block Island or North Kingstown or the other towns that were somewhat involved in the proceeding. ... I think you need to drive that home when you're making these kinds of proposals. The standard is need and convenience. That's a need and convenience that is directly related to the public, and you need to be able to drive home that the proposal is going to further that; that the proposal is certainly going to be a benefit, not only to the applicant, but as a whole to the people of Rhode Island or to the people who are looking to attract increased tourism to Rhode Island. If that's not the most important thing, then you won't be successful.

Q: News of the proposed new service made its way around social media. Did any of that activity make its way into the case?

HALL: There was one point in time where there was a discussion whether or not Rhode Island Fast Ferry or the incumbent provider had higher scores on some of these social media travel sites. It was given very short consideration, to say the least, by the hearing officer.

Q: What aspect of the case did you find most personally fulfilling?

SHOER: This is one of those examples of how new concepts in established business models can change. You look at different industries — doesn't matter if it's telephones, or Uber and ride-sharing services and

how they're disrupting the old traditional taxi cab model. This is just another example of entrepreneurial activity bringing in a new form of a business model. This particular client was the first to introduce a high-speed ferry business model into this region [in 1999, from Point Judith to Block Island]. That caused a lot of disruption. The Interstate business was very concerned about it and fought him very hard 20 years ago. But eventually they saw this was the wave of the future, and they bought into that high-speed ferry business. Who knows how long it would have taken Interstate to get into the high-speed ferry business, but I think it's fair to say it wouldn't have happened as fast as it did if there wasn't an effort to come in and disrupt the same-old, same-old way the ferry business had operated for decades. We hear about disruptive technology and business models a lot, and this is just another example of how an innovative approach to a very important public need can help really change the way our society gets around.

Q: When is the service going to start?

HALL: We received an appeal from the town filed on [Oct.] 12. The town has appealed the order and is seeking to have it overturned. That said, that doesn't necessarily stop preparations from going forward. We think we're on very, very sturdy ground in terms of being able to prevail even on appeal. That being said, the earliest that the service would go into the water would be the summer of 2018. There's a dock that is currently under the permitting process that needs to be built. Rhode Island Fast Ferry is in the process of contracting for another new vessel ... in order to get the service up and running.