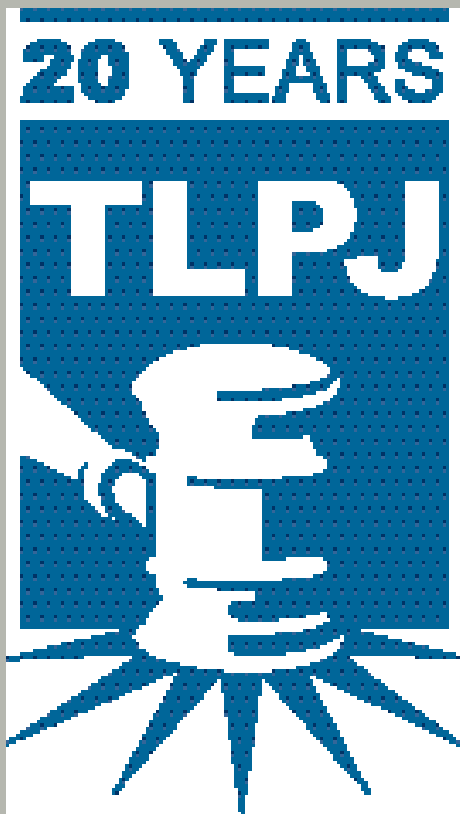


TRIAL LAWYERS DOING PUBLIC JUSTICE



TRIAL LAWYERS FOR PUBLIC JUSTICE

2002

OUR MISSION

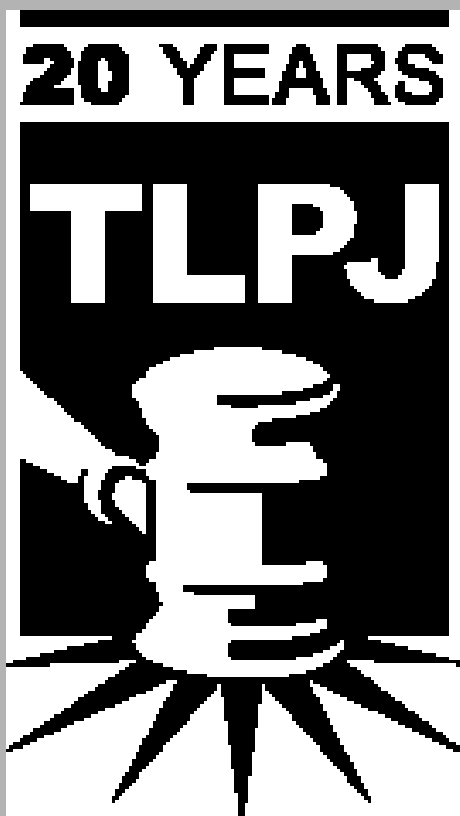
Trial Lawyers for Public Justice is the only national public interest law firm that marshals the skills and resources of trial lawyers to create a more just society.

Through creative litigation, public education, and innovative work with the broader public interest community, we:

- protect people and the environment;
- hold accountable those who abuse power;
- challenge governmental, corporate and individual wrongdoing;
- increase access to the courts;
- combat threats to our justice system;
- and inspire lawyers and others to serve the public interest.

Founded in 1982, TLPJ utilizes a network of more than 2,700 of the nation's outstanding trial lawyers to pursue precedent-setting and socially significant litigation. TLPJ has a wide-ranging litigation docket in the areas of consumer rights, worker safety, civil rights and liberties, toxic torts, environmental protection, and access to the courts. TLPJ is the principal project of The TLPJ Foundation, a not-for-profit membership organization headquartered in Washington, DC, with a West Coast office in Oakland, California. The TLPJ web site address is www.tlpj.org.

TRIAL LAWYERS DOING PUBLIC JUSTICE



TRIAL LAWYERS FOR PUBLIC JUSTICE

2002

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INTRODUCTION

Trial lawyers have a special commitment to justice. Their advocacy skills breathe life into the rights of individuals and groups that have suffered injustice and harmful abuses.

Every year, trial lawyers provide millions of people with the means to obtain justice. In the majority of these cases, the client is an individual who has been damaged in some way—physically, mentally, emotionally, or monetarily—by the wrongful conduct of a business or corporation.

These David-and-Goliath battles for legal justice usually pit the enormous financial resources of the bureaucratic or business defendant against the meager resources of the injured plaintiff. Ironically, plaintiffs' attorneys are not generally paid unless they win.

However, many trial lawyers take great risk and overcome incredible odds to advance the common law, to make new law, and to win justice for their clients and for the common good of the public. We honor such lawyers with this publication.

Despite trial lawyers' dedication to fighting for public justice, some cases are so novel or demanding that, even though they involve the public good, they are unlikely to be pursued by private practitioners or other public interest organizations. Trial Lawyers for Public Justice (TLPJ), a national public interest law firm with offices in Washington, D.C., and Oakland, California, handles such cases.

TLPJ, founded in 1982, chooses cases on its wide-ranging docket for their impact on the public good. TLPJ uses creative litigation to protect people and the environment, hold accountable those who abuse power, challenge and remedy wrongdoing, guard access to the courts, combat threats to our judicial system, and inspire lawyers and others to serve the public interest. A volunteer network of more than 2,700 of the best trial lawyers in the United States and abroad supports the work of this firm. TLPJ litigates most of its cases by calling on these members.

Unfortunately, much of the public is unaware of how the work of trial lawyers successfully corrects injustices and creates economic incentives that protect the public health, safety, and welfare. That is why The TLPJ Foundation exists. The TLPJ Foundation is the nonprofit, charitable membership

organization that supports Trial Lawyers for Public Justice. For more information on how to join and support the Foundation's work, please see the membership form at the back of this publication.

One goal of The TLPJ Foundation is to inform the public about court cases decided each year that illustrate the principles of public justice. To that end, The TLPJ Foundation presents two awards—the Public Justice Achievement Award and the Trial Lawyer of the Year Award.

The Public Justice Achievement Award is presented periodically to the volunteer attorneys who have won major victories in TLPJ cases in the past year, or in cases that demonstrate excellence in achieving the purposes of TLPJ's mission. Recipients show how trial lawyers, working together, can win cases of national significance.

The Trial Lawyer of the Year Award is presented to the trial attorney or attorneys who have made the greatest contribution to the public interest within the past year by trying or settling a precedent-setting case. Finalists and recipients exemplify how trial lawyers use their skills and determination to create a more just society.

This publication describes the extraordinary work and achievements of the winners of the 2002 Public Justice Achievement Award, and the winners and finalists for the 2002 Trial Lawyer of the Year Award. It highlights the outstanding work of attorneys on eight cases. These cases illustrate the public benefits of trial lawyers and the civil justice system in helping to prevent injuries and wrongdoing, to achieve fair compensation for injured people, and to hold wrongdoers accountable. The accomplishments of these outstanding trial lawyers are a testament to the values espoused by Trial Lawyers for Public Justice and The TLPJ Foundation.

We hope the cases described in this publication will illustrate the precious rights protected by our judicial system, and the need to sustain the principles of justice and fairness it embodies.

2002 PUBLIC JUSTICE ACHIEVEMENT AWARD

Ting v. AT&T

Jim Sturdevant, Karen L. Hindin, and F. Paul Bland, Jr.



Jim Sturdevant

This award is presented periodically to attorneys who win exceptional victories for the public interest in TLPJ cases.

Jim Sturdevant and **Karen L. Hindin** of The Sturdevant Law Firm in San Francisco and **F. Paul Bland, Jr.**, of TLPJ won a landmark ruling against mandatory arbitration in their class action lawsuit on behalf of seven million California consumers against AT&T. In a detailed decision published on January

15, 2002, U.S. Magistrate Judge Bernard Zimmerman of San Francisco found that AT&T had effectively tried to eliminate long distance customers' rights by inserting a broad new mandatory arbitration provision in its form contract with them.

The decision in *Ting v. AT&T* concludes, "AT&T sought to shield itself from liability . . . by imposing Legal Remedies Provisions that eliminate class actions, sharply curtail damages in cases of misrepresentation, fraud, and other intentional torts, cloak the arbitration process with secrecy and place significant financial hurdles in the path of a potential litigant. It is not just that AT&T wants to litigate in the forum of its choice—arbitration; it is that AT&T wants to make it very difficult for anyone to effectively vindicate her rights, even in that forum. That is illegal and unconscionable and should be enjoined."



Karen L. Hindin



F. Paul Bland, Jr.

This exceptional team of lawyers put together a rich factual record and tried the case on November 12-14, 2001. The suit was a class action on behalf of all AT&T long distance customers in California. The named plaintiffs in the case are Darcy Ting, an AT&T customer who lives in Berkeley, and Consumer Action, a San Francisco-based, national public interest organization. The court permanently enjoined the

arbitration and limitation on liabilities provisions of AT&T's contract from taking effect. AT&T has appealed the case to the U.S. Court of Appeals for the Ninth Circuit.

The *Ting* case vindicated the rule of law and held a communications giant accountable. We are proud to honor the exceptional lawyers who prosecuted it with the Public Justice Achievement Award.

We also acknowledge and thank four other TLPJ staff members—Olender Fellow **Khalid Elhassan**, Consumer Rights Fellow **Michael J. Quirk**, Executive Director **Arthur H. Bryant**, and law clerk **Kate Gordon**—who provided invaluable assistance in this case.

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2002 TRIAL LAWYER OF THE YEAR AWARD

This nationally prestigious award is bestowed annually upon the trial lawyer or lawyers who have made the greatest contribution to the public interest by trying or settling a precedent-setting case.

All of the finalists for the 2002 Trial Lawyer of the Year Award are deserving of our praise and thanks. Their outstanding work, outlined below, won justice against incredible odds. The listing begins, however, with the 2002 Trial Lawyer of the Year Winners:

2002 TRIAL LAWYER OF THE YEAR WINNERS

FIGHTING RACISM IN HIGHER EDUCATION:

AYERS V. STATE OF MISSISSIPPI

Isaac K. Byrd, Jr., Armand G. Derfner, Bob Pressman, and Alvin O. Chambliss, Jr.



Isaac K. Byrd, Jr.

Isaac K. Byrd, Jr., of Byrd & Associates in Jackson, Mississippi, **Armand G. Derfner** of Derfner & Wilborn, L.L.C. in Charleston, South Carolina, solo practitioner **Bob Pressman** of Lexington, Massachusetts, and **Alvin O. Chambliss, Jr.**, of Texas Southern University's Thurgood Marshall School of Law in Houston achieved a landmark \$513 million settlement in a class action lawsuit to end the State of Mississippi's 27 year-old battle over college

desegregation and unequal funding of higher education. The settlement plan includes \$245 million for academic programs—plus millions more for new facilities, endowments, and administration funding—for Mississippi's historically black universities.

The lawsuit was filed in 1975 by the late Jake Ayers, Sr., who accused Mississippi of neglecting its three historically black universities—Jackson State, Alcorn State, and Mississippi Valley State. For decades, the State had appropriated double and sometimes triple the per student share of funding for historically white universities, compared with the per student share for historically black universities. The financial disparity forced the historically black universities to use decrepit class rooms, dorms and offices,



Armand G. Derfner

while students learned from worn and outdated textbooks. Ayers died in 1986, without ever seeing the case go to court.

In 1987, after a five-week trial, U.S. District Judge Neal Biggers, Jr., dismissed the suit on the ground that, regardless of Mississippi's history of creating separate and unequal educational institutions for black students, there were no longer any State policies that prevented African-American students from attending the Mississippi university of their choice. The U.S. Court of Appeals for the Fifth Circuit *en banc* affirmed that ruling in 1990. Plaintiffs' lawyers Alvin Chambliss and Bob Pressman appealed, and worked wonders to keep the case alive. Armand Derfner joined the case in 1991, and helped prepare the Supreme Court briefing and oral argument.

In 1992, the U.S. Supreme Court reversed. It held that the State had to eradicate any policies traceable to Mississippi's history of discrimination that were still in force and resulting in discriminatory effects.

In 1994, Chambliss, Pressman and Derfner tried the case a second time before Judge Biggers, in a trial that lasted more than two months. The case was consolidated with a case filed by the U.S. Department of Justice. Biggers issued a ruling in 1995, calling for new admission standards and ordering significant relief to help desegregate and equalize the schools; and plaintiffs appealed to the Fifth Circuit.



Bob Pressman

In 1996, the District Court designated U.S. Representative Bennie Thompson, one of the original named plaintiffs, as the class representative. Thompson in turn named Isaac Byrd, Jr., as class counsel. In 1997, the Fifth Circuit ordered additional relief and ordered Biggers to reconsider parts of his ruling but upheld the admission standards. In 1998, the U. S. Supreme Court denied *certiorari*.

Byrd and Congressman Thompson persuaded the State to return to the bargaining table in June 2000, and spent nine months negotiating the settlement and shepherding its approval through a hostile political and legal landscape. Byrd's legal team assembled a dream team of higher education analysts to develop a settlement proposal. He organized town hall meetings across Mississippi to explain how the settlement would fairly and adequately

redress decades of discrimination. And they garnered support from key officials and community leaders.



Alvin O. Chambliss, Jr.

Nevertheless, Judge Biggers took the unprecedented step of requiring the parties to secure a resolution from the State Legislature to fund the settlement. So Byrd's legal team used their political savvy to persuade the legislature to pass a resolution to fund the half a billion dollar agreement, despite a severe budget crunch. The settlement represents a significant victory against institutional racism in higher education.

We also laud and thank the **Center for Law and Education** in Boston and **Northern Mississippi Rural Legal Services** in Oxford, Mississippi, for their support of this important case.

WINNING JUVENILE JUSTICE REFORMS:

GARY J., ET AL V. STATE OF MARYLAND

Mark A. Darden III, Evelyn O. A. Darden, Deborah St. Jean, Stacey Gurian-Sherman, William H. Murphy, Jr., Richard V. Falcon, William H. Murphy III, James E. McCollum, Jr., and John P. Coale



Mark A. Darden III and Evelyn O. A. Darden

Mark A. Darden III and **Evelyn O. A. Darden** of the Law Offices of Addison-Darden in Glen Burnie, Maryland, **Deborah St. Jean** and **John P. Coale** of Coale, Cooley, Lietz, McInerny & Broadus in Washington, D.C., solo practitioner **Stacey Gurian-Sherman** of Takoma Park, Maryland, **William H. Murphy, Jr.**, **William H. Murphy III**, and **Richard V. Falcon** of William H. Murphy, Jr. & Associates, P.A. in Baltimore, and **James E.**

McCollum, Jr. of James E. McCollum, Jr. & Associates, P.C. in College Park, Maryland, forced Maryland to enact sweeping reforms to its juvenile justice system by suing the State in a class action lawsuit on behalf of nearly 1,000 juvenile males who were victims of physical and emotional abuse at juvenile boot camps.



Deborah St. Jean



John P. Coale

As a result of a series of investigative stories by the *Baltimore Sun* concerning abuse at the State's three military-style juvenile boot camps, the State closed the camps in December 1999. Several juveniles retained the Law Offices of Addison-Darden, who investigated their claims and found outrageous violations of the juveniles' civil rights, including acts of torture

that caused serious injuries. Publicity about the tort claims brought the firm together with other trial attorneys who also represented a large number of the abused juveniles. Together they forged a legal team that diligently pursued the claims of juvenile males who had been committed to the camps between 1996 and 1999.



Stacey Gurian-Sherman



William H. Murphy, Jr.

The team faced the daunting task of representing a group of young males with juvenile offense records, some of whom had become adult offenders, and several of whom were involved in crimes of moral turpitude which presented a question as to their credibility at trial. Nevertheless, the team's investigation built a convincing case. They discovered that the Maryland

Department of Juvenile Justice had participated in a pattern of abuse against juvenile offenders aged 14-17. The pattern included beatings that resulted in emotional trauma, broken and fractured bones, and injuries requiring surgery and sutures.



William H. Murphy III



Richard V. Falcon

The team achieved a settlement of \$4.5 million, which included an educational fund to allow those who endured abuse to pursue vocational training or a college education. The settlement also produced substantial improvements in the juvenile justice system, including replacement of the Department's upper management; removal of abusive officers; provisions for treatment, training, and rehabilitation of

delinquent youth; and new policies and institutional safeguards.

This lawsuit—the first class action civil rights lawsuit to correct abuse of juveniles in military-style boot camps—set a benchmark for the protection of juveniles committed to the care and supervision of a State agency.



James E. McCollum, Jr.

**PROTECTING CHILDREN FROM MOLESTATION:
*DiMARIA V. ROMAN CATHOLIC BISHOP OF ORANGE COUNTY***

Katherine K. Freberg



Katherine K. Freberg

Katherine K. Freberg of Freberg & Associates in Irvine, California, won a record-setting \$5.2 million settlement, precedent-setting reforms, and a first-of-its-kind public apology from the Roman Catholic Church on behalf of a man who suffered childhood sexual abuse at the hands of a priest.

From the 1970s until the early 1990s, Monsignor Michael Harris molested students while teaching at various Catholic high schools. One of his victims, Ryan DiMaria, filed suit in 1997 in Orange County Superior Court against Harris and the Los Angeles and Orange County Dioceses over abuse he had experienced in 1991. As a result of the abuse, DiMaria had undergone treatment by psychologists and psychiatrists since his junior year in high school.

Freberg argued that the Dioceses were aware of the priest's behavior but failed to act. She discovered that other victims had been molested by the same priest; that the Archdiocese of Los Angeles was given notice in 1981 that the priest was molesting minors; and that the Dioceses engaged in a pattern of putting priests who molested into counseling, but then returning them to positions where they would work with minors.

Although the Dioceses tried to shield a "smoking gun" psychological exam of the priest behind an assertion of doctor/patient privilege, Freberg successfully argued that the evidence was not privileged, since the patient knew that his communications with the doctors would not be kept confidential from his employers. Freberg further persuaded the court that the Dioceses' records of other sexual abuse complaints against the priest were not subject to attorney/client privilege. The Dioceses filed a writ of mandamus with the Court of Appeals to shield the records. After full briefing and oral argument, the Court of Appeals ordered production of the majority of the Dioceses' investigation files. In August 2001, the case settled before trial.

As part of the settlement—the largest ever won by an individual priest molestation victim—the Pope defrocked Monsignor Harris, and the Dioceses

agreed to change the way they handle sexual abuse allegations. Reforms included establishing a toll-free phone number and web site for anonymous abuse complaints, and forbidding any priest to be alone in social settings with minors. The Dioceses also agreed to adopt a “zero tolerance” policy toward priests who molest. And Judge James P. Gray ordered the Dioceses to issue public apologies to DiMaria and four others. These were the first written apologies ever issued to any priest’s molestation victims. Freberg’s efforts have made the Dioceses more publicly accountable and will spare future students from sexual abuse.

Solo practitioner **Terry M. Giles** of Rancho Santa Fe, California, assisted Freberg in strategic decisions and settlement talks. The TLPJ Foundation lauds and thanks him for his work on this important case.

FREEING THE INNOCENT:

GODSCHALK V. MONTGOMERY COUNTY DISTRICT ATTORNEY'S OFFICE

Peter Neufeld, Barry C. Scheck, David Rudovsky,
and Vanessa Potkin



Peter Neufeld

Peter Neufeld, Barry C. Scheck, and Vanessa Potkin of the Innocence Project at the Benjamin Cardozo School of Law in New York and **David Rudovsky** of Kairys, Rudovsky, Epstein, Messing & Rau in Philadelphia won the freedom of a man who served 15 years in prison for crimes he did not commit in *Godschalk v. Montgomery County District Attorney's Office*.

It was the first case in the nation in which DNA tests resulted in exoneration following a federal judge's landmark ruling that an inmate has a constitutional right to post-conviction DNA testing.

In May 1987, Godschalk was convicted of forcible rape and burglary in Montgomery County, Pennsylvania, and was sentenced to 10-20 years in prison. In post-trial motions, he argued that his confession was coerced and should have been suppressed, but the Pennsylvania Superior Court rejected that claim. When DNA testing became readily available in the mid-1990s, Godschalk filed a petition to inspect evidence and asked for an order that the prosecutor turn over semen samples for DNA testing. After the Montgomery County Court and the Superior Court rejected the petition, Godschalk contacted the Innocence Project.



Barry C. Scheck

Neufeld and Scheck fought for years to obtain a copy of the taped confession. In 1999, the prosecutor finally turned over the tape. The plaintiff sent the tape to a confession expert, who concluded that it was likely that Godschalk had falsely confessed. Nevertheless, the D.A. refused to allow access to the semen samples.

In November 2000, the legal team filed a federal civil rights lawsuit against the D.A.'s office in the Eastern District of Pennsylvania, charging that their refusal to release biological evidence for testing at Godschalk's expense violated his constitutional right to due process under the law. Senior U.S.



Vanessa Potkin

District Judge Charles R. Weiner denied the D.A.'s motion to dismiss, and the D.A.'s office indicated that they would release the evidence. However, while pretending to negotiate on a testing protocol, the D.A.'s office secretly sent some of the biological evidence to a laboratory and consumed it in testing. The plaintiff filed a Motion for Summary Judgment and a Motion for Emergency Relief.

In August 2001, Judge Weiner granted summary judgment in a landmark decision, holding that the prosecutor violated the plaintiff's civil rights in refusing access to biological evidence for DNA testing. Tests in January 2002 excluded Godschalk as the perpetrator. The tests were corroborated by the D.A.'s own test results. However, the D.A. initially refused to release Godschalk, citing possibly flawed tests. Finally, on February 14, 2002, Godschalk walked free.

As a result of this case, the federal right to post-conviction DNA testing was recognized, an innocent man was freed from wrongful imprisonment, and wrongly convicted prisoners throughout the nation will have the opportunity to prove their innocence.



David Rudovsky

**REDRESSING POLICE MISCONDUCT:
SALINAS, ET AL V. CITY OF HARLINGEN**

Broadus A. Spivey, Price Ainsworth, Ramon Garcia, and Sonia I. Lopez



Broadus A. Spivey

Broadus A. Spivey and **Price Ainsworth** of Spivey & Ainsworth, P.C. in Austin, Texas, and **Ramon Garcia** and **Sonia I. Lopez** of the Law Office of Ramon Garcia in Edinburg, Texas, won a \$35 million wrongful death verdict against the City of Harlingen, Texas, whose Police Department allowed a police-issued rifle to be used as a murder weapon.

A woman whose home had been burglarized twice took her AR-15 assault rifle to the Harlingen Police Department in 1995 with specific instructions that the gun be destroyed. She was worried that thieves might obtain the gun and use it in a crime. The police assured her that they would destroy it. But instead, the department issued the weapon to police officer R. D. Moore, who took it home and put it in a gun safe in his son's room. His son, Earnest Moore—a marijuana user and cocaine addict—had a key to the safe.

Earnest used a different rifle to kill two Rio Hondo, Texas, residents and paralyze a third, but he then returned home, took the AR-15 assault rifle from the vault, and ambushed pursuing law enforcement officers in a cornfield, killing two Border Patrol agents. He also severely wounded a sheriff's deputy before being killed in a shootout.



Price Ainsworth

The families of three shooting victims filed two separate cases, which were consolidated for discovery and trial in the U.S. District Court for the Southern District in Brownsville, Texas. The City of Harlingen had made it clear that it would only pay claims brought under the Texas Tort Claims Act, which has a cap of \$250,000 per person. To obtain justice for the families, Spivey filed a federal civil rights lawsuit under the "police-created danger theory," which the Fifth Circuit had only recently recognized. This theory holds a government agency



Ramon Garcia



Sonia I. Lopez

liable for damages if it creates the plaintiffs' peril, increases their risk of harm, or acts to render them more vulnerable to danger.

The trial court granted a motion for summary judgment at first, then reversed itself and allowed a trial after the plaintiffs produced an affidavit from a missing witness. The plaintiffs made the police department's obfuscation and coverup after the ambush a key issue at trial, and persuaded the jury that much of the defendant's testimony was simply not credible. The \$35 million jury verdict helped establish the state-created danger theory and alerted local governments of the need to follow specific rules on storage and maintenance of firearms.

**HOLDING INSURERS ACCOUNTABLE:
WHITEN V. PILOT INSURANCE COMPANY**

Gary R. Will



Gary R. Will

Gary R. Will of Will Barristers in Toronto, Ontario, Canada won an unprecedented \$1 million punitive damage verdict in February 2000 in a Canadian Supreme Court case against an insurance company for engaging in “exceptionally reprehensible” conduct against a poor family.

Pilot Insurance Company had accused Keith and Daphne Whiten of deliberately setting fire to their house in January 1994, despite evidence to the contrary.

The couple and their daughter had fled their blazing house wearing only nightclothes. Keith suffered frostbite when he gave his daughter his slippers. The house was destroyed and their three cats were killed. Both of the Whitens were unemployed. Keith had declared bankruptcy a few months earlier and their mortgage payments were in arrears.

Although the fire chief, an insurance investigator and Pilot’s adjuster all agreed the fire was accidental, Pilot brought in a new adjuster and accused the couple of arson. The Whitens took Pilot to court, and in January 1996 a jury awarded \$287,000 in compensatory damages and legal costs, plus \$1 million in punitive damages for hardships caused by the unfounded accusation. The verdict sent shockwaves through the insurance industry, because the largest prior punitive damages verdict against an insurer in Canada was \$15,000.

The Ontario Court of Appeals held that Pilot had engaged in bad faith conduct but reduced the punitive damages to \$100,000 in a 2-1 decision in February 1999. The Whitens appealed to the Supreme Court of Canada in December 2001. The Insurance Council of Canada intervened, arguing for a \$25,000 cap on punitive damages in insurance cases.

In February 2002, the Supreme Court reinstated the full punitive damage award, holding that an insurer can be held liable for punitive damages on the basis that the independent, actionable wrong requirement in Canadian law is met by bad faith conduct.

Justice Binnie stated in his opinion, “The respondent (Pilot) clearly hoped to starve the appellant into a cheap settlement... . That it failed to do so is due in no small part to appellant’s counsel who took a hotly-contested claim into an eight-week jury trial on behalf of a client who was effectively without resources of her own; and who obviously could have been starved into submission but for her firm’s intervention on her behalf.” The verdict sent a strong message of denunciation and deterrence to all insurance companies that they cannot take advantage of the poor and vulnerable.

The TLPJ Foundation acknowledges and thanks **Justin Linden** of Malach & Fidler in Richmond Hill, Ontario, solo practitioner **Anil Varma** of Toronto, **Robert B. Munroe** of Ross & McBride in Hamilton, Ontario, solo practitioner **Martin Wunder** of Windsor, Ontario, and **Dermot P. Nolan** of Nolan Law Offices in Hamilton, who provided invaluable assistance in this case.

BATTLING BIG TOBACCO: *SCHWARZ V. PHILIP MORRIS*

Lawrence Wobbrock, Richard A. Lane
and Charles S. Tauman



Lawrence Wobbrock

Lawrence Wobbrock and **Richard A. Lane** of Lawrence Wobbrock Trial Lawyer, P.C. in Portland, Oregon, and **Charles S. Tauman** of Portland's Bennett, Hartman, et al. won \$168,000 in compensatory damages and a precedent-setting \$150 million punitive damages verdict against Philip Morris in March 2002 in the first "low-tar fraud" case against Big Tobacco to go to trial. The case was the first to hold a tobacco company accountable for injuring smokers by misleading them about the safety of low-tar cigarettes.

In 2000, Tauman approached Wobbrock about becoming lead counsel in a lawsuit filed in the Circuit Court for the State of Oregon against the multi-billion dollar conglomerate Philip Morris by the family of Michelle Schwarz, a woman who died in 1999 of lung cancer at age 53 after smoking low-tar Merit cigarettes. Schwarz had switched from a regular filtered version because she believed the low-tar version would be better for her health. Philip Morris had never settled an individual smoker case, instead fighting each with scorched earth tactics. In this case, the defense comprised three law firms and more than 10 lawyers.



Richard A. Lane



Charles S. Tauman

The plaintiffs' legal team argued that addicted smokers were getting the same amount of tar from low-tar cigarettes as from other cigarettes by taking more puffs, inhaling more deeply, consuming more cigarettes and smoking closer to the cigarette butt—and that Philip Morris knew it. The trial lawyers mastered reams of evidence to prove in a seven-week trial that Philip Morris had falsely represented

that low-tar cigarettes are healthier, despite evidence that nicotine addicts compensate if they smoke low-tar cigarettes in order to receive the same amount of nicotine.

The major obstacles faced by the trial team were to prove that the defendant was more than 50 percent at fault and to overcome Philip Morris's argument that the Federal Cigarette Labeling Act pre-empted all of Schwarz's claims.

The verdict was the first in the nation to hold a cigarette manufacturer liable for "low-tar fraud," and it educated the public—including users of use low-tar cigarettes who make up 80 to 90 percent of all smokers—about the dangers of Big Tobacco's deceptive marketing.

NOMINATIONS SOUGHT FOR 2003 TRIAL LAWYER OF THE YEAR AWARD

Help us honor the best of the trial bar, and all trial lawyers, by submitting nominations for our annual Trial Lawyer of the Year Award. This nationally prestigious award will be bestowed upon the attorney or attorneys who have made the greatest contribution to the public interest by trying or settling a precedent-setting case between April 1, 2002, and March 31, 2003.

Nominated attorneys prove that, in the hands of dedicated trial lawyers, the law can be an enormously powerful force for the public good. Nominations should be sent with information about the case, a description of its significance, and if possible, court documents and press clippings about the case.

The finalists are selected in June, and the award winner or winners will be announced at The TLPJ Foundation's 21st Annual Party and Awards Dinner in San Francisco in July 2003. Thank you for your help in praising those attorneys who exemplify the ideals for which TLPJ stands.

Send your nominations to The TLPJ Foundation. For more information, visit our web site, www.tlpj.org, or call 202-797-8600.

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