



T R I A L L A W Y E R S F O R P U B L I C J U S T I C E

2003

TRIAL LAWYERS

DOING PUBLIC JUSTICE

**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 3,000 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](http://www.tlpj.org).



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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 3,000 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 Access to Justice Award and the Trial Lawyer of the Year Award.

The Access to Justice Award is a new award being presented to two TLPJ staff attorneys who won a unanimous U.S. Supreme Court decision securing access to justice for injury victims nationwide. This case is a major victory for TLPJ and demonstrates 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 2003 Access to Justice Award, and the winners and finalists for the 2003 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.

## 2003 ACCESS TO JUSTICE AWARD

### *SPRIETSMA V. MERCURY MARINE*

Leslie A. Brueckner & Michael J. Quirk



Leslie A. Brueckner

*This new award is presented to two TLPJ staff attorneys who won a unanimous U.S. Supreme Court decision securing access to justice for injury victims nationwide.*

TLPJ Staff Attorney **Leslie A. Brueckner** brilliantly and successfully served as Counsel of Record for the plaintiffs before the U.S. Supreme Court in *Sprietsma v. Mercury Marine*, winning a unanimous December 2002 decision rejecting the defendant's efforts to expand federal preemption of injury victims' claims and affirming tort victims' right to seek recovery for their injuries. TLPJ Staff Attorney **Michael J. Quirk**, co-counsel, assisted with the briefing and preparation for oral argument.

The Supreme Court held in *Sprietsma* that the Federal Boat Safety Act of 1971 (FBSA) and a 1990 decision by the U.S. Coast Guard (USCG) not to require propeller guards on recreational motor boat engines does not bar injury victims from suing boat engine manufacturers under state law for failing to install propeller guards on their boats. The Court rejected the boat manufacturer's preemption defense, holding that a lawsuit seeking damages for injuries caused by an unguarded boat propeller does not conflict with any federal purposes.

The case originated from the tragic death of Jeanne Sprietsma, who was fatally struck by the propeller of an outboard engine when she fell from a recreational motor boat. The engine was designed and manufactured by defendant Mercury Marine and contained no propeller guard or other safety device to protect Mrs. Sprietsma from bodily contact with the whirling propeller blades. Her husband, children, and estate sued Mercury Marine for wrongful death in Illinois state court.



Michael J. Quirk

The Illinois Supreme Court accepted the manufacturer's argument, however, that it could not be sued because — even if it had acted outrageously — the FBSA and the USCG's decision not to regulate propeller guards preempted such lawsuits. Several federal appeals courts had issued similar rulings. The U.S. Supreme Court then granted TLPJ's petition for review. At TLPJ's urging, the United States of America and the Attorneys General of 17 States filed *amicus* briefs arguing that claims like Mr. Sprietsma's are not preempted.

The Supreme Court's landmark ruling in *Sprietsma* preserved access to justice for the Sprietsma family and for millions of Americans. We are proud to honor these exceptional lawyers for their accomplishment with the Access to Justice Award.

We also acknowledge and thank **Joseph A. Power, Jr.**, **Todd A. Smith** and **Devon C. Bruce** of Chicago's Power, Rogers & Smith; **John B. Kralovec** of Chicago's Kralovec, Jambois & Schwartz; and TLPJ Executive Director **Arthur H. Bryant** for their work on this case. The case is now being prepared for trial.

## 2003 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 2003 Trial Lawyer of the Year Award are deserving of our praise and thanks. The listing begins, however, with the 2003 Trial Lawyer of the Year Award Co-Winners, Dennis Cunningham, J. Tony Serra, Robert Bloom, Ben Rosenfeld, William M. Simpich, William H. Goodman, and Michael E. Deutsch for the ***Estate of Judi Bari v. Doyle*** and Michael Rubin, Albert H. Meyerhoff, Jr., Pamela M. Parker, Keith F. Park, Alan M. Caplan, and L. Thomas Galloway for the **Marianas Sweatshop Litigation**.

## 2003 Trial Lawyer of the Year Award Co-Winners

### Exposing FBI Misconduct: *Estate of Judi Bari v. Doyle*

Dennis Cunningham, J. Tony Serra, Robert Bloom, Ben Rosenfeld, William M. Simpich, William H. Goodman, and Michael E. Deutsch

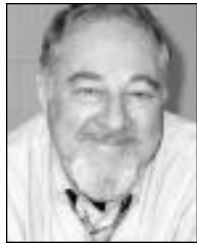


Dennis Cunningham

Solo practitioners **Dennis Cunningham, J. Tony Serra, Robert Bloom, and Ben Rosenfeld** of San Francisco, and **William M. Simpich** of Oakland, California, along with **William H. Goodman** — formerly of the Center for Constitutional Rights in New York and currently with Moore & Goodman in New York — and **Michael E. Deutsch** — also formerly of New York's Center for Constitutional Rights and now of The People's Law Office in Chicago — took on federal and state law enforcement power in a classic David and Goliath battle, winning a rare \$4.4 million jury verdict against the Federal Bureau of Investigation (FBI) and the City of Oakland for violating the civil rights of two environmental activists during a 1990 bomb investigation. The jury found that both the FBI



J. Tony Serra



Robert Bloom

and the City had violated the First and Fourth Amendment rights of Earth First! activists Judi Bari and Darryl Cherney, under the false cover of a “terrorist” investigation.

This case arose after a pipe bomb exploded in Bari’s car, causing her serious injury and also injuring fellow activist Cherney, who was a passenger in the car. Law enforcement investigators claimed that Bari and Cherney were hospitalized due to a blast from a

pipe bomb that the activists had planned to use in environmental protests, but charges were never filed. The activists countered that the investigators smeared them in the national media as “terrorist suspects,” ignored evidence that the bomb was planted under the driver’s seat and rigged to detonate when the car moved, falsified statements in search warrant applications, and illegally searched their houses. Despite the fact that the FBI never found evidence linking the activists to any bomb, or any crime, they



Ben Rosenfeld

continued to investigate and discredit Earth First! for two years, after the manner of the FBI’s infamous Counter Intelligence Program (COINTELPRO) operations that targeted grassroots groups in the 1960s and 1970s.



William M. Simpich

The plaintiffs’ legal team litigated the case — only the third jury trial against the FBI in history — for 11 years, fighting in federal trial court and the U.S. Court of Appeals for the Ninth Circuit to pierce the immunity of the law enforcement agencies. They

took over 100 depositions and analyzed more than 8,000 pages of FBI files before starting a five-week trial in April 2002. The jury deliberated for 17 days before reaching a verdict. The jury found that the law enforcement agencies had wrongfully arrested Bari and searched her house in May 1990. The jury deadlocked on whether Cherney’s arrest was wrongful, but found that his Fourth Amendment rights were violated when his home was searched in May 1990.



William H. Goodman



Michael E. Deutsch

The jury found that the federal and state law enforcement agencies were roughly equally liable for violating the activists’ civil rights and divided the \$4.4 million award evenly between compensatory and punitive damages.

Bari — who died of cancer in 1997 — bequeathed half of her \$2.9 million award to the nonprofit Redwood Justice Fund. Cherney said he will use his \$1.5 million award to continue his activism. The

verdict in this case sends a strong, cautionary message about the value of our constitutional rights and the abuse of law enforcement power in the name of national security.



Photo by Seattle Photography

From left to right: TLPJ Immediate Past President Paul L. Stritmatter with 2003 Trial Lawyer of the Year Award co-winners, Pamela M. Parker, Albert H. Meyerhoff, Jr., Alan M. Caplan, Robert Bloom, Dennis Cunningham, William M. Simpich, and Michael Rubin.

**WINNING SWEATSHOP REFORMS:  
MARIANAS SWEATSHOP LITIGATION**

Michael Rubin, Albert H. Meyerhoff, Jr., Pamela M. Parker, Keith F. Park, Joyce C. H. Tang, Alan M. Caplan, and L. Thomas Galloway



Michael Rubin

**Michael Rubin** of Altshuler Berzon Nussbaum Rubin & Demain in San Francisco, **Albert H. Meyerhoff, Jr.** of Milberg Weiss Bershad Hynes & Lerach LLP in Los Angeles, **Pamela M. Parker** and **Keith F. Park** of Milberg Weiss Bershad Hynes & Lerach LLP in San Diego, **Joyce C. H. Tang** of Teker Civile Torres & Tang in Saipan, Northern Mariana Islands, **Alan M. Caplan** of Bushnell, Caplan & Fielding LLP in San Francisco, and L. **Thomas Galloway** of Galloway & Associates in Boulder, Colorado reformed living and

working conditions for sweatshop workers in six Asian Pacific nations and a U.S. territory by negotiating a comprehensive \$20 million settlement of three novel human rights class actions in March 2003 on behalf of approximately 30,000 garment workers. As part of the settlement, the federal court of the U.S. Commonwealth of the Northern Mariana Islands (CNMI) ordered the implementation of a model Code of Conduct and a monitoring program to prevent the recurrence of systemic and pervasive human rights abuses that have plagued the Saipan garment industry sweatshops for 15 years.



Albert H. Meyerhoff, Jr.



Pamela M. Parker

The plaintiffs' attorneys filed these three lawsuits — collectively referred to as the Marianas Sweatshop Litigation — in January 1999 on behalf of different plaintiffs in different venues alleging different claims. The 30,000 garment workers were primarily from China, but were also located in Bangladesh, Thailand, Vietnam, Korea, the Philippines, and the CNMI.

The scope of the litigation against an entire production system was unprecedented, comprising claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), the Thirteenth



Keith F. Park

Amendment, the Anti-Peonage Act, the Fair Labor Standards Act (FLSA), CNMI law, the Alien Tort Claims Act, California's Business and Professional Code, and common law. The plaintiffs' lawyers advanced claims and legal theories (particularly under RICO, the Alien Tort Claims Act, and the Anti-Peonage Act) which had never before been asserted on this scale or in this context. Yet each of the cases and theories advanced human

rights law toward a single goal — to abolish substandard workplace and living conditions in Saipan factories that manufactured garments for major retailers in the mainland United States. The 56 defendants included the entire Saipan garment industry and its customers, including well-known U.S. retailers, such as The Gap, J.C. Penney, Target, The Limited, Calvin Klein, Sears, Nordstrom, Gymboree, and Brooks Brothers.



Alan M. Caplan

The plaintiffs' attorneys built a massive factual record — despite the fact that many witnesses lived thousands of miles away, feared government and employer reprisals, and spoke no English — and coped with numerous motions to change venue, dismiss the cases, and decertify the classes. In addition to the extraordinary settlement provisions, the cases created several precedents, including a ruling by the U.S. Court of Appeals for the Ninth Circuit on the FLSA claim that permitted the garment workers to proceed under "Jane Doe" pseudonyms and the CNMI District Court's May 2002 order granting class certification.



L. Thomas Galloway

The plaintiffs' lawyers devoted a total of 70,000 hours to these three cases (*Does I v. The Gap, Inc.*, *Does I v. Advance Textile Corp.*, and *Union of Needletrades Industrial Textile Employees v. The Gap, Inc.*) over a four-year period. Milberg Weiss waived all of its legal fees (approximately \$16 million) and much of its expenses, and many other plaintiffs' firms waived all or a substantial portion of their fees and expenses. Their determined and innovative efforts set new standards for fighting to protect workers' rights.



**PROTECTING THE POOR'S ACCESS TO HEALTH CARE:  
LAFOLLETTE MEDICAL CENTER V. CITY OF LAFOLLETTE**

David H. Dunaway



David H. Dunaway

**David H. Dunaway** of the Law Offices of David H. Dunaway & Associates in LaFollette, Tennessee fought for three years to win — and successfully defend on appeal — a case that safeguards indigent families' access to health care in rural East Tennessee. The City of LaFollette had tried to use \$9.2 million that it received from the sale of a hospital for a variety of purposes, none of which involved health care. Dunaway stopped the City's plan dead in its

tracks, winning an important ruling from the Tennessee Court of Appeals in February 2003 that requires the City to leave the \$9.2 million in a constructive trust. In addition, any expenditure of the funds must be court-approved and related to community health care.

Dunaway filed suit in April 1999 on behalf of members of the hospital board, arguing that since the City had built the LaFollette Medical Center with funds from the federal Hill-Burton loan program, the proceeds from the sale were assets from a public trust and should be used only for the hospital's intended purposes.

The case was tried before a chancellor in July 1999, who ruled that use of the funds must be restricted to the hospital's purpose of providing general health care, particularly care to poor people. The City appealed. Dunaway argued that it would be unconscionable and illegal to allow the City to use the funds to balance its budget or spend the money for purposes other than healthcare. The three-judge appellate panel unanimously affirmed the chancery court decision in February 2003, stating "The City is attempting to reap what it has not sown."

The verdict represents an important victory for affordable, accessible health care.

**HOLDING HMOs ACCOUNTABLE:  
PYBAS V. CIGNA HEALTHCARE OF TEXAS**

J. Don Gordon, George Parker Young, and Nikki Grote Morton



J. Don Gordon

**J. Don Gordon** of Hynds & Gordon, P.C. in Sherman, Texas, and solo practitioners **George Parker Young** and **Nikki Grote Morton** of Fort Worth, Texas won a precedent-setting \$13 million verdict — \$10 million of it in punitive damages — when a Dallas jury found in June 2002 that Cigna Healthcare of Texas put cost-saving measures ahead of a patient's life. The verdict marked the first time that plaintiffs won a case tried under the section of the state's 1997 Health Care Liability Act that allows injured patients to sue a health maintenance organization (HMO) for medical malpractice.

The plaintiffs' legal team represented the family of 83-year-old heart patient Herschel Pybas, who charged that HMO officials pushed Pybas out of a medical care facility to his home, despite the fact that he needed 24-hour skilled care. Pybas died in a hospital in 1999, just six days after Cigna discharged him from a skilled nursing home to contain costs. Before trial, Cigna refused to engage in serious settlement talks, offering only \$150,000 to compensate the family's loss.



George Parker Young

The legal team spent three-and-a-half years building a factual record to prove that the HMO caused Pybas' death. They unearthed evidence showing that the HMO paid bonuses to employees charged with overseeing medical costs — including the costs of Pybas' care — for keeping patients out of hospitals. One nurse who tracked Pybas' case received a \$500 bonus immediately before and after Pybas died. The family's attorneys also showed that HMO administrators promised Pybas' doctor that Pybas would receive home assisted health care comparable to the skilled nursing home, but Pybas' home was never set up with promised essentials, such as an oxygen system.



Nikki Grote Morton

Overcoming long odds, the family's legal team made the case for an exception to the statute's damages caps, convincing jurors to make an affirmative finding that Cigna, by act or omission, knowingly or intentionally harmed Pybas. The precedent-setting verdict achieved in this case sends a message to HMOs that they will be held accountable for placing profits over patient safety.

### FIGHTING FOR EMOTIONAL DISTRESS DAMAGES: *WOLLERSHEIM V. CHURCH OF SCIENTOLOGY*

Ford Greene, Charles B. O'Reilly, Daniel A. Leipold, and Craig J. Stein



Ford Greene

**Ford Greene** of Hub Law Offices in San Anselmo, California, solo practitioner **Charles B. O'Reilly** of Marina Del Rey, California, **Daniel A. Leipold** of Hagenbaugh & Murphy in Glendale, California, and solo practitioner **Craig J. Stein** of Los Angeles fought an epic 22-year legal battle — which included two appeals to the U.S. Supreme Court and successful defenses of several countersuits against the plaintiff and his legal team — to collect a multimillion

dollar jury verdict for a man who was psychologically and financially ruined by the Church of Scientology. Employing its “practice of retribution” — called “fair game” by Scientology — the Church targeted Wollersheim after he defected from the organization, coercing him to continue participating in Scientology by means of kidnaping and brainwashing. This aggravated Wollersheim's incipient manic-depressive personality and ultimately caused mental illness.



Charles B. O'Reilly

Wollersheim filed a tort suit for fraud and intentional and negligent infliction of emotional distress in 1980, after Scientology consigned him to a “thought reform gulag” in a ship docked off California for 18 hours a day. O'Reilly represented him during a five-and-a-half-month trial that resulted in a \$30 million verdict for Wollersheim in July 1986 (including \$25 million in punitive damages), and during the initial appeal to the California Court of Appeal. In 1989, the appeals court reduced the judgment to \$2.5 million. While the case was pending, Scientology sued O'Reilly and the plaintiff's experts twice in federal court, first for alleged RICO violations and then for alleged civil rights violations, but O'Reilly defeated both suits.



Daniel A. Leipold

In 1993, Wollersheim hired Greene to combat Scientology's petition for U.S. Supreme Court review of the constitutionality of the punitive damages award. The Supreme Court remanded the case to the California Court of Appeal to review the punitive

damages issue in light of an earlier Supreme Court decision. Ultimately, Greene prevailed on the punitive damages issue. While this appeal was pending, Greene, Leipold, and Stein worked to collect the judgment.

In the meantime, Scientology was waging a battle over when the interest on the judgment started to accrue, arguing that it should be March 1993, when the U.S. Supreme Court remanded the case to the California Court of Appeal. Greene and Stein again prevailed, winning at the trial court level and on appeals up to the California Supreme Court.

By the mid-1990s, the Church of Scientology had stripped itself of hundreds of millions of dollars in assets, seeking to make itself a judgment-proof, corporate shell. In November 1997, in an effort get additional damages, Greene, Leipold, and Stein won a motion to amend the judgment to add other Scientology entities as real parties in interest/judgment debtors as of July 1986, the date of the initial judgment. In February 1999, the Court of Appeal reversed and remanded the case for trial against all of the interlocking entities. Trial was set for May 9, 2002. On that date, Scientology finally capitulated and deposited over \$8.6 million — the entire judgment plus interest — in the trial court.

During the 22 years of litigation, Wollersheim's attorneys team survived numerous attempts by Scientology to derail the case — including blizzards of motions and appeals, as well as bad-faith litigation tactics. These so-called "fair game" tactics included surveillance, infiltration, meritless civil lawsuits, adverse publicity, bar complaints, and attempts to generate criminal investigations.

We also acknowledge and thank **Mark A. Goldowitz**, Director of the California Anti-SLAPP Project, for his work with Leipold in successfully litigating a motion to strike a separate action against Wollersheim — known as a Strategic Lawsuit Against Public Participation — filed by Scientology in 1993 as part of its multi-front battle to derail Wollersheim's tort suit. This case is a landmark victory for former members of Scientology, which is known for its heated and protracted legal battles.

## DEFENDING DUE PROCESS RIGHTS: *REINSCHMIEDT V. CITY OF WICHITA*

LJ Leatherman, Gary D. White, Jr., Kiehl Rathbun,  
and Jerry R. Palmer



LJ Leatherman

**LJ Leatherman, Gary D. White, Jr., and Jerry R. Palmer** of Palmer, Leatherman & White, L.L.P. in Topeka, Kansas, and **Kiehl Rathbun** of Rathbun Law Office in Wichita, Kansas, achieved a groundbreaking victory for due process rights, securing an injunction that stopped the City of Wichita from imprisoning people for failing to pay traffic and misdemeanor fines, freeing 62 people from what amounted to a debtor's prison, and winning a \$10 million class action settlement on behalf of 7,111 people whom the City had wrongfully imprisoned.

In July 1999, the legal team filed a *habeas corpus* petition on behalf of David Reinschmiedt and a class of similarly situated people, charging that the City's use of a "time to pay docket" and a "pay before release" system violated their due process rights. On the same day, the attorneys secured a temporary restraining order (TRO) that stopped the City from (1) issuing "pay before release" warrants, (2) imprisoning people on the "time to pay docket" for failure to pay fines, (3) executing any outstanding "pay before release" warrants, and (4) imprisoning Reinschmiedt on an outstanding "pay before release" warrant. Within a week, 62 people were released from prison, and a temporary injunction against these activities soon followed.



Gary D. White, Jr.



Kiehl Rathbun

In September 1999, the legal team filed an amended petition to seek monetary and equitable relief for the wrongfully imprisoned people, charging the City with violating the plaintiffs' constitutional rights to due process and equal protection. Over a three-year period, the plaintiffs' attorneys engaged in substantial discovery, filed multiple motions to compel discovery, and won class certification of the §1983 claims for



Jerry R. Palmer

the 7,111 people whom the City had imprisoned and held on a “pay before release” status.

In June 2002, the court approved a settlement in which the City agreed to forgive all fines and costs owed by class members in “time to pay” cases, provide cash payments to class members, expunge their arrest records, and pay attorneys’ fees. The National Judges College now uses the case to teach new judges the dangers of converting monetary sentences into jail time.

**BATTLING BIG TOBACCO:  
PRICE V. PHILIP MORRIS USA**

Stephen M. Tillery, George A. Zelcs, Stephen A. Swedlow, Michael J. Brickman, Gerson H. Smoger, Donald M. Flack, Lisa R. Kernan, Jerry Hudson Evans, Kimberly S. Keevers, Gregory A. Lofstead, James C. Bradley, Nina Hunter Fields, and Stephen A. Sheller



Stephen M. Tillery



George A. Zelcs

**Stephen M. Tillery, George A. Zelcs, Stephen A. Swedlow, Donald M. Flack, and Lisa R. Kernan** of Carr Korein Tillery LLC in Chicago, **Michael J. Brickman, Jerry Hudson Evans, Kimberly S. Keevers, Gregory A. Lofstead, James C. Bradley,**

and **Nina Hunter Fields** of Richardson, Patrick, Westbrook & Brickman, LLC of Charleston, South Carolina, and **Gerson H. Smoger** of Smoger & Associates, P.C. in Dallas

pursued an innovative legal strategy to win a precedent-setting \$10.1 billion damages judgment (including \$3 billion in punitive damages) against the nation’s largest tobacco company in the first class action lawsuit tried on behalf of “light” cigarette smokers. The



Stephen A. Swedlow



Michael J. Brickman

landmark consumer fraud judgment, achieved in March 2003, was the first to hold a tobacco company accountable for the deceptive labeling of “light” cigarettes. Within weeks of the verdict, defendant Philip Morris USA declared that it is removing the words “Lowered Tar and Nicotine” from packages of Marlboro Lights cigarettes.



Gerson H. Smoger



Lisa R. Kernan

The plaintiffs’ legal team advanced an untried legal theory in case: instead of seeking



Jerry Hudson Evans



Kimberly S. Keevers

to recover damages for personal injury or addiction, they sought to establish liability under the Illinois Consumer Fraud Act based on evidence Philip Morris falsely represented that its “light” cigarettes delivered lower tar and nicotine than regular cigarettes. The

undisputed evidence at trial proved that “light” cigarettes are by design not significantly lower in tar and nicotine, but contain even more harmful constituents than do regular cigarettes. The court found that Philip Morris was aware of this increased harm since 1971, but marketed its cigarettes as “Lights” in order to increase its market share in the face of growing public concern over the health effects of smoking.



Gregory A. Lofstead



James C. Bradley

The trial team advanced \$3 million in litigation costs, examined millions of pages of documents produced by Philip Morris, and created a database that electronically archived 120 depositions. The landmark ruling — and the specific findings of fact made by the court in this precedent-setting class action lawsuit — will hound Philip Morris in all future personal injury or deceptive marketing actions. The ruling also paves the way for new lines of attack against the tobacco industry as a whole.



Nina Hunter Fields



Stephen A. Sheller

**Stephen A. Sheller** of Sheller, Ludwig & Badey P.C. in Philadelphia was also named as a finalist in this case for discovering the light cigarette-fraud and initiating the litigation strategy to remedy the deception.

**HOLDING INSURERS ACCOUNTABLE:  
 TEDESCO V. THE PAUL REVERE LIFE INSURANCE CO.**

D. Frank Winkles and Claude H. Tison, Jr.



D. Frank Winkles

**D. Frank Winkles** and **Claude H. Tison, Jr.** of Winkles Law Group, P.A. in Tampa, Florida set the stage for exposing an insurance giant’s rampant bad faith practices, winning a \$36.7 million punitive damages verdict in May 2001 against an insurance company that wrongfully denied disability payments to an ophthalmologist disabled by Parkinson’s disease and a back injury.

In 1992, eye surgeon Dr. John Tedesco bought a disability insurance policy from The Paul Revere Life Insurance Company for about \$3,800 a year to provide coverage if he could no longer work as an ophthalmologist. In 1998, Tedesco had to close his practice due to his diagnosed disabilities, but the insurance company paid only five months of coverage and then stopped. The company tried to blame Tedesco for ending his career by closing his practice, apparently ignoring the fact that a doctor who shakes with Parkinson’s cannot perform eye surgery.

Winkles filed suit in federal court in Tampa, alleging breach of contract and bad faith denial of the doctor’s claim for disability benefits. Tison assisted Winkles in handling 20 separate defense pre-trial motions. In an apparent effort to make the case disappear, the insurance company paid all back benefits and began paying Tedesco’s monthly benefits shortly before trial — after having paid nothing for two-and-a-half years. Tedesco and his attorneys pressed forward to expose the company’s deliberate practices to avoid paying valid disability claims.



Claude H. Tison, Jr.

After winning the punitive damages verdict, and multiple post-trial motions, the parties settled the case in April 2002 for a confidential amount that is reported to be the largest settlement paid by the company. The factual record developed by the plaintiff’s attorneys provided an evidentiary trove for many nationwide cases that followed, helping others win substantial verdicts against UNUM Provident, the parent company of Paul Revere and

the largest disability insurance company in the world. As a result of these bad faith suits, UNUM's longtime president was removed from office. This important case, highlighted by CBS's "60 Minutes," stands as an example of how tenacious trial lawyers can force corporate giants to change their practices by making them pay for their wrongdoing.

## NOMINATIONS SOUGHT FOR NATIONALLY PRESTIGIOUS 2004 TRIAL LAWYER OF THE YEAR AWARD

Please help honor the best of the trial bar — and all trial lawyers — by submitting nominations now for the 2004 Trial Lawyer of the Year Award.

The TLPJ Foundation will bestow this nationally prestigious award upon the trial attorney or attorneys who have made the greatest contributions to the public interest by trying or settling a precedent-setting case between April 1, 2003, and April 1, 2004. Finalists and recipients exemplify how trial lawyers use their skills and determination to create a more just society.

To nominate a trial attorney or litigation team, please send a letter or fax that includes: (1) the nominee's name and firm; (2) the name of the case that the nominee won or settled, (3) the date of the verdict or final settlement approval (on or after April 1, 2003, and before April 1, 2004); (4) the outcome of the case, and (5) why you believe this attorney or litigation team deserves the award. For example, you may include a statement of how the case impacts the public interest, a summary of the trial lawyers' skills and resources demonstrated, and/or a description of obstacles that the plaintiff's counsel overcame in fighting for public justice. If you have news clippings about the case, you may submit those as well. However, please do not send videotapes.

Nominations should be sent to Communications Director Jonathan Hutson at The TLPJ Foundation's national headquarters, located at 1717 Massachusetts Avenue, NW, Suite 800, Washington, DC 20036-2001, fax 202-232-7203. The deadline for nominations is Thursday, April 1, 2004.

TLPJ will select the finalists for the Trial Lawyer of the Year Award in June. Typically, the cases won or settled by the finalists cover a broad range of public interest work, including but not limited to civil rights, consumer protection, workers' rights, human rights, environmental preservation, and corporate and governmental accountability. The winner will be announced at TLPJ's 22nd Annual Awards Dinner and Gala in Boston in July 2004.

Descriptions of recent Trial Lawyer of the Year Award finalists and winners are posted on TLPJ's web site, [www.tlpj.org](http://www.tlpj.org).

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