



Law and Ethics

TLR's mission is to foster a civil justice system in which disputes can be resolved fairly, honestly, and efficiently.

We honor the long tradition of American justice – rooted in ancient English common law, refined in Britain's American colonies, enshrined in the enduring U.S. Constitution, and evolved through centuries of legislation and court decisions.

It is essential to a healthy society to have disputes resolved peacefully and fairly. Each of us wants to know that when we have suffered a harm that needs recompense, or when we are alleged to have caused harm to someone else, we can access a system that is neutral and will produce an outcome solely on the merits of the case. Citizens will have confidence in a civil justice system only if it has integrity.

We believe that the practice of law should be a profession, not an entrepreneurial enterprise. We believe that litigators have a duty both to their clients *and* to the law itself. This is why lawyers are deemed "officers of the court." We believe that this view of the legal

profession is shared by most lawyers, including most trial lawyers. But not by all.

This Special Edition of *The Advocate* reprints news articles about the kinds of lawyers who appear to have a dangerous and destructive view of the practice of law, one in which greed, rather than justice, is the driving force. We bring these articles to your attention not to disparage the legal profession (two of TLR's four co-founders are lawyers), but to highlight the kinds of ongoing abuses in the legal system that give rise to the need for the reforms which TLR advocates.

Most of the worst problems are generated by the few lawyers who abuse the legal process or view lawsuits as products to be manufactured, like widgets on an assembly line. A prime illustration of the lawsuit manufacturing industry is asbestos litigation. A few mass tort plaintiffs' firms used vast x-ray screening schemes and a handful of hired doctors to gath-

er large pools of persons whom the law firms alleged had been exposed to asbestos and suffered health problems as a result. After inundating defendants with such claims, the major asbestos law firms pursued strategies that made effective trial defense impossible, even though it was clear that only a tiny fraction of the asbestosis claimants actually had health impairments. As a consequence, the asbestos plaintiffs' firms have so far bankrupted 70 American companies, displacing tens of thousands of American workers.

Some asbestos lawyers later migrated to filing lawsuits alleging injuries from inhaling silica. It is common for mass tort lawyers to use their winnings in one line of cases to finance their attacks on a new set of defendants, re-using the same assembly line methods to create cases. This time, however, a federal judge in Corpus Christi thoroughly reviewed thousands of silicosis cases early in the litigation. She concluded that the silica cases were "*manufactured for money*," in the judge's own words.

Fortunately, in 2005, Texas enacted an asbestos and silica litigation reform statute advocated by TLR. Now Texas has a system that works – claimants do not go to trial

until and unless they show that they are actually sick. There are about 90,000 asbestos and silica "claims" in Texas state courts. Since the reform statute became effective, only a tiny percentage of claimants – about 330 – have shown a health impairment that qualifies them to proceed to trial. This confirms the independent studies which have concluded that only a small fraction of the people making claims in mass asbestos and silica litigation are actually sick.

The abuses that are alleged or illustrated in these news articles – bribery of judges, overcharging of clients, manipulation of class action statutes, falsifying evidence, and chasing lawsuits (even across national borders) – deeply undermine belief in justice and respect for the law.

Lawyers who abuse or corrupt the legal process for personal gain are "deaf to justice, blind to law," to borrow an apt phrase from Homer. To rebuild confidence in the civil justice system, and in the legal profession essential to its functioning, unethical conduct cannot be permitted to go unnoticed and undeterred.

Richard J. Trabulsi, Jr.

President

★ MARCH 2008 ★

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Lawyer Will Plead Guilty in Kickback Scheme

NY Times, September 18, 2007

By **BARRY MEIER**

THE SECURITIES LAWYER William S. Lerach agreed to plead guilty today to a criminal conspiracy charge in connection with a class-action scheme involving his former firm, now known as Milberg Weiss, the United States attorney's office in Los Angeles said.

Mr. Lerach, 61, who has long been under investigation by federal authorities, will enter his plea in Federal District Court in Los Angeles, the prosecutor said.

He has agreed to plead guilty to the conspiracy charge, forfeit \$7.75 million to the government, pay a \$250,000 fine and accept a sentence ranging from one year to two years in federal prison, according to a statement from the United States attorney. An arraignment will be at a later date.

In his plea agreement, Mr. Lerach acknowledges making secret payments to Dr. Steven G. Cooperman, and acknowledges that oth-

ers received payments from other partners of Milberg Weiss. These individuals were generally promised 10 percent of the attorneys' fees received by Milberg Weiss. The payments were kept secret from the courts overseeing the class actions, and the named plaintiffs who received the kickbacks made false statements under oath concerning the payments.

See **Kickback**, Back Page

Exposing the Truth Behind Silicosis

To attorneys who had earned millions from asbestos settlements, it represented the next potential windfall. But it all came undone in a haze of dust and deception.

The Houston Chronicle, May 7, 2006

By MIKE TOLSON

IN THE SPECULATIVE WORLD of high-stakes lawsuits, where the right idea or the right illness can mushroom into a financial windfall, Carl Thomas was the next big thing.

Not Thomas personally, as he was neither dead nor catastrophically injured – but Thomas the blue-collar worker, the X-ray, the everyman who, because he was interchangeable with so many others, could bring large corporations to their knees.

Thomas' value lay in his claim of silicosis, an occupational lung disease caused by exposure to silica, a variant of ordinary beach sand used by industry in dozens of ways. He was a victim, or so his lawyer asserted. He and thousands just like him deserved to be compensated.

And so it began. First came a few dozen lawsuits, then a few hundred, then thousands. In the span of two years, a waning and somewhat obscure disease was transformed into monster court dockets in Mississippi, where most of the suits were filed. To the stunned corporate targets, it looked like asbestos all over again: The lawsuits threatened to take on a life of their own simply because there were so many of them.

Never mind that Thomas, a 61-year-old Pearland longshoreman, like most of the others, showed no ill effects from the alleged silicosis. Never mind that he, like the majority of them, had years earlier filed lawsuits claiming an entirely different lung ailment, asbestosis.

What mattered was that Thomas had an abnormal X-ray and a doctor offering a diagnosis. Small settlement checks from Thomas' first lawsuit came in every so often. He had no reason to think the silicosis claim wouldn't pay similar dividends.

"I think it's just attached to the asbestosis," Thomas said of his newest disease. "It's like getting one kind of cancer, and the next thing you know you've also got another cancer."

To Thomas, the idea of having both ailments makes perfect sense. He spent years inspecting cargo inside the dusty holds of arriving ships. Sometimes he was around bags of asbestos waiting to be unloaded. He figures there must have been some sand in there, too.

From a medical perspective, the chance of coming down with both – a pulmonary daily double – is remote. A thickening of the lungs' lining, which Thomas cited as evidence for his asbestosis, is not even characteristic of silicosis.

But to the handful of lawyers along the Gulf Coast who represented Thomas and clients like him, the absence of medical support was nothing to worry about. They did not need sick people, only doctors who would issue diagnoses. With a little luck, they would walk away with billions of dollars in settlements.

In 2001 and 2002, they began beating the bushes for anyone who had been employed where silica might have been used. If that meant trolling through lists of old asbestos clients like Thomas, so be it. The extent of these so-called "asbestos retreads" was not widely known. Then again, for silica litigation to pay off the way they hoped, the fewer details disclosed the better.

The result of their effort was an explosion of lawsuits the likes of which is rarely seen. Texas got its share, close to 4,000, but nothing like Mississippi. In just one year, 2002, one of the smallest states in the country went from 76 new silicosis suits to 10,642. By the end of 2004, the state's total topped 20,000.

How were so many "victims" found so quickly? The answer lies not in luck or previous medical oversight but in a well-oiled litigation machine run by an aggressive band of entrepreneurial lawyers. Operating in the shadows of the civil justice system, the machine's sole purpose is to turn people like Carl Thomas into case numbers.

X-rays in vans

Like the best machines, the marvel of this one is its simplicity. The law firm hires a medical screening company. The screening company hires a doctor. The two go to work, one bringing people through the front door, the other stamping them as sick. At the end of the day, a clerk at a law firm fills in a few blanks, punches a button and produces a lawsuit.

It's the job of the screening company to connect with workers. It owns a mobile van, maybe several, that shows up in parking lots to conduct X-ray sessions. By the time the van arrives, thousands of potential claimants have been reached by direct mail, fliers put up in union halls and ads placed in hundreds of small-town newspapers and occasionally on television.

The X-rays are done at no cost, with the understanding that the results are given to lawyers for the purpose of litigation. The

"Our marketing efforts have brought thousands of new cases to plaintiff law firms," the letter stated. "Prior to the year 2000, Lloyd Criss was employed by the Foster and Sear law firm, and in a one-year period approximately 7,000 new cases were added to that firm's inventory."

A legal dance

When the screeners are done, the pressure is on the doctors to keep the numbers up. Most of them have worked with the same lawyers for years; few, if any, even have a regular medical practice. The X-rays are read quickly, sometimes more than 100 in a day. A large number are found to be slightly abnormal.

In a short amount of time, thousands of people who were unaware they were "sick" are deemed to be suffering from a serious lung ailment. In the case of silica, the newly minted "victims" were not sent to physicians for treatment and follow-up. But because they had signed papers allowing legal representation, they began to receive care of a different sort.

Suddenly, courthouses began to fill up with bare-bones lawsuits against hundreds of companies, thus beginning the protracted legal dance that has become the staple of mass torts. Committees of lawyers for the various parties

How were so many "victims" found so quickly? The answer lies not in luck or previous medical oversight but in a well-oiled litigation machine run by an aggressive band of entrepreneurial lawyers. Operating in the shadows of the civil justice system, the machine's sole purpose is to turn people like Carl Thomas into case numbers. – Mike Tolson

screening company receives a set fee per person tested, as does the doctor who receives the X-rays along with a brief work history of the potential client.

The goal is volume. In May 2003, Lloyd Criss, owner of defunct screening company Gulf Coast Marketing in La Marque, sent a promotional letter to lawyers that emphasized one thing.

are formed. Demands are made. A few trials are scheduled for the sickest of the plaintiffs. Settlement talks begin.

Overwhelmed by so many lawsuits that they could never try them all, the defendants have a powerful incentive to dispose of them quickly. Typically, the major-

See **Silicosis**, Page 7

Mexico Lawsuits Evoked Discontent

San Antonio Express-News,
November 28, 2007

By **JOHN MACCORMACK**

CORPUS CHRISTI – Long beyond the reach of most U.S. lawsuits, Mexico was for a few heady years a gold mine of lucrative wrongful death cases for enterprising legal prospectors like Mauricio Celis and his partners.

Celis, 36, is under indictment, accused of misrepresenting himself as a lawyer and a peace officer, along with stealing from a client. The Texas attorney general also has sued to close his Corpus Christi law firm.

But before his troubles began this fall, when he was denounced as a fraud by another lawyer, Celis cut a wide swath in Corpus Christi as a political player capable of generating huge sums for candidates.

Not many years earlier, and despite the handicap of apparently not having a law license in either

Texas or Mexico, Celis and several lawyer partners struck it rich south of the border by importing cases involving terrible accidents for litigation in U.S. courtrooms.

In Mexico, his country of birth, Celis cut a striking figure, according to a man he visited about five or six years ago in the state of Guanajuato while seeking to sign up a client.

“He arrived in a BMW with Texas plates, very rich. And he came with Francisco Roux, the former Mexican ambassador to Australia, a friend of mine,” said Antonio Gonzalez Cue, a lawyer for the state government.

“He moved at a very high level. He gave presents, he had dinners, he gave money to people, both in Corpus Christi and Mexico,” said Gonzalez, who had met Celis earlier in Texas.

He said Celis asked for help in finding the mother of a Mexican who had died in a car accident in the United States. But, Gonzalez said, he was put off by Celis and didn’t cooperate.

“I had no confidence in him. I felt he was a bluffer and a schemer,

and his (contracts) were in English and poorly made,” he said.

But if Gonzalez declined to work with Celis, other Mexicans had no such reservations about his get-rich offers, even if they later complained bitterly about getting stiffed.

Ford and Firestone

Working with several Corpus Christi lawyers, primarily Vance Owen, Celis combed Mexico for death and disaster, keeping a particular eye out for bad accidents involving Ford Explorers and Firestone tires.

At the time, Ford and Firestone were being inundated with lawsuits over alleged defects in their products, but Mexico was largely unexploited territory.

Eventually, the Mexican lawsuit bonanza ended, in part because of a 2003 ruling by the 5th U.S. Circuit Court of Appeals that Mexican wrongful death cases occurring there should be tried in Mexico, not the United States.

But by then, according to court documents, Celis and Owen had already found at least 18 Ford

and Firestone cases in Mexico that were later litigated or settled in U.S. courts.

By a rough rule of thumb, those cases may have resulted in a payout of \$75 million to \$150 million, according to several estimates.

Most of the Ford and Firestone cases Celis helped uncover in Mexico were apparently handled by Mikal Watts, a lawyer then practicing in Corpus Christi who now practices in San Antonio. Last month, he dropped out of the race for the U.S. Senate seat held by John Cornyn, citing pressure that campaigning has put on his family.

Watts kept 20 percent of the recovery in the cases he got and gave Celis and his partners an equal share, according to court documents.

But not everyone who worked on the cases in Mexico was paid what they believed they were due.

For the full story, please visit
www.tortreform.com

Restoring Public Trust

The Cincinnati Post, EDITORIAL, August 8, 2007

A judge’s long-awaited decision to order the repayment of excessive attorney fees in the celebrated fen-phen diet drug case was right on the money.

Special Judge William Wehr’s order that three central Kentucky lawyers repay at least \$62.5 million – with interest at 8 percent over the six years they had the money – sends a welcome message to anyone who might think the legal system is theirs to game.

The three attorneys once represented more than 400 Kentucky residents who believed they’d been harmed by taking fen-phen. With help from Cincinnati attorney Stan Chesley, the three lawyers secured a \$200 million settlement from the drug’s manufacturer.

Last month a federal grand jury indicted the three attorneys –

William J. Gallion, 56, and Shirley A. Cunningham Jr., 52, of Lexington and Melbourne Mills Jr., 76, of Versailles – for conspiracy to commit wire fraud. They are accused of lying to their clients about the amount of the settlement, and of taking two-thirds of it when they were entitled to just one-third. All three have pleaded not guilty.

Last year, in a civil suit the ex-clients had filed, Wehr concluded that after paying Chesley \$20 million for his role in negotiating the settlement, the three lawyers paid themselves \$42 million and used another \$20.5 million to set up a charitable fund with themselves as trustees who were each paid \$60,000 a year. The attorneys told the presiding judge in the original fen-phen case that all the plaintiffs wanted the charitable fund estab-

lished. In fact, Wehr concluded, the plaintiffs knew nothing about the fund until after it had been established. In depositions given in the civil case, the three lawyers acknowledged that they met secretly to decide how to distribute the settlement money and burned or tore up notes that would have shown how much they paid themselves and their clients.

Chesley was not indicted, but has been sued by some of the original plaintiffs for allegedly breaching his fiduciary duty to them. He has denied any wrongdoing, saying his dealings were with the three attorneys, not the clients. His civil trial in Wehr’s court is scheduled to begin in September.

Wehr had said nearly a year ago that he would require some of the attorney fees be repaid to the clients. But it wasn’t until Friday that he issued a binding order specifying an amount to be

repaid. Still pending is a civil trial on the question of punitive damages; Wehr has said that will wait until after the criminal proceedings are concluded.

Through his steady handling of the matter, and by going the extra step of charging interest on the money that should have gone to the fen-phen clients, Wehr is helping to mend the damage caused by this celebrated case. Public confidence in the legal system is sometimes shaky, in part because of the perception that some lawyers are using the suffering of others to strike it rich. By sending such a clear signal that shenanigans won’t be tolerated, Wehr is helping to restore public trust – and in the process he is helping the majority of lawyers who play by the rules and conduct themselves honorably. ■

The Trial Bar on Trial

Wall Street Journal, EDITORIAL, November 30, 2007

The barons of the tort bar must have thought 2007 would be a very good year: Some of their biggest cases (Katrina, Enron) were set to pay out, and a Democratic Congress meant no more worries about legal reform. Talk about reversal of fortune: As the year ends, we are witnessing nothing short of the dismantling of what are alleged to be major tort criminal enterprises.

Bill Lerach, the king of class actions, stands disgraced as an admitted felon. His former partners at Milberg Weiss face trial for being part of the same kick-back scheme as Lerach. Federal prosecutors continue to pursue a criminal probe into asbestos and silicosis litigation fraud. And now comes the indictment of Mississippi tort legend Richard "Dickie" Scruggs, who is trying to soak insurance companies the way he once did Big Tobacco.

On Wednesday, Mr. Scruggs and four cohorts were indicted for trying to bribe a state judge in exchange for favorable rulings. The indictment reads like something out of a bad John Grisham novel, complete with piles of cash delivered secretly and wire-tapped conversations featuring phrases like "bodies buried." The accused claim to be innocent, but our reading of the indictment is that they are going to need very good defense counsel.

The alleged conspiracy flows from litigation after Hurricane Katrina. The Scruggs Law Firm established a tort consortium called the Scruggs Katrina Group to shake down the insurance industry for not paying enough in claims, even though most homeowner policies excluded flood damage. Not atypically, a dispute emerged between Mr. Scruggs and one of the group's attorneys, John Griffin Jones, over how to divide the \$26.5 million in attorneys' loot from a mass settlement with State Farm Insurance Co.

According to the indictment, after *Jones v. Scruggs* moved to court, Mr. Scruggs attempted to buy off presiding circuit court Judge Henry Lackey. Judge Lackey reported the

bribery overture and assisted with an FBI investigation. Presumably the Judge wore a wire, since the U.S. Attorney's case so far seems based largely on evidence gathered from secret conversations.

In March of this year, the complaint says, two meetings took place at Mr. Scruggs's offices in Oxford, Mississippi to discuss "how to influence the outcome" of the Jones suit. The alleged conspirators include his son, Zachary, a partner in the Scruggs firm, and another partner, Sidney Backstrom; as well as an outside attorney, Timothy Balducci, and former state auditor Steven Patterson, who resigned his office in 1996 amid malfeasance allegations. Later that month, Mr. Balducci, acting as the intermediary, first approached Judge Lackey.

In May, Mr. Backstrom emailed Mr. Balducci an order they wanted the Judge to sign, which is not specified in the indictment other than that it was favorable to Mr. Scruggs. In a conversation with Judge Lackey listed in the indictment, Mr. Balducci describes their relationship: "he and I can talk very private [sic] about these kinds of matters and I have the fullest confidence that if the court, you know, is inclined to rule...in favor...everything will be good...The only person in the world outside of me and you that has discussed this is me and Dick [Scruggs]." (The ellipses in the quotes are from the indictment itself.)

Mr. Balducci continued: "We, uh, like I say, it ain't but three people in the world that know anything about this...and two of them are sitting here and the other one...the other one, uh, being Scruggs...he and I, um, how shall I say, for over the last five or six years there, there are bodies buried that, that you know, that he and I know where...where are, and, and, my, my trust in his, mine in him and his in mine, in me, I am sure are the same."

The indictment says that in September Judge Lackey, working undercover, agreed to a \$40,000 bribe from Mr. Balducci, to be

High Profile Lawyer Indicted in Bribery Scheme

Mobile Register, November 29, 2007

By MICHAEL KUNZELMAN

NEW ORLEANS – An attorney who helped negotiate a multibillion-dollar settlement with tobacco companies in the 1990s and represents hundreds of Mississippi homeowners after Hurricane Katrina was indicted Wednesday in an alleged scheme to bribe a judge.

A federal grand jury in north Mississippi indicted Richard "Dickie" Scruggs, his son and law partner Zach Scruggs, two other lawyers and a former Mississippi auditor of conspiring to bribe state Circuit Judge Henry Lackey with \$40,000 in cash.

The 13-page indictment accuses the men of trying to bribe Lackey to rule in favor of Scruggs in a civil lawsuit, filed by other attorneys, that accused Scruggs of withholding fees for work on Katrina insurance litigation.

The indictment says Lackey, who sits in Mississippi's Third Circuit Court District, reported the "bribery overture" to federal authorities and agreed to assist investigators in an "undercover capacity."

Joey Langston, a lawyer for Scruggs' firm, said Richard Scruggs, his son and a third defendant turned themselves in to authorities Wednesday afternoon at a federal building in Oxford, where the grand jury handed up the indictments earlier in the day.

"I'm convinced that these guys did not do what they're accused of doing," Langston said.

The charges against Scruggs and the others include one count of defrauding the federal government and two counts of wire fraud.

Also named as defendants in the indictment are Zach Scruggs; Sidney Backstrom, a lawyer in Scruggs' firm; Timothy Balducci, a New Albany, Miss.-based lawyer; and former State Auditor Steven Patterson, an employee of Balducci's firm.

Patterson resigned as auditor in 1996 after he allegedly lied on state documents to avoid paying taxes on a car tag.

Following their arraignment Wednesday, Richard Scruggs was released on \$100,000 bail, while Zach Scruggs and Patterson each were freed on \$50,000 bail. Langston said Backstrom is expected to be arraigned today, but he couldn't say when Balducci is expected to appear in court.

Langston said it was too early for him to comment on the details of the allegations.

Scruggs, whose brother-in-law is Sen. Trent Lott, R-Miss., earned millions from asbestos litigation and from his role in brokering a multibillion-dollar settlement with tobacco companies in the mid-1990s.

The Gulf Coast native sued insurers on behalf of hundreds of policyholders whose claims were denied after Hurricane Katrina.

delivered in installments. After discussing the matter with Messrs. Patterson and Backstrom, Mr. Balducci allegedly delivered \$20,000 in cash to the Judge's chambers. Mr. Balducci told Mr. Patterson, "All is done, all is handled and all is well." The government claims he later made two more \$10,000 payments, with plans for a third after talking to Mr. Scruggs.

If convicted, the Scruggs Five could each face up to 75 years in prison. Keep in mind that these

aren't street toughs but officers of the court, men who are supposed to uphold the law and who daily claim to be agents of justice against fraudulent business. If guilty, they are the pin-striped version of crooked cops – traitors to the public.

By the way, in addition to this indictment, Mr. Scruggs is also facing criminal contempt charges for flagrantly violating a judge's order in a different State Farm matter. He says he's innocent of that charge, too. ■

Setting the Bar for Corruption

Washington Post, November 18, 2007

By **GEORGE F. WILL**

This excerpt is from George Will's November 18, 2007 column that explores the grisly details disclosed by the indictment of the nation's leading class action law firm, Milberg Weiss:

"[Milberg Weiss] has been indicted as a "racketeering enterprise" that obstructed justice and committed perjury, bribery and fraud while collecting about \$250 million in fees from about 250 cases using paid plaintiffs, which is illegal. Several of the firm's members, past and present, also have been indicted.

"Since 1965, the firm has won, often by tactics indistinguishable from extortion, \$45 billion from corporations - more than \$1 bil-

lion a year for plaintiffs claiming to have been cheated as investors. Plaintiffs firms such as Milberg Weiss are paid contingency fees - they are paid only if they win, but up to 30 percent of what is won. Mel Weiss, whose case is going to trial, and his former partner, Bill Lerach, who specialized in volatile stocks of Silicon Valley companies in the 1990s and is now going to jail, each pocketed - it would be strange to say they earned - more than \$100 million in the 1990s. The firm itself has been charged with paying \$11.4 million to three serial plaintiffs who testified in 180 cases over 25 years, claiming to have been repeatedly defrauded.

"For Milberg Weiss to land the

lucrative role as lead counsel, in charge of a case, it had to be first to file suit - to win the "race to the courthouse." The firm's tactic was to store a few plaintiffs in its pantry. They would buy small amounts of stock in many companies, so they were poised to sue any of the companies whose stock lost substantial value.

"Lead plaintiffs must swear that they are not getting special payments. According to prosecutors, some of Milberg Weiss' phony plaintiffs were getting millions of dollars in kickbacks - generally about 10 percent of net attorneys' fees - for their charade as injured investors.

David Bershad, who has made \$161 million with the firm since 1983, has pleaded guilty to one charge and cooperated with prosecutors. Steven Schulman has pleaded guilty to racketeering.

The collateral damage is still spreading. A Los Angeles attorney has pleaded guilty to acting as a conduit for secret payments to one of the pantry plaintiffs for accepting payments from Milberg Weiss for work never done and for passing the payments on to the plaintiff.

How do you convict a company of the crime of having the price of its stock fall? How do you prove that a company is guilty of fraud and liable for losses it presumably did not want? Often you do not prove it, or even plan to. Rather, you threaten to be such a costly nuisance that the company pays you to go away.

For the full story, please visit www.tortreform.com

Power Broker is Indicted: 7 Counts

Mauricio Celis is accused of misrepresenting himself as a lawyer

San Antonio Express-News, November 17, 2007

By **JOHN MACCORMACK**

Mauricio Celis, a man of modest beginnings who achieved personal wealth and political clout through the legal system, was indicted Friday in Corpus Christi on seven felony counts of misrepresenting himself as a lawyer.

A Nueces County grand jury also charged him with one count each of impersonating a peace officer, aggravated perjury and stealing from a client. If convicted of all charges, he could face up to three decades in prison.

Celis remained free Friday afternoon while his case was being processed in the district clerk's office and his lawyers worked with the Nueces County District Attorney's office to arrange his surrender.

"His lawyer wants to turn him in," said Mark Skurka, first assistant district attorney. District Attorney "Carlos Valdez is recommending \$250,000 bond on each

of the four counts, but the judge is the one who will set the bail."

Celis, 36, who owns the CGT Law Group International firm in Corpus Christi, did not study law in the United States but claims to have earned a law license in Mexico.

For nearly a decade, he has worked closely with various plaintiffs lawyers, and contributed huge sums to area and state political candidates.

The indictments allege Celis represented himself as a lawyer variously licensed in Mexico, Texas, California, and Washington, D.C.

Celis, who has denied ever claiming to be a lawyer in Texas, did not return calls to his home and law firm on Friday. In an earlier interview he said he was only the administrator at the law firm, despite company documents that described him as a lawyer.

His rapid rise to prominence and uncanny ability to land big

lawsuit cases, which he typically referred to powerful local litigators for a share of the recovery, may have undone him.

In late September, Corpus Christi lawyer Thomas Henry began denouncing him on local television as a fraud. Henry has since sued Celis on behalf of a client.

"This is just the beginning of the process and I think we'll learn a lot more about Mr. Celis," Henry said of Friday's indictments. "The law says you can't pay a non-lawyer for cases. It's a crime. I think at the end of the day we'll know where Mr. Celis got his money, and why people were facilitating him in the business."

A call to Celis' lawyer, Tony Canales, was not returned Friday.

The grand jury is believed to have heard testimony from, among others, Henry's client Paloma Steele, former Nueces Sheriff Larry Olivarez, who now works

for Celis, an unnamed member of the CGT law firm, and a woman who briefly but famously shared a hot tub with Celis.

In that September incident, Celis allegedly attempted to "take into custody" a nude woman at 4 a.m. outside a Corpus Christi convenience store while dressed in a bathrobe and waving a sheriff's badge from nearby Duval County.

Celis, whose peace officer license as a reserve deputy had expired in 2003, now is charged with impersonating a police officer and attempting to interfere with an investigation.

He was also charged with aggravated perjury, accused of falsely swearing under oath that he had graduated from a law school in Mexico, and allegedly stealing between \$1,500 and \$20,000 from Steele. ■

Each of us wants to know that when we have suffered a harm that needs recompense, or when we are alleged to have caused harm to someone else, we can access a system that is neutral and will produce an outcome solely on the merits of the case. – *Texans for Lawsuit Reform*

The Pursuit of Justice, or Money?

The New York Times, December 8, 2007

By JOE NOCERA

“If I don’t bring the lead paint industry to its knees in three years, I will give them my boat.”

So declared Ronald L. Motley to The Dallas Morning News in the fall of 1999 – and why not? In addition to being the owner of a very large yacht, Mr. Motley is also one of the country’s pre-eminent plaintiffs’ lawyers, the titular head of the 70-lawyer firm Motley Rice, based in Charleston, S.C.

At the time of that interview, he was on top of the world. He had just spearheaded the drive against the tobacco industry, resulting in a \$246 billion settlement with the 50 states. His fees ran into the hundreds of millions, if not billions, of dollars.

“Retire?” he scoffed in that same interview. “There are too many corporate crooks out there manufacturing dangerous products and injuring kids as a result.” He vowed to use his tobacco winnings to go after more bad guys, like those evildoers populating the lead paint industry. And that he has.

In the wake of the Merck-Vioxx column I wrote a few weeks ago – in which I took the position that plaintiffs’ lawyers aren’t always on the side of the angels – I was deluged with e-mail messages from readers who said, in effect, “Oh yes they are!”

And up to a point, I would agree: who can argue with the billions of dollars the plaintiffs’ bar extracted from the big banks that enabled Enron? (I can’t help noting, however, that the lead lawyer in the Enron lawsuits, William S. Lerach, will soon be in prison, having pleaded guilty to a felony directly related to the way he used to practice law.)

But for every Enron, there are cases where lawyers abuse the legal system. In these cases, litigation can look more like an income-redistribution racket than a search for justice. So I come forward this morning with a new example of litigation run amok. I offer you Mr. Motley’s lead paint litigation.

Lead is poisonous. We all know that, though a century ago, we thought that people needed to have a lot of lead in their systems for it to present a health problem. But now we also know that lead in the bloodstream, even in small doses, has the potential to cause problems in babies. Today, any child who has more than 10 micrograms per deciliter is considered to have an elevated blood lead level – though under these modern standards, the entire baby boomer generation had elevated blood lead levels as children.

Here’s what else we know. We know how to get the lead problem under control. In the mid-1970s, the government passed laws eliminating lead in gasoline, paint and tin cans. (Lead in gasoline was by far the biggest cause of elevated blood lead levels.) And states and cities passed laws mandating that landlords keep their properties freshly painted – so that old lead paint chips would not fall off and be eaten by children.

“Basically, what we have succeeded in doing in this country is reduce the incidence of lead poisoning by 90 percent and the blood lead levels by 90 percent,” said Dr. Philip J. Landrigan, the head of the Department of Community and Preventive Medicine at Mount Sinai School of Medicine. He told me that this constituted “a great public health triumph.” Despite this belief, however, Dr. Landrigan has testified as an expert witness on behalf of plaintiffs.

Although lead was outlawed in paint in 1978 – and though many industry players had removed it even earlier than that – the lawsuits began in 1987. These were not, however, Motley Rice lawsuits. Most were product liability suits that claimed the pigment manufacturers knew that lead was dangerous and had therefore knowingly harmed the consumer.

The cases went nowhere, for two primary reasons. First, it was hard to make the case in court that the companies had done anything wrong. Yes, there were “bad documents” – there are always bad documents – but most of them were a half a century old, as the science around lead was emerging in this country. They mainly showed that the Lead Industries Association was less than keen about embracing the emerging consensus about the dangers of lead to small children. But the industry didn’t try to cover up the science, and as the science became clearer in the 1950s, the industry voluntarily took lead out of interior paint. I realize that many people think companies should rush to abandon legal products at the first whiff of a problem, but if that were really the standard, the shelves would be bare.

The second problem is that it was impossible to know which manufacturer’s paint had been used on a particular house. For most judges, that was the real deal-breaker. For as long as there has been product liability law, it has been rooted in the notion that

case, and take 16.7 percent of the proceeds if its side won. A lawyer named Fidelma Fitzpatrick came up with the most novel theory yet: the state should sue the companies on the ground that lead paint was a “public nuisance.” It was so far-fetched that another lawyer in the office would later tell a reporter that, at first, they called it Fidelma’s Wacky Idea.

Ms. Fitzpatrick explained to me that since the substance was still so prevalent, it was a public nuisance and therefore all the companies were guilty of creating that nuisance. See how easy that was? Suddenly, the case was no longer about an individual who had been harmed by lead – or an absentee landlord who hadn’t maintained his property. It was about those dastardly pigment makers who had put lead in paint.

Armed with this new theory, Motley Rice went to trial in Rhode Island in 2002. Hung jury. Then, in 2006, the case was retried – and Motley Rice won. “Evidence?” laughed Jane Genova, a blogger who has followed the case closely. “There was no evidence. The judge’s instructions said you

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in order to sue a wrongdoer, you have to know who the wrongdoer is. Plaintiffs’ lawyers tried to argue that since all the manufacturers used lead pigment, they were all guilty – and their guilt should be proportional to their market share. But aside from Wisconsin, this was universally rejected by the courts.

And there things stood until Motley Rice arrived on the scene. In Rhode Island, where Motley Rice has an office – and lots of political ties – the firm agreed to join forces with the attorney general’s office, just as it had in the tobacco

didn’t need evidence.” If the jurors found that lead paint created a public nuisance, then they should find for the plaintiffs. Sure enough, they did. (It didn’t help that the companies didn’t put on a defense, so sure were they of victory.)

In the last year, it’s gotten even worse for the defendants, at least in Rhode Island. The state, with the help of its friends at Motley Rice, recently unveiled an abatement plan that would require the companies to pay for the inspection of a staggering 240,000

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Lawyer Told to Fork Over More Cash

Arbitrators add interest, fees in payments to former clients

The Houston Chronicle, September 12, 2007

By MARY FLOOD

With interest added, Houston trial lawyer John O'Quinn must pay \$41.4 million because he improperly charged expenses to his former breast implant litigation clients, an arbitration panel ruled Tuesday.

In July, the panel found that O'Quinn was to pay at least \$35.7 million to the more than 3,000 women who were improperly charged an extra 1.5 percent for general expenses. On Tuesday the panel added more than \$5 million in interest and some specific attorneys fees.

O'Quinn has previously called the decision unfair but could not be reached for comment late Tuesday. His lawyer, Billy Shepherd, said he was not able to comment because he had not seen the opinion.

Only \$30.7 million of the sum will go directly to the women because \$10.7 million will go toward expenses and fees for the attorneys who sued O'Quinn.

The case stems from a 1999 class-action lawsuit filed by ex-clients in East Texas. That suit was joined by thousands of women alleging O'Quinn improperly took funds from their settlements for group charges they had not agreed to pay. The panel said O'Quinn breached his duty to the women.

Joe Jamail, lead attorney for O'Quinn's ex-clients, said Tuesday "you can imagine how grateful they are. They feel they were not treated right."

The arbitration panel asked the parties to divide up the \$30.7 million among the ex-clients

who are part of this lawsuit, giving each a pro-rata share depending on how much they paid in general expenses.

It could be some time, however, before any money gets to the women.

O'Quinn previously said he plans to appeal the decision, though arbitration decisions are generally considered to be final.

He also has said he does not consider himself personally liable since the finding is technically against three legal entities: John M. O'Quinn PC, John M. O'Quinn & Associates and John M. O'Quinn & Associates LLP.

The arbitrators are David Beck, Kenneth Tekell Sr. and Susan Soussan. They previously wrote that although O'Quinn did an exceptional job and many lawyers have trouble charging shared expenses, the O'Quinn contracts nevertheless did not allow for the deductions O'Quinn charged.

In July O'Quinn said: "I didn't cheat anybody. We got people record results and charged the least expenses of any law firm in town." ■



OUR MISSION

Texans for Lawsuit Reform is a volunteer-led organization working to restore fairness and balance to our civil justice system through political action; legal, academic, and market research; and grassroots initiatives. The common goal of our more than 16,000 supporters is to make Texas the Beacon State for Civil Justice in America.

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Pursuit *Continued*

homes as well as thousands of other structures like hospitals and day care centers, and remove lead from most of them. The estimated cost for doing this – almost surely understated – is \$2.4 billion, with a hefty chunk of that going to the lawyers, of course. Never mind that for the vast majority of homes, the far better and cheaper solution is simply to keep them maintained. Or that this plan has been ginned up even though the case is still on appeal.

Meanwhile, to capitalize on its success in Rhode Island, Motley Rice and other big-time plaintiffs' lawyers have raced all over

the country, trying to get other jurisdictions interested in suing the same defendants on the same grounds. Fortunately, they have had less luck. This past summer, the public nuisance theory was rejected by high courts in New Jersey and Missouri. In Wisconsin, two high-profile trials were held this year; the plaintiffs lost them both.

Still, Motley Rice has cases going in Ohio, California and Wisconsin. "I think New Jersey is going to be an aberration," Ms. Fitzpatrick said. She made it sound as if her firm remained undeterred – since, after all, it is on the side of the angels. "There is no doubt they knew," she said of the compa-

nies. When I brought up her contingency fee, she bit my head off. "The real story here is the amount of money the defendants have spent defending these cases," she said. "We're the only group of lawyers who haven't been paid in 10 years." No wonder she's still at it.

But what are the companies supposed to do? Let Motley Rice bankrupt them because of something they did three decades ago that was perfectly legal? When I asked Dr. Landrigan why he was working for the plaintiffs he said: "The removal of paint from apartment buildings is expensive. States and cities are chronically underfunded. So basically, getting a judgment against the com-

panies is a way to get revenue to do the removal." You will never hear a purer distillation of the real motivation for bringing these suits. The companies have lots of money, so make them pay – no matter what the evidence.

One thing I couldn't help wondering was why the gasoline makers weren't subject to these kinds of lawsuits. After all, gasoline, not pigment, was the primary cause of elevated blood lead levels back in the day. When I mentioned this to David Rosner, a Columbia professor who has served as an expert witness for the plaintiffs, he reassured me.

"I think there might be a suit like that filed next week," he said. ■

Silicosis *Continued*

ity of the defendants are asked to contribute small amounts per case, from a few hundred to a few thousand dollars, so that it's cheaper to settle than fight.

Checks are cut. Most of the plaintiffs get modest sums. A handful of genuinely sick ones get six figures. And the lawyers make millions because of the sheer number of cases. Rarely does a case reach a jury trial.

Far from being the end of things, as asbestos litigation showed, the first round of lawsuits inspires law firms to look for new clients, new venues to make claims and even more defendants. More screenings take place, more

lawsuits are filed, and the process starts again. For the lawyers, screeners and doctors in on the ground floor, the prospect is good for an endless stream of paydays.

For the full story, please visit www.tortreform.com

Public Left in Dark on Accused Attorneys

Protection from angry clients cited as one reason for secrecy.

Fort Worth Star-Telegram, August 19, 2007

By YAMIL BERARD

Dallas attorney Bruce Patton has a clean disciplinary record, according to the State Bar's Web site, which provides profiles of the state's 80,000 or more practicing attorneys. But consider this before you hire him to draft your will: Patton is in state prison after being convicted of a felony two years ago.

Would you be curious to know whether the personal-injury lawyer you're interested in hiring is careful not to bill you a dime too much? The firm of John O'Quinn, one of the state's wealthiest personal-injury lawyers, was ordered by an arbitration panel this summer to pay \$35 million to former clients who say he overbilled them for expenses, but no mention of that order is on the Bar's Web site.

Then again, the Bar forewarns that it provides "no warranty" that its information is complete and accurate.

Key aspects of the oversight system for Texas lawyers could leave the public vulnerable, a *Star-Telegram* review found. The Texas Legislature and Supreme Court, which share a role in establishing

ethics rules for attorneys, have made it so that the public stays in the dark about thousands of lawyers accused of misconduct. Bar confidentiality rules ensure that many sanctions are private and that lawyers accused of felonies can continue practicing. The Bar doesn't require attorneys to report their criminal record or malpractice suits.

Bar officials say that protecting the public is an important role for the Commission for Lawyer Discipline, the Bar's primary disciplinary arm. "The very big concern is making sure that we protect the public from lawyers that are abusing the public trust," said Betty Blackwell, chairwoman of the commission.

But that doesn't mean the general public has to be thoroughly informed of lawyer discipline, she said. Representatives of the public sit on the board of the Bar's disciplinary arm. So "even though this may not be made public, and the public as a whole may not know what happened, it has been reviewed by public members," Blackwell said. "That's the point."

The limited publicity also reflects the commission's other priority: sparing attorneys from needless embarrassment. Under today's rules, the public is not told if an attorney is being investigated, or the number or nature of any grievances that are dismissed against an attorney. So the Bar won't say whether it is considering sanctioning Patton, whose jail term ends next month. Its Web site says only that he is inactive.

Blackwell also won't comment on the situation with O'Quinn, who was sued by women he had represented in breast-implant lawsuits. The women said he overbilled them by including expenses that weren't authorized in his contracts with them. In a split decision in July, the arbitration panel found that O'Quinn had breached his fiduciary duty, according to published reports.

Neither will she say whether the Bar is examining the role of any Texas attorneys who may have played a part in the creation of fraudulent tax shelters at Jenkins & Gilchrist, which was one of the state's most prestigious law firms. The firm agreed to a \$79 million penalty settlement with the federal government. While the settlement included a nonprosecution agreement, the firm admitted to developing and marketing fraudulent tax shelters. Some clients who relied on the firm's advice and wound up

owing millions of dollars in back taxes filed suits alleging malpractice, fraud and other infractions.

The Bar's Web site does not list sanctions against several Texas attorneys named in such lawsuits.

Confidentiality is important to protect competent lawyers from the wrath of disgruntled clients over an unfavorable judgment or a complaint that the attorney isn't communicating enough, Blackwell said.

"It's just the nature of the profession, the confidentiality," Blackwell said. "Should the lawyer face the same thing [as someone accused of a crime] because a frivolous complaint has been filed against them? Should the public know this lawyer is being investigated?"

The Bar's answer is a resounding no, in all matters of misconduct, serious or slight. In fact, Bar staff and others say with aplomb that, when attorneys are arrested on felony charges, that's not necessarily cause for the Bar to start a disciplinary investigation.

"We're not criminal attorneys," Blackwell said. "That's the job of district attorneys."

For the full story, please visit www.tortreform.com



Kickback *Continued*

Dr. Cooperman, a former eye doctor in Beverly Hills, Calif., pleaded guilty in July to accepting \$6.1 million in secret kickbacks for serving as a lead plaintiff in securities lawsuits filed by Milberg Weiss, a New York investor class-action law firm. His sentencing is set for June 30, 2008.

"William Lerach's plea can be credited to the thoroughness of this investigation and the dedication of the investigative team, to ensure that justice is done," said Pete Zegarac, postal inspector in charge. "The U.S. Postal Inspection Service remains committed to the investi-

gation of a conspiracy until each and every perpetrator has been brought to justice."

The plea comes amid a seven-year investigation into whether Mr. Lerach and other senior lawyers at Milberg Weiss conspired to pay kickbacks to individuals who agreed to serve as named plaintiffs in class-action lawsuits.

Another former senior partner in the firm, David J. Bershada, has already pleaded guilty to a charge related to the kickback scheme, and another named partner at the firm, Melvyn I. Weiss, has also been a subject of the investigation, but has not been charged.

For years, Mr. Lerach and his former firm aggressively filed

class-action lawsuits, particularly in the securities area. Being the first to organize and file suits also put them in position to get a sizable share of any legal fees produced by the cases.

Mr. Lerach, who did not return a telephone call to his office, long championed the class-action system as an equalizer for small investors and other plaintiffs seeking redress of corporate wrongdoing. John W. Kecker, Mr. Lerach's lawyer, did not return a phone call, and the United States attorney's office declined to comment.

Under the plea agreement, Mr. Lerach is not required to cooperate with the government in any

further inquiries into the matter, the people knowledgeable about it said. The agreement terms, they said, also call for the law firm from which Mr. Lerach recently resigned, Coughlin Stoia Geller Rudman & Robbins, to face no liability or risk.

If a judge declines to accept the terms of the plea agreement, Mr. Lerach is free to withdraw his guilty plea.

For the full story, please visit www.tortreform.com

Michael J. de la Merced
contributed reporting.