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## In Practice

### Small Firm Rides String Of Victories In Railroad Cases

By Lewis L. Rice

Jerome Schlichter and his six-lawyer St. Louis law firm have amassed quite a courtroom record over the past two years - 12 jury trials against railroad companies and 12 victories.

Taken together, those verdicts amounted to more than \$26 million, which comes

#### Small-Firm Profile

to an average verdict of more than \$2 million.

The fact that Schlichter's firm is relatively small has not impeded its ability to bring complex lawsuits against giant companies.

"We've always been able, not only to take the battle to the defendant, but win the battle," he said.

#### Hiding Injuries

Schlichter began handling railroad cases in 1989, soon after he left an 18-lawyer firm to start his own personal injury firm. Two years later, he was joined by two lawyers from his previous firm - Robert Bogard and Roger Denton - both of whom are name partners in the new firm.

The firm has attracted railroad cases primarily by word of mouth and its history of success. However, referrals also come from the Brotherhood of Locomotive Engineers and Trainmen, a union representing railroad workers, which includes the firm on its designated list of legal counsel for its members.

One of those cases was on behalf of Patrick Johnson of Clinton, Iowa, who turned to Schlichter after he was injured in a derailment in Cedar Rapids in May 2001. According to Johnson, a fourth-generation locomotive engineer, he was pulling a grain train into the yard when the rail brake underneath the locomotive. The accident, which flung him around the cab, ruptured a disk in his neck and caused other disks to bulge. He tried to return to work after five months but his injuries prevented him from performing the job, he said.

Johnson said the railroad company, Union Pacific, was negligent in the case because it did not maintain the track properly in an area known for poor drainage. A jury agreed last year, awarding Johnson \$4.1 million.

Schlichter contends that the company's offer of vocational rehabilitation was part of an industry-wide "strategy orchestrated by claims people to make it look like the railroad is going to offer [injured workers] a job when, in fact, they don't intend to do anything as soon as the trial is over."

He said he has deposed vocational counselors to show they are acting at the behest of claims representatives of the railroad.

"In every one of the cases where vocational rehab is involved, the jury saw it for what it is," Schlichter said.

A spokesman for Union Pacific declined to comment.

The Johnson case and others like it demonstrate the hazards of railroad work, where even low-speed accidents involving locomotives weighing 400,000 pounds can cause severe personal injury.

In another accident, a train in the Chicago area traveling just 18 mph collided with an idle train, killing a conductor and crushing the pelvis of Larry Allen, an engineer whom Schlichter represented. In 1996, the jury awarded Allen \$4.75 million.

Schlichter contends that the inherent dangers of the job are exacerbated by a pattern of negligence within the railroad industry. The



Jerome Schlichter has won 12 consecutive cases against the railroads, arguing that the inherent dangers in railroad jobs have been exacerbated by staff and safety cutbacks.

"I attribute it frankly to the arrogance of the railroads not appreciating how their policies are seen by independent people on juries," he said.

#### Track Record

It may be easy to confuse Jerome Schlichter with Jan Schlichtmann - the central character in the best-selling book and movie "A Civil Action." Not only do the names sound similar, but Schlichter, like Schlichtmann, also handled an environmental case that garnered nationwide attention and controversy.

Working with his current partners at their previous firm, Schlichter represented residents of Times Beach, a small town in Missouri whose entire population was evacuated in the mid-1980s after being exposed to the chemical dioxin. They were reportedly shunned in other communities over fear that their exposure was contagious.

Many at the time questioned whether dioxin exposure can even cause harm to humans. Nevertheless, Schlichter had his clients - more than 100 people and their families - undergo sophisticated medical tests at the Mayo Clinic in an attempt to show that the chemical exposure led to health problems. With the target defendant in bankruptcy, the case settled for \$19 million.

In that case, he made a large investment of time and money - the medical tests alone cost about \$1 million, he said - in hopes of paying dividends in the future. It's an example of what firms must be prepared to do when they take on a big case, said Schlichter.

That was also true in the firm's sex discrimination action against Rent-A-Center. When the rent-to-own chain attempted to broker a nationwide settlement of the class action, the firm countered with a campaign to convince women to opt out of what it deemed an insufficient offer. That necessitated hiring 28 contract lawyers plus paralegals to communicate with members of the class. After more than 1,000 of them agreed to opt out, according to Schlichter, the company walked away from a tentative \$12 million settlement and ultimately settled for \$47 million and promised the implementation of new policies.

As the firm's track record expands, so does the potential client base. Schlichter, who

serves as managing partner, has considered expanding the operation yet worries that quality control would suffer in a trial-oriented firm. He maintains a high ratio of support staff per attorney - with seven paralegals and nine secretaries in the six-lawyer firm. The goal is to make it possible for the lawyers to spend their time on the tasks that require an attorney, and delegate the other work to less expensive support staff.

That focus is needed not just for the financial return (Schlichter declined to disclose annual firm revenues) but because each trial often represents the most important event in a client's life, he said.

"People see their lives in one quick moment potentially go up in smoke and their way of life changed forever," said Schlichter. "And the uncertainty of cases and waiting and the uncertainty of how they're going to survive or provide for their family and themselves is very difficult for many people."

Most of these people, Schlichter noted, could never get their day in court without the contingency system and the much-embattled plaintiffs' trial lawyers who represent them. For example, he described a class-action suit his firm accepted when no others would take it on. The suit involved a group of African-Americans from impoverished East St. Louis, Ill., who sued the Illinois Central Railroad for racial discrimination.

The case settled for \$10 million after more than a decade of litigation that required more than 20,000 attorney-hours, 6,700 hours of paralegal time and expert testimony evaluating computer models of more than 1,200 hiring decisions at 43 locations.

According to Schlichter, District Court Judge James Foreman said in an order for attorneys' fees that only two law firms in the country would have considered handling the case.

"It is an example of advocacy at its highest and noblest purpose, and class counsel accomplished a great public good," Foreman wrote. "This court is unaware of any comparable achievement of public good by a private lawyer in the face of such obstacles and enormous demand of resources and finances." LWR/SA

Questions or comments can be directed to the features editor at: [ibibel@lawyersweekly.com](mailto:ibibel@lawyersweekly.com)