

PUBLIC JUSTICE



SUPPORTING THE WORK OF TRIAL LAWYERS FOR PUBLIC JUSTICE

Seattle to Pay WTO Protestors for Wrongful Arrest Settlement Follows Court's Ruling That Mass Arrests Lacked Probable Cause

The City of Seattle has agreed to pay \$250,000 to settle the wrongful arrest claims of 155 peaceful protesters and bystanders arrested during the World Trade Organization (WTO) conference in December 1999. Three weeks earlier, on December 29, 2003, a federal judge held that Seattle police had no probable cause for the arrests. Trial Lawyers for Public Justice and its cooperating attorneys were scheduled to represent the arrestees at trial in this portion of the civil rights class action, *Hickey v. City of Seattle*, beginning on January 20, 2004.

The plaintiffs charged that the City violated their right to be free from unreasonable seizures when it herded,

trapped, and arrested them on December 1, 1999, without giving them a meaningful opportunity to disperse. All of them were outside a "no-protest zone" in downtown Seattle created by then-Mayor Paul Schell in response to massive protests against the WTO. And all of them were booked using the same photocopied arrest warrant, listing an arresting officer who later



Photo by Al Crespo

TLPJ sued Seattle for wrongly arresting peaceful protesters inside and outside of a no-protest zone during the WTO demonstrations in December 1999.

See *WTO Class Action*, page 10.

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Settlement Reached in Landmark Sex Discrimination Class Action Lawrence Livermore Lab to Dramatically Change Procedures, Pay Over \$10.6 Million

On December 4, 2003, a California state court preliminarily approved a broad-ranging settlement agreement that would resolve a class action lawsuit charging that thousands of female employees were denied equal pay and promotional opportunities at Lawrence Livermore National Laboratory (the "Lab"), a national security research facility managed by the Regents of the University of California for the U.S.

Department of Energy. A hearing to consider final approval of the settlement will be held on February 26, 2004, at 9:00 a.m. in Department 22 of the California Superior Court in Alameda County.

More than 3,000 female Lab employees are represented by four law firms, including lead counsel The Sturdevant Law Firm in San Francisco and Trial Lawyers for Public Justice.

See *Gender Equity*, page 12.

Advancing the Fight for Public Justice

This issue of *Public Justice* is particularly inspiring to me because it's filled with articles that demonstrate the extraordinary breadth of TLPJ's public interest litigation and impact.

Many of the stories in this issue will be familiar to those of you already receiving our occasional TLPJ E-letters about breaking news and important case developments. If you aren't already getting this free electronic service, you should sign up for it and choose your interest categories now by visiting TLPJ's web site and clicking on one of the many links to our E-letter sign-up page, www.tlpj.org/elert_signup.htm.

When you see the range of work done and issues tackled by Trial Lawyers for Public Justice – including major constitutional cases to preserve Americans' civil liberties, precedent-setting cases to hold irresponsible corporations and governments accountable, heroic efforts to keep the courthouse doors open to wronged consumers and injury victims, and battles to preserve the Appalachians from the devastation of mountaintop removal mining – you realize why now, more than ever, the trial bar looks to TLPJ as its conscience. We are a unique national law firm marshaling trial lawyers' skills and resources for the public good.

In a time when corporate-funded and politically-driven campaigns invite the public to treat lawyers with ridicule and scorn, TLPJ showcases what is *right* with the civil justice system. And TLPJ more than lives up to its name as a fighter for public justice.

Yet much more work lies ahead. At this moment, the values we cherish are under direct attack. We must increase our efforts to hold the powerful and greedy accountable, safeguard the rights of all Americans, and preserve access to justice.

We need the continued support of our members, through annual dues contributions, special gifts, event sponsorships, and *cypres* awards. That's why I want to thank *all* of our members, especially the exceptionally generous supporters listed on pages 17 through 19. It's also why I urge each of you to renew your membership right away – and increase your annual dues to the most generous level you can afford. And I ask you to make tax-deductible special gift contributions to support TLPJ's mission whenever you can.

It's an honor to be your president. I am dedicated to working personally with all our leaders, staff, and members. Please feel free to contact me directly at any time. Thanks for your help. ■



Gary Gwilliam

EXECUTIVE DIRECTOR'S REPORT

How America Fights

This is an extraordinary time in our nation's history. We have declared war against a horrible type of conduct – terrorism – rather than a specific country or group of people or countries. The war has no known geographic limits, no known (or at least few publicly identified) enemies, and possibly no time limit at all. We could lose the war in a variety of ways, but there is no way we can tell if we've really won it.

We haven't fought a war like this ever. And the closest analogies – like the war on poverty and the war on drugs – are hardly cause for confidence or comfort.

In a war like this, *how* America fights is especially important. First, we must fight efficiently and use the best resources possible. Second, during the battle, we must vindicate, not sacrifice, the very principles we are fighting to protect and uphold – the principles on which America is based.

That's why three cases highlighted in this issue of *Public Justice* are so significant. They seek to ensure that America fights as it must. If we are going to fight efficiently and use the best resources possible, then we have to ensure that our nation's best and smartest men *and women* are involved in the battle. That (among many other things) is what the landmark settlement in our sex discrimination class action on behalf of women employees at Lawrence Livermore National Laboratory will help achieve. *See* page 1.

If we are going to stay true to our principles, then we must protect the First Amendment and due process principles underlying – and preserved by – the United States Constitution. That is what our battles for the wrongfully-arrested protesters at the World Trade Organization Conference in Seattle and the U.S. detainees held indefinitely in Guantanamo Bay are all about. *See* pages 1 and 3.

These battles are crucial – and they're just the beginning. As this issue went to press, the U.S. Supreme Court agreed to decide whether the President can, as he claims, deny virtually all constitutional rights to any American citizen he designates as an "enemy combatant." We think otherwise.

America gives hope to the world because of the principles on which it's based. We must stay true to those principles – and our Constitution – as America fights. ■



Arthur H. Bryant

Photo by Herman A. Farrer

TLPJ Supports Guantanamo Prisoners' Court Access

Coalition Challenges Bush Administration's Claim of Unbridled Power

TLPJ and a broad coalition of concerned groups have urged the U.S. Supreme Court to rule that the federal government cannot hold more than 660 people indefinitely at Guantanamo Bay Naval Base in Cuba and deprive them of any court review of their detention. The *amici* brief filed by the groups on January 14, 2004, in the consolidated cases of *Rasul v. Bush* and *Al-Odah v. United States*, demonstrates that – contrary to the Bush administration's claim – the U.S. courts do have jurisdiction to hear the Guantanamo Bay prisoners' legal challenges.

"The U.S. Constitution, the writ of *habeas corpus*, and the Geneva Convention – which we have ratified and made part of our law – all require the Guantanamo Bay prisoners' cases to be heard by the United States' courts," said TLPJ Executive Director Arthur H. Bryant. "America must remain committed to the rule of law, and to standing as a beacon for the rule of law and access to justice throughout the world."

As part of America's war on terrorism, the United States rounded up and confined over 660 individuals in Guantanamo Bay. The prisoners – many of whom were seized far from any field of battle – hail from 43 different countries. Several captured in Afghanistan or Pakistan claim that they were providing volunteer humanitarian assistance when local villagers seeking bounties turned them over to American forces. According to the Pentagon, 34 detainees have attempted suicide.

For almost two years now, the U.S. government has held the detainees indefinitely while bringing no charges against them, depriving them of access to an attorney, refusing to provide them with the basic protections of due process and the Geneva Convention, and denying all requests for judicial

review before any military or civilian tribunal. The Supreme Court will decide whether the Executive Branch's actions are subject to *any* review by U.S. courts.

"The Executive Branch does not have *carte blanche* to trample on the rights of U.S. or foreign citizens in the name of the war on terrorism," said TLPJ Staff Attorney Victoria Ni, who assisted with the brief. "The courthouse doors must be kept open to all prisoners held in U.S. custody."

The *amici* brief, principally authored by Jonathan Freiman of the Orville Schell Center for International Human Rights at Yale Law School, disproves the Executive Branch's assertion that U.S. courts lack jurisdiction to hear the pleas of foreign citizens incarcerated abroad in U.S. custody. It demonstrates that the Geneva Convention addressing the Treatment of

Prisoners of War, ratified by America in 1955, and the U.S. military's own regulations require that the detainees be afforded access to court. The brief also shows that the government's position violates both generally recognized principles of international law and the laws of numerous democratic nations. And it challenges the government's claim that the prisoners have no due process rights under the U.S. Constitution because they are being kept on foreign soil, since an agreement between America and Cuba gives the U.S. sole control over Guantanamo Bay.

"The Executive Branch cannot be allowed to make an end run around the Constitution by shunting the prisoners to Guantanamo Bay and treating it as a legal black hole," said TLPJ's Goldberg-Deitzler Fellow Richard Frankel, who also assisted with the brief.

A wide-ranging coalition of groups joined in the *amici* brief urging the Court to give the prisoners their day in court. In addition to TLPJ, the American Civil Liberties Union (ACLU), the American Jewish Committee, Amnesty International,



U.S. Army military police wheel Shafiq Rasul on a stretcher to interrogation at prison camp in Guantanamo Bay.

AP File

the Lawyers Committee for Human Rights, the National Association of Social Workers Legal Defense Fund, the National Council of the Churches of Christ, People for the American Way, and the Rutherford Institute, among others, joined in the brief. Former U.S. diplomats and former American prisoners of war also filed *amici* briefs supporting the prisoners' right to obtain access to court.

Oral argument has not yet been scheduled in the case. The Supreme Court's decision is expected by June. The *amici* brief is posted online at www.tlpj.org. ■

High School Students and Textbook Author Charge Texas Board of Education Officials with Censorship

TLPJ Files Landmark First Amendment Lawsuit Against State Board Members for Rejecting Environmental Science Textbook

TLPJ filed a First Amendment lawsuit on October 30, 2003 in Dallas against Texas State Board of Education officials, charging that their November 2001 decision to reject an environmental science textbook for use in public high schools constitutes censorship in violation of the U.S. Constitution. The First Amendment prohibits government officials from censoring speech because of the message or viewpoint it conveys. The lawsuit was filed in the U.S. District Court for the Northern District of Texas to vindicate the free speech rights of the author, as

book, and that review panels of science professors at Texas A&M University and the Science Teachers Association of Texas had given the book high marks, the Board voted to reject the book.

“The Board’s rejection of this widely-used textbook was not based on any legitimate concerns for factual accuracy or curriculum fulfillment,” said TLPJ lead counsel Steve Baughman Jensen of Dallas’ Baron & Budd, P.C. “The Board rejected the book because 10 of its 15 members disagreed with Dr. Chiras’ viewpoints on environmental and economic issues, views based on 30

years of scientific study. This lawsuit aims to expose this blatant censorship and end this unconstitutional behavior.”

The class action lawsuit charges Board officials with violating the plaintiffs’ free speech rights under the First and Fourteenth Amendments to the U.S. Constitution, and the federal Civil Rights Act of 1871, 42 U.S.C. §1983. The plaintiffs seek a court

order declaring that the Board members’ rejection of Dr. Chiras’s book was unconstitutional and requiring the book’s inclusion on the list of state-approved texts. Dr. Chiras also seek damages from several current and former Board members in their personal capacities, stemming from the lost sales caused by their censorship.

Texas is one of the country’s largest textbook markets – second only to California – and often sets the agenda for classroom texts nationwide. As a result, the Board’s rejection of Dr. Chiras’s book had a nationwide “ripple effect,”

causing schools in other states to decide against purchasing the book. This magnified the infringement on free speech rights, as well as the damages resulting from lost sales.

“I was stunned by the Board’s decision to reject my textbook,” said Dr. Chiras. “Texas public high schools used an earlier edition of my book, and colleges across the country, including a state university in Texas, have used the current edition. It is incredibly offensive and unfair that my book was falsely portrayed as ‘anti-Christian’ when this same book is used at Baylor University – a top-tier Christian school and Texas’ oldest university.”

Though most states select textbooks on a school-by-school or district-by-district basis, Texas adopts textbooks through a formal statewide process. Every year, the Board votes on a list of books submitted for adoption in subject areas scheduled for review that year, then provides the state’s public schools with a list of approved books from which to choose. Local school districts may use state funds only to purchase Board-approved textbooks. Before the Board’s final vote, the books are vetted in a rigorous process that includes review by textbook panels appointed by the Texas Commissioner of Education, reports by the Commissioner to the Board recommending whether to adopt or reject a textbook, written comments from Texas residents, and public hearings at which residents, experts, and publishers may comment.

Three environmental science textbooks, including Dr. Chiras’s text, were submitted to the Board for approval in 2001. All three books were submitted for use in general high school environmental science classes, but Dr. Chiras’s book was the only one also submitted for Advanced Placement classes. The Board approved one environmental



Photo by Jonathan Huson

Adele Kimmel, Dan Chiras, and Steve Baughman Jensen announce the filing of TLPJ’s First Amendment lawsuit over textbook censorship in Dallas.

well as tens of thousands of Texas public high school students who have been denied access to the textbook.

The textbook at the center of this lawsuit is “Environmental Science: Creating a Sustainable Future (6th Edition)” by Daniel D. Chiras, Ph.D., and published by Massachusetts-based Jones and Bartlett Publishers. The book has been widely used for over 20 years in top-tier universities, including Baylor University in Waco and the University of Texas at Tyler. Despite the fact that Texas’ Commissioner of Education recommended adopting Dr. Chiras’s

See Textbook Censorship, page 5

TLPJ Wins Injunction in Sex Discrimination Lawsuit Against West Chester University for Violating Title IX

Federal Court Orders Immediate Reinstatement of Women's Gymnastics Team

A federal court in Philadelphia ordered West Chester University (WCU) to immediately reinstate its women's gymnastics team on November 12, 2003, in response to a sex discrimination lawsuit filed by TLPJ charging that the state university's decision to eliminate its women's gymnastics team in response to a budget crunch violates federal law. The class action lawsuit was filed in the U.S. District Court for the Eastern District of Pennsylvania on September 4, charging WCU with violating Title IX of the Education Amendments of 1972, the federal law that prohibits sex discrimination by all educational institutions receiving federal funds.

"This is an enormous victory for WCU's women gymnasts, for all other WCU women athletes, and for everyone who cares about gender equity in

sports," said lead counsel Sharon McKee of Philadelphia's Hanglely Aronchick Segal & Pudlin.

The Honorable R. Barclay Surrick heard testimony on plaintiffs' motion for a preliminary injunction from September 29-October 6, 2003. The motion sought immediate reinstatement of the women's gymnastics team pending a full trial on the merits.

"We are delighted that the federal court ordered WCU to reinstate the women's gymnastics team immediately and provide the team with coaching staff, full funding, and the necessary training facilities," said TLPJ Staff Attorney Leslie A. Brueckner, co-counsel.

WCU filed a notice of appeal but did not seek a stay of the district court's ruling. The team has been reinstated, and it has a full schedule of meets planned for the Winter 2004 season.



Photo by Jonathan Hutson

TLPJ's Leslie Brueckner with Philadelphia attorneys Sharon McKee and Bill Hanglely

In addition to McKee and Brueckner, the plaintiffs' legal team includes William T. Hanglely of Hanglely Aronchick Segal & Pudlin, co-counsel at trial, and TLPJ's Rebecca Epstein and Adele Kimmel. The complaint and other key legal documents in *Barrett v. West Chester University*, are posted on www.tlpj.org. ■

Textbook Censorship

continued from page 4.

science textbook without requiring any changes; that book was partly financed by a consortium of mining companies. The Board ultimately approved, but had preliminarily rejected, another textbook after it was modified in response to political criticisms by two conservative "think tanks" in Texas – Texas Public Policy Foundation (TPPF) and Citizens for a Sound Economy (CSE). The publisher of the preliminarily rejected text, J.M. LeBel Enterprises, sharply criticized the approval process as a "book burning" that was "100 percent political." Dr. Chiras and his publisher refused to modify their text in response to similar ideological attacks – and suffered the consequences.

On November 9, 2001, the Board voted to reject Dr. Chiras's book in a 10-5 vote held just one day after public hearings where TPPF and CSE attacked the book as anti-Christian, anti-free enterprise, and anti-American.

For example, TPPF charged that Dr. Chiras's book was not acceptable for classroom use because of its allegedly "heavy bias toward radical politics." Indeed, TPPF's spokesperson portrayed the text as unpatriotic based on Dr. Chiras's favorable view of the marketability of solar energy sources. Although the Board did not name any grounds for rejecting Dr. Chiras's book, individual Board members' statements show the influence of TPPF and CSE. In short, the Board improperly rejected Dr. Chiras's book because the author's viewpoint did not echo their own political and religious views.

"The Board's decision to choose an environmental science text financed by the mining industry over one written by a scientist that emphasizes the importance of critical-thinking is no accident," said TLPJ Staff Attorney Adele P. Kimmel, co-counsel in the case. "Texas students will be better prepared to compete for jobs and college scholarships when the Board stops trying to force feed them with corpo-

rate propaganda and extremist ideology."

"I am taking an Advanced Placement course in Environmental Science to prepare for college," said Plaintiff Lillian Pollak, an 18-year-old senior at the Talented and Gifted Magnet High School in Dallas. "But I am learning even more about censorship than science."

On December 10, 2003, Dr. Chiras received a "Pearl" Award – while the Texas State Board of Education received a "Swine" Award – from the Association for Women in Communications at its annual Pearls & Swine luncheon in Denver, which recognizes upholders and trouncers of the First Amendment.

The defendants have filed a motion to dismiss the case. The plaintiffs filed their opposition on January 22, 2004.

In addition to Jensen and Kimmel, the plaintiffs' legal team includes TLPJ's Rebecca Epstein and Kate Gordon. The complaint in the case, *Chiras v. Miller*, is posted on TLPJ's web site, www.tlpj.org. ■

Appeals Court Upholds MetLife Policyholders' Right to Opt Out of Nationwide Class Action Settlement

TLPJ Argued That Policyholders Have Right to Their Own Day in Court

TLPJ won a major victory against corporate abuse of class actions in *Drelles v. Metropolitan Life Insurance Company*, where the U.S. Court of Appeals for the Third Circuit in Philadelphia rejected Metropolitan Life Insurance Company's (MetLife's) attempt to use a nationwide class action settlement to prevent the discovery and introduction of crucial evidence in lawsuits being pursued by hundreds of policyholders who had opted out of the class action. The Third Circuit agreed with TLPJ that MetLife was unlawfully attempting to restrict policyholders' right to opt out of class actions and have their own day in court. MetLife had sought an injunction to stop these policyholders from gathering and introducing evidence in their individual cases relating to the illegal nationwide sales practices at issue in the class action. On December 24, 2003, the Court of Appeals ruled that the proposed injunction would have violated the policyholders' opt-out rights.

"This is a major victory for consumers' rights," said lead counsel Leslie Brueckner of TLPJ, who argued the appeal on December 12, 2003, on behalf of several hundred policyholders who had opted out of the class action. "This ruling protects the right of consumers to exclude themselves from a class action settlement and pursue their own cases. We commend the Court for recognizing and safeguarding the rights of opt-out litigants guaranteed by Rule 23 of the Federal Rules of Civil Procedure and the U.S. Constitution."

The decision in *Drelles* arose out of MetLife's December 1999 settlement of a federal class action filed on behalf of millions of policyholders who challenged MetLife's nationwide sales practices, claiming that they had been deceived into paying excessively for their life insurance policies. Under the terms of that settlement, policyholders

were permitted to "opt out" of the class action and pursue their individual claims. Hundreds of such cases are now pending in Pennsylvania state court and elsewhere. In those state-court proceedings, the opt-out litigants have been permitted to conduct discovery on MetLife's nationwide sales practices on the ground that the sales practices are relevant to their individual claims against the insurance company.

In October 2001, however, MetLife sought a federal district court injunction preventing the opt-out litigants from relying on any evidence of MetLife's illegal nationwide sales practices. MetLife



MetLife's headquarters in New York

argued that an injunction was necessary on the ground that permitting evidence of its practices would disturb, or effectively "relitigate," the nationwide class action that was settled in federal court. TLPJ filed objections to the proposed injunction on behalf of several hundred policyholders who had opted out of the settlement, arguing that the injunction would violate the plain terms of the class notice, the federal Anti-Injunction Act, and the opt-out rights guaranteed by Rule 23 and due process. The district court ultimately agreed with TLPJ and denied the injunction outright.

In rejecting MetLife's appeal of that decision, the Third Circuit ruled that the injunction would violate the opt-out

rights guaranteed by federal law. In so ruling, the Court emphasized that, because the individual state-court litigants "opt[ed] out all of their claims" from the nationwide class action, they were not parties to that settlement and could not be restricted in the manner requested by MetLife. The Court also rejected MetLife's claim that the policyholders who opted out were improperly attempting to "relitigate" claims that had been settled: "Appellees . . . are not relitigating the settled claims at all here; they are suing over their own alleged mistreatment at the hands of MetLife, not over someone else's claim." The Court concluded that "MetLife cannot point to any caselaw authorizing an injunction against opt-out plaintiffs . . . who consciously and purposefully refused to join a class action settlement."

"We are pleased that the Court rejected MetLife's attempts to restrict consumers' rights," said TLPJ's Michael J. Quirk, co-counsel. "Not only was the injunction plainly illegal, but it would have prevented policyholders who had opted out of the nationwide settlement from obtaining any relief against MetLife."

"Our clients opted all of their claims out of the nationwide settlement in order to pursue their own cases because they were dissatisfied with the relief obtained in the settlement," said Kenneth R. Behrend of Pittsburgh's Behrend & Ernsberger, P.C., lead trial counsel for the opt-out policyholders. "If the Court had accepted MetLife's arguments, the right to opt out would have been rendered meaningless."

TLPJ's participation in this case is part of its Class Action Abuse Prevention Project, a nationwide campaign dedicated to monitoring, exposing, and fighting class action abuse. Copies of TLPJ's briefs in *In Re MetLife Sales Practices Litigation* and copies of the ruling in *Drelles* are posted at www.tlpj.org. ■

TLPJ Successfully Urged MD Court to Reject Abusive Class Action Settlement with Bell Atlantic

Settlement Would Have Paid \$13 Million to Lawyers, Under \$125,000 to Class

The Circuit Court for Prince George's County, Maryland struck down a proposed class action settlement in *Dotson v. Bell Atlantic-Maryland, Inc.*, where the entire class of consumers who sued the telephone company for charging excessive late fees would have recovered less than \$125,000, while the lawyers for the class would have been paid \$13 million in attorneys' fees. The Court's opinion, issued on November 13, 2003, adopts the legal positions pressed by TLPJ and a team of consumer lawyers in objections filed on behalf of 12 class members who opposed the settlement.

"The state court was absolutely right to kill this deal," said TLPJ Staff Attorney Michael J. Quirk, who briefed and argued the objections to the settlement. "This deal, which would have given nearly all the money to the lawyers and only a minuscule share to the class, was an abuse of the class action device and would have played right into the hands of critics of all class action litigation."

Dotson was originally filed in 1999 on behalf of approximately two million current and former Bell Atlantic local telephone service customers who alleged that the company was charging them unlawful late fees in excess of the 6% usury cap established in Maryland's Constitution.

In December 2002, the parties entered into a proposed settlement of the class members' claims.

Under the terms of the proposed settlement, class members would have to obtain, fill out, and mail in a claim form in order to receive \$6 in relief. The settlement would have allowed Bell Atlantic to keep all the money that class members did not claim. The objectors showed that only 18,000 out of 2.5 million class members filed claims, producing less than \$125,000

in class relief, which allowed Bell Atlantic to keep over \$51.7 million in unclaimed funds. Nevertheless, the lawyers for the class, John Beins, Seth Goldberg, and Paul Gleiberman of the Washington, D.C. firm of Beins, Goldberg, and Gleiberman, and Connie Kratovil Lavelle of Kratovil & Kratovil in Stevensville, Maryland, attempted to claim \$13 million in attorneys' fees, based almost entirely on the value of the money that Bell Atlantic would have kept.

On April 11, 2003, TLPJ and a team of consumer lawyers filed objections on behalf of 12 current or former Maryland residents in opposition to the proposed class action settlement.

TLPJ's objections alleged that the relief paid to the class under the settlement was woefully inadequate because it was dwarfed by the fees being paid to class counsel, that the notice mailed to class members was deficient because it did not disclose the \$13 million fee, and that the fee award itself was grossly excessive in light of the relatively paltry relief that the class would have recovered.

"Both the court and the attorneys for the class have a solemn fiduciary obligation to conduct the litigation for the benefit of the clients – and no one else," said Kieron F. Quinn of Quinn, Gordon, & Wolf, Chtd. in Baltimore, lead counsel for the objecting class members. "If and when that obligation appears to be violated by the class's own lawyers then the Court, and objecting class members, have to step in."

The opinion by Judge Steven I. Platt of the Prince George's Circuit Court adopted TLPJ's objections. Judge Platt found that the proposed \$13 million award of attorneys' fees was unwarranted because it was "based on phantom numbers and calculations thereon...."



Kieron F. Quinn



Michael J. Quirk

Herman Farrer

The opinion continued that "unless the Court requires that there must be a rational connection between the fee award and the amount of the actual distribution [to] the class, the underlying purpose of class actions will be undermined."

Judge Platt also adopted TLPJ's argument that it was improper for the class notice not to disclose the value of the fee to class members.

"This decision proves that state courts already have the tools to deal with abusive class action settlements," said Philip S. Friedman of The Friedman Law Offices in Washington, D.C., co-counsel for the objecting class members. "This decision also reaffirms that state courts can and will step in to protect consumers from occasional abuses of class actions."

In addition to Quirk, Quinn, and Friedman, TLPJ's legal team representing the objecting class members included TLPJ Staff Attorney F. Paul Bland, Jr., Philip O. Foad of Foad, Gisriel, O'Brien & Ward in Towson, Maryland, and Richard S. Gordon of Quinn, Gordon, & Wolf, Chtd.

TLPJ's briefs objecting to the proposed settlement in *Dotson v. Bell Atlantic-Maryland, Inc.*, which were filed as part of TLPJ's Class Action Abuse Prevention Project, are available on TLPJ's web site at www.tlpj.org. ■

Mandatory Arbitration Abuse Prevention News

Here are the latest updates on TLPJ's Mandatory Arbitration Abuse Prevention Project cases:

Arbitrator Bias (CT)

Hottle v. BDO Seidman

The Connecticut Supreme Court granted review on February 19, 2003 to determine if the court of appeals properly enforced an arbitration clause in an employment dispute involving an accounting firm, even though the clause provided that the panel of arbitrators to hear the dispute would all be partners in the firm. On May 12, TLPJ filed an *amicus* brief urging the Court to hold that any arbitration clause providing that the arbitrator will be a person with strong financial ties to one party to the dispute is unenforceable. TLPJ's Paul Bland drafted the *amicus* brief, along with co-counsel Daniel Blinn of Danbury, Connecticut.

Bad Faith Insurance (CA)

Boghos v. Lloyd's of London

Tony Boghos managed his own plumbing business until he was injured and disabled, losing his business and sole income. Boghos had a long-term disability insurance policy with Lloyd's of London, but Lloyd's denied him coverage after he was injured. Boghos sued Lloyd's in California state court for bad faith denial of insurance and breach of contract. Lloyd's moved to compel arbitration. The trial court denied the motion and Lloyd's appealed. TLPJ joined the case to represent Boghos on the appeal of the arbitration motion. On May 29, 2003, the California Court of Appeal held that Lloyd's could not compel arbitration because its policy allowed Boghos to litigate claims for amounts due and because the arbitration clause illegally required him to pay excessive arbitration costs. Lloyd's petitioned the California Supreme Court for review of this decision. The California Supreme Court granted review on September 24, 2003. Lloyd's filed its opening brief on the merits on November 24, 2003. TLPJ filed its brief for the plaintiff on January 22,

2004. TLPJ's Michael Quirk is briefing and arguing the appeal on the arbitration issue, with assistance from TLPJ's Kate Gordon and Paul Bland. Plaintiff's lead counsel is Robert H. Bohn of Bohn & Bohn in San Jose, California.

Class Actions (CA)

Discover Bank v. Superior Court of Los Angeles County

A California court of appeal held that an arbitration clause banning class actions, either in arbitration or in court, could not be found unconscionable under state contract law because such a finding was preempted by the Federal Arbitration Act. TLPJ's Paul Bland and Kate Gordon, with assistance from Michael Quirk, filed a petition for review with the California Supreme Court on February 21, 2003, arguing that the appeals court's decision goes against the weight of California law and basic principles of conflict preemption. The Court granted review on April 9, 2003. Briefing is complete and we await the scheduling of oral argument. California Attorney General Bill Lockyer has requested depublication of the appellate decision. TLPJ's co-counsel are Los Angeles attorneys Brian Strange, Gretchen Carpenter, and Barry Kramer.

Class Actions (CA)

Tamayo v. Brainstorm

In this consumer deception case, a federal district court refused to enforce the arbitration clause of a company that sells computers to low income persons. TLPJ, along with co-counsel Bryan Kemnitzer and Christopher Jennings of San Francisco and Eric Wayne Wright of Los Gatos, California, represents the consumers on appeal. The plaintiffs argue that they are not subject to binding arbitration because (1) there was no agreement to submit the plaintiffs' claims to binding arbitration under the language of the contract; (2) the arbitration clause is unconscionable because it prohibits class actions; and (3) the arbitration clause is unconscionable because it imposes prohibitive expenses upon the consumers. Briefing has been

completed. TLPJ's Michael Quirk argued the appeal for the plaintiffs in the Ninth Circuit on August 13, 2003. We are awaiting a decision.

Costs of Arbitration (AL)

Leeman v. Cook's Pest Control

A public school teacher and principal in Alabama sued a pest control company alleging that the company had not adequately inspected and maintained their home. The company moved to compel arbitration under the American Arbitration Association (AAA) Commercial Rules. Plaintiffs objected on the ground that arbitration would cost thousands of dollars. Plaintiffs based this objection on the fact that their trial counsel had previously arbitrated five cases against pest control companies under the AAA Commercial Rules and had faced initial costs of about \$4,000, plus arbitrator costs of \$10,000 or more. An Alabama Court of Appeals rejected plaintiffs' argument; plaintiffs appealed to the Alabama Supreme Court. TLPJ's Paul Bland and Kate Gordon wrote the opening and reply brief, arguing that these costs are prohibitive and will prevent plaintiffs from vindicating their rights. Co-counsel is Tom Campbell of Campbell & Baker in Birmingham, Alabama. We await an argument date.

Costs of Arbitration (OH)

McCaleb v. All American Motors

A used car buyer who makes less than \$17,000 per year brought suit against the car dealer asserting claims based on the vehicle's numerous performance defects and the dealer's failure to provide a range of mandatory disclosures about the vehicle and the finance agreement. The dealer moved the Ohio trial court to compel arbitration of the buyer's claims before the National Arbitration Forum (NAF). The buyer opposed this motion, arguing that the dealer's arbitration clause was unconscionable, and introduced evidence showing that the NAF's arbitration rules would force her to pay over \$9,000 to

Continued to opposite page.

have an in-person hearing and obtain written findings from an arbitrator. On September 29, 2003, the Ohio Court of Common Pleas (Cuyahoga County) heard oral argument and granted the motion to compel arbitration. The buyer noted her appeal to the Ohio Eighth District Court of Appeals, and TLPJ joined the case as lead appellate counsel on the arbitration issues. TLPJ's Michael Quirk is lead counsel on the appeal. The plaintiff's lead trial counsel is Ronald I. Frederick of Cleveland.

Employment Discrimination (AL)

Luke v. Baptist Medical Center-Princeton

Fonza Luke, a 59-year-old African-American nurse, repeatedly refused to sign a hospital's arbitration clause in November 1997, stating, "I refuse to sign my rights away." The hospital terminated her employment in March 2001. Luke filed federal race and age discrimination claims, and the hospital moved to compel arbitration. A federal district court in Alabama held that Luke's continuing employment signified her agreement to arbitration. It also found that her refusal to sign and her statements of rejection were irrelevant to the question of her assent. TLPJ's Michael Quirk is lead counsel for the plaintiff on her appeal to the U.S. Court of Appeals for the Eleventh Circuit. TLPJ's Paul Bland and Mark H. Elovitz of Birmingham, AL are co-counsel.

Forum Selection and Costs (CA)

Nagrampa v. MailCoups, Inc.

A district court in California held that an arbitration clause in a contract between a one-woman franchisee and a national franchisor was not unconscionable, even though the clause required arbitration in Massachusetts and the arbitral forum required the franchisee to pay over \$7,000 simply to defend herself against an action by the franchisor. TLPJ is lead counsel on the appeal to the U.S. Court of Appeals for the Ninth Circuit, where we argue that the forum selection and cost provisions are unconscionable, and that the arbitral panel – the American Arbitration Association (AAA) – is biased because it depends on repeat contracts with the

franchisor. The case was fully briefed as of September 29, 2003, and we await the scheduling of oral argument. Meanwhile, MailCoups has gone to the federal district court in Northern California to attempt to enforce an arbitration award it secured against the franchisee, and TLPJ is handling the franchisee's defense in that court. TLPJ obtained a stay of the district court action until the Ninth Circuit reaches a decision. TLPJ's Kate Gordon is taking the lead in briefing and arguing this case, with assistance from Paul Bland and Michael Quirk. TLPJ's co-counsel in the appeal is the Law Firm of Sanford M. Cipinko in San Francisco.

Illegal Contracts (FL)

Cardegna v. Buckeye Check Cashing

Consumers allege that a pay day lender charging interest rates of 350% has violated Florida's usury laws. The trial court denied the lender's motion to compel arbitration, in part because it ruled that the entire contract is illegal under Florida law. On July 24, 2002, the Fourth District Court of Appeals reversed, compelling arbitration. On April 25, 2003, the Florida Supreme Court accepted the case. The plaintiffs filed their opening brief on June 6, 2003. TLPJ's Paul Bland and co-counsel Clayton Yates of Fort Pierce, Florida, Christopher Casper of Tampa, Florida, and Richard Fisher of Cleveland, Tennessee wrote the opening brief, with input from TLPJ's Michael Quirk and Kate Gordon. Paul Bland and Clayton Yates co-argued the case on October 7, 2003.

Magnuson-Moss Warranty Act (MI)

Abela v. General Motors Corp.

A Michigan GM employee and consumer sued for a declaration that GM's arbitration clause violates the Magnuson-Moss Warranty Act and the Michigan Lemon Law. The trial court granted partial summary judgment for the plaintiff, finding that GM's arbitration clause violated both statutes. GM unsuccessfully attempted two interlocutory appeals. Shortly before the hearing on summary judgment, GM revised its arbitration clause to eliminate several provisions that the plaintiff had chal-

lenged, and GM has promised not to reinstate these provisions for five years. On July 17, 2003, the Michigan Court of Appeals reversed the trial court and held that claims under Magnuson-Moss and the Michigan Lemon Law may be compelled into arbitration. Plaintiffs filed a petition for *certiorari* to the Michigan Supreme Court on August 4, 2003. TLPJ's Michael Quirk wrote the brief opposing GM's appeal with assistance from Paul Bland, who argued the case on June 11, 2003. We await a decision as to whether the Michigan Supreme Court will hear the case. TLPJ's co-counsel are E. Powell Miller of Troy, MI, and Christopher M. Lovasz and Mark Romano of Consumer Legal Services in Garden City, MI.

Non-Mutual and Remedy-Limiting Arbitration Requirement (WI)

Eastman v. Conseco Finance Servicing Corp.

Borrowers filed a putative class action against a sub-prime mortgage lender challenging some of its fees as unlawful under the Wisconsin Consumer Act. The lender moved to compel arbitration. The state trial court refused to compel arbitration, holding that the lender's arbitration clause was unconscionable because it required borrowers – but not lenders – to arbitrate their claims. TLPJ represents the plaintiffs on the lender's appeal of this order. On May 29, 2002, the Wisconsin Court of Appeals certified the appeal to the Wisconsin Supreme Court to determine whether the arbitration clause is unconscionable and whether the plaintiffs would be able to maintain a class action and obtain punitive damages and injunctive relief in arbitration. The Wisconsin Supreme Court accepted the certification on September 27, 2002. TLPJ's Michael Quirk wrote the plaintiffs' brief with assistance from Kate Gordon, Paul Bland, and Leslie Brueckner. The Wisconsin Attorney General's Office, the Legal Aid Society of Milwaukee, the Center for Public Representation, and groups of professors from the U. of Wisconsin and Marquette U. Law Schools have filed *amicus* briefs in

See Arbitration Updates, page 10.

support of the plaintiffs. The week before the case was scheduled for oral argument, the court stayed the case due to the defendant's bankruptcy filing. The bankruptcy stay remains in effect.

Statutory Rights (FL)

Bautista v. Star Cruises and Norwegian Cruise Line

On Oct. 14, 2003, the District Court for the Southern District of Florida held that Filipino seamen working on cruise ships, who have certain labor rights granted to them under the Jones Act, may be compelled to arbitrate claims for wrongful death and personal injury before labor arbitrators in the Philippines. The plaintiffs in the case are the widows of six seamen who were killed when a cruise ship's boiler exploded; plaintiffs also include several seamen injured in the explosion. The Eleventh Circuit granted review in November 2003 to determine whether the district court was correct in holding that the Convention on the

Enforcement of Foreign Arbitral Awards (the international companion to the Federal Arbitration Act) does not exempt seamen, and also whether the arbitration clause in this case is valid. TLPJ plans to join an *amicus* brief principally authored by ATLA, which will focus on the historical protection of seamen under the Jones Act. TLPJ's piece of the brief will argue that under this arbitration clause, plaintiffs will effectively lose all their substantive rights under the Jones Act, as the Philippine Supreme Court has recently held that labor arbitrators in that country have no jurisdiction to grant important Jones Act remedies such as lost future wages. Kate Gordon will principally author TLPJ's section of the *amicus* brief, with assistance from Paul Bland. Plaintiffs' lead counsel is William Huggett from the Huggett Law Firm in Miami, Florida.

Waiver (FL)

Saldukas v. Raymond James

The plaintiffs allege that their broker's handling of their account violated

the state's securities laws. They initiated arbitration, but Raymond James responded that it did not recognize any agreement to arbitrate or obligation to arbitrate, and that if the arbitrator found that there was such an agreement it would go to court to seek an injunction against arbitration. The plaintiffs then sued in court, where the defendants moved to dismiss the case. After the trial court denied the defendants' motion to dismiss, they then moved to compel arbitration. The trial court held that the defendants had waived their right to arbitrate, and the court of appeals affirmed that decision. The defendants pointed out a conflict among the federal courts of appeal and the Florida district courts of appeal on the appropriate legal standard to be applied, and the Florida Supreme Court took jurisdiction over the case. TLPJ's Paul Bland, along with co-counsel Ben Isenberg and Christopher Vernon of Naples, Florida, filed the plaintiffs' brief in the Florida Supreme Court on December 18, 2003. We await a date for oral argument. ■

WTO Class Action

continued from page 1.

admitted that – contrary to what the warrants state – he neither gave any warnings nor made any arrests.

“This settlement is a real victory for civil rights and the Constitution,” said TLPJ lead counsel Steve W. Berman of Seattle's Hagens Berman. “It will deter the City and other municipalities around the country from ignoring protesters' rights and the importance of balancing the desire for security against the legitimate exercise of fundamental constitutional rights.”

TLPJ originally filed the class action lawsuit in October 2000 on behalf of about 600 people who were arrested both inside and outside of the 25-block “no-protest zone,” jailed for three to five days, then released and never convicted of any crime. The claims of most of the original plaintiffs were dismissed in the fall of 2001 when U.S. District Court Judge Barbara Rothstein

ruled that the City did not violate the Constitution when it created and enforced a “no-protest zone” during a state of emergency. Those claims are on appeal before the U.S. Court of Appeals for the Ninth Circuit. Argument is scheduled for February 6, 2004.

Judge Rothstein's ruling, however, did not eliminate the claims of more than 150 plaintiffs who were outside of the “no-protest zone” when they were arrested. U.S. District Judge Marsha Pechman, who took over the case after Judge Rothstein left the court in the summer of 2003, held that these plaintiffs were arrested without probable cause. Judge Pechman labeled the police record-keeping in the case “atrocious.” She noted that the photocopied arrest warrants used to round up protesters and onlookers outside of the “no-protest zone” contained several inaccuracies and could not be used to establish the individualized probable cause needed to justify the arrests. Although Judge Pechman held that the

arrests were wrongful, she ruled that the issue of whether the City should be held liable for those arrests should go to trial.

“We won half the battle for the protesters arrested outside of the no-protest zone when the judge vindicated our position that the arrests were wrongful,” said TLPJ Staff Attorney Victoria Ni. “With this settlement, we now have held the City accountable for its violation of these protesters' rights.”

The settlement is subject to Judge Pechman's approval.

In addition to Berman and Ni, the legal team representing the wrongfully arrested protesters and bystanders includes Seattle attorneys Tyler Weaver of Hagens Berman, Michael Withey of Stritmatter Kessler Whelan Withey Coluccio, John Muenster of Muenster & Koenig, Fred Diamondstone, and Ben Schwartzman; Yvonne Kinoshita Ward of Auburn, WA; Professor Erwin Chemerinsky of the University of Southern California Law School; and TLPJ Executive Director Arthur Bryant. ■

Environmental Groups Sue Army Corps of Engineers for Allowing Coal Companies to Bury Streams

TLPJ Charges Corps with Violating Clean Water Act in Appalachia

U.S. Army Corps of Engineers' permits that allow coal companies to bury streams with mining waste are illegal, according to a lawsuit filed by TLPJ and the Appalachian Center for the Economy and Environment on October 23, 2003 in the U.S. District Court for the Southern District of West Virginia in Huntington. *Ohio Valley Environmental Coalition v. Bulen*, filed on behalf of the Natural Resources Defense Council and two West Virginia environmental groups, charges that the Corps' mountaintop removal permits violate the Clean Water Act, the National Environmental Policy Act (NEPA), and the Administrative Procedure Act. The new lawsuit is a continuation of litigation against mountaintop removal mining that TLPJ began in 1998, and builds upon prior victories that have already reduced the devastating effects of this mining.

This lawsuit seeks to force the Corps to comply with the Clean Water Act and NEPA by authorizing mountaintop removal mines only after thorough study of their environmental and community impacts. If successful, this action will significantly improve the Corps' permitting process throughout the Appalachian region and will set an important precedent nationally. Named as defendants are Colonel William Bulen, District Engineer for the Corps' Huntington District Office, and Lieutenant General Robert B. Flowers, Chief of Engineers and Commander of the U.S. Army Corps of Engineers.

The action was filed on behalf of the Whitesville-based Coal River Mountain Watch, the Huntington-based Ohio Valley Environmental Coalition, and the Washington, D.C.-based Natural Resources Defense Council by Joe Lovett, Executive Director of the

Appalachian Center for the Economy and the Environment, and Jim Hecker, Environmental Enforcement Director of TLPJ.

"Big Coal has buried alive 1,200 miles of streams, and the Corps has buried the truth by calling this major disaster a minimal impact," said Hecker. "The Corps should stop twisting science and the law to satisfy industry greed and, instead, make Big Coal conform to the law."

Despite prior litigation and the devastating scientific data gathered by federal agencies in the recently released draft environmental impact statement on mountaintop removal mining, the



Coal companies blast off mountain peaks and push millions of tons of mining waste rubble into surrounding valleys, burying miles of streams.

Corps continues to use general permits to authorize coal mining activities in southern West Virginia, Eastern Kentucky, Virginia, and Tennessee.

"It is unfortunate that citizens must resort to litigation to force the Bush administration to enforce environmental protection laws passed by Congress more than 25 years ago," attorney Joe Lovett said. "The administration's collusion with coal operators to undermine the enforcement of these crucial laws, if allowed to continue, will not only destroy the region's forests, streams and mountains, but also its economic future."

Mountaintop removal is a process in which coal companies blow up mountaintops to access thin seams of coal beneath the surface. Although the companies replace some of the debris on the mountaintop after removing the coal, they dump the rest of the rocks and dirt in nearby valleys. These "valley fills" bury streams under tens of thousands of tons of waste rock and dirt, killing all aquatic life below.

For years, the Army Corps has granted coal companies permits to destroy streams under a Clean Water Act permit provision intended only for small fills that have "minimal adverse environmental effects." Using "minimal effects" permits, coal companies have buried more than 1,000 miles of Appalachian streams.

The lawsuit alleges that the Army Corps of Engineers' general permit authorizing the valley fills, called Nationwide Permit 21, violates the Clean Water Act by allowing environmental impacts that are not "minimal." In addition, the groups charge that the Corps has violated NEPA by failing to complete a full analysis of the environmental impacts of the valley fills. The groups have asked the court to declare Nationwide Permit 21 illegal and prevent the agency from authorizing any new fills.

"It's painfully obvious that the Corps is violating the law by ignoring both the individual and cumulative effects of valley fills on the natural resources and communities in the coalfields," said Vivian Stockman of Ohio Valley Environmental Coalition. "The Corps isn't bothering to review and evaluate the destruction it is permitting."

The complaint in *Ohio Valley Environmental Coalition v. Bulen* is posted on www.tlpj.org. ■

Photo courtesy of U.S. News & World Report

Gender Equity

continued from page 1.

“The proposed settlement is a victory for female employees at one of America’s top laboratories and for everyone who cares about equal opportunity in the workplace,” said plaintiffs’ lead counsel James Sturdevant. “This settlement will significantly change the Lab’s compensation and promotion policies so that women who work at the forefront of national security will finally get the pay and promotions they deserve.”

The lawsuit was filed over five years ago, on December 23, 1998, charging that female Lab employees in a variety of job categories are paid and promoted less than male employees with comparable education and experience.

One of the lawsuit’s main contentions is that the Lab’s system of making annual salary adjustments based on an employee’s “Relative Value Rank” – a number which supposedly reflects an assessment of the employee’s total contribution to the Lab as compared to other employees – is overly subjective and allows gender stereotyp-



Photo by Myles Spann

Katherine Fritz, Maura Spragge, Shirley Jennings and Janelle Spann are four of the seven named plaintiffs in the *Singleton* sex discrimination class action lawsuit.

ing and biases to influence decisions. The lawsuit also alleges that the Lab had documented, but failed to correct, discrimination against women for more than a decade.

“We’ve fought for five long years – some of us even longer – to get the Lab to listen to and address our concerns,” said Shirley Jennings, a representative plaintiff and a computer support associate at the Lab. “I’m proud that our efforts have led to reforms that will help end bias against my female colleagues

and me. I think this agreement will go a long way toward shattering the glass ceiling for women at the Lab.”

The settlement requires that the Lab dramatically overhaul its performance management system, including its system of Relative Value Ranking (RVR), and its human resource practices. For example:

- The Lab will eliminate RVR for three groups of administrative and technical employees. Compensation for these employees will instead be based on a system that determines pay primarily based on the employee’s job classification and performance.
- The Lab will issue revised guidelines for the RVR of all remaining employees designed to eliminate subjective biases from decision processes.
- The Lab will conduct annual pay, promotion, and rank equity studies to identify any disparities between male and female employees. If the studies show statistically significant disparities based on gender, the Lab will determine the reason for

the disparity and either correct the problem or document the non-discriminatory reasons for the disparity. The studies will be shared with the attorneys for the class, who may use such information to show

the Court that the Lab is not complying with the agreement.

- The Lab will develop and implement a written plan to promote equal opportunity for women in obtaining desirable job assignments.
- Lab managers and supervisors will be required to receive training on compliance with the settlement agreement; compliance with federal, state, and Lab prohibitions against discrimination and retaliation; diversity; and recognizing and

avoiding the influence of stereotyping in the making of personnel decisions.

- Annual performance evaluations of Lab managers and supervisors will include evaluations of their ranking and performance evaluation skills and compliance with equal employment opportunity laws.

In addition to these major reforms, the Lab will pay \$9.7 million in damages to the class members, pay an additional \$80,000 to the seven representative plaintiffs, and increase the base salary of all class members by 1%, with the increase totaling about \$850,000 in the first year alone. The Lab will also pay plaintiffs’ reasonable attorneys’ fees, based on actual time worked and expenses incurred.

“This agreement not only compensates victims of past discrimination, it also makes sweeping reforms to help level the playing field for women at the Lab now and in the future,” said TLPJ Staff Attorney Victoria Ni, co-counsel in the case. “The Lab’s recognition that equal work deserves equal pay and equal promotional opportunities is long overdue.”

The plaintiffs filed suit only after trying for more than two decades to persuade the Lab’s management to recognize and correct pervasive and systemic discrimination against women.

“Women working at a first-class national laboratory will no longer be treated as second-class citizens,” said The TLPJ Foundation’s President Gary Gwilliam of Oakland’s Gwilliam, Ivory, Chiosso, Cavalli & Brewer, co-counsel in the case.

“This settlement will help ensure fair treatment and compensation for all Lab employees,” said plaintiffs’ co-counsel Todd Schneider of San Francisco’s Schneider & Wallace.

In addition to Sturdevant, Ni, Gwilliam, and Schneider, the plaintiffs’ legal team includes Mark Johnson and Karen Hindin of The Sturdevant Law Firm; TLPJ Executive Director Arthur H. Bryant; and Guy Wallace of Schneider & Wallace.

More information about and key papers in the *Singleton* case, including the class notice, are posted at TLPJ’s website, www.tlpj.org. ■

CASE UPDATES

Recent developments in other TLPJ cases are summarized below.

TOXIC TORTS

Lead Paint (NY)

N.Y. City v. Lead Industries Ass'n

This case seeks reimbursement from the lead industry for the cost of removing lead paint from some of the city's public housing. Discovery is ongoing. TLPJ's Arthur Bryant is "of counsel."



CONSUMER RIGHTS

Credit Cardholders' Rights (MD)

Wells v. Chevy Chase Bank

This consumer class action seeks damages for Chevy Chase Bank's breach of its promise to credit cardholders that their annual percentage rates would "never" exceed 24%. The trial court has dismissed the case twice, once compelling arbitration and once holding that the plaintiffs' claims were preempted by federal law. Both times the state's high court reversed those rulings. Chevy Chase has asked the U.S. Supreme Court to grant *certiorari* with respect to the second ruling. In the meantime, the case is back in the trial court, and plaintiffs' motion for class certification and defendants' motion for summary judgment are pending.

Gun Safety and Accountability (PA)

Ryan v. Koehler International, Inc.

This products liability lawsuit alleges that Smith & Wesson defectively designed and failed to child-proof a nine-millimeter semi-automatic handgun. The suit seeks damages for an eight-year-old boy who was accidentally shot in the face by another boy playing with a gun he thought was unloaded. The case is scheduled to go to trial in April 2004. The plaintiffs are represented by co-lead counsel Robert L. Pottroff

of Manhattan, KS, and Robert J. Mongeluzzi of Philadelphia; co-counsel Stephen W. Brown of Pratt, KS; and TLPJ's Arthur Bryant and Victoria Ni.

HMO Accountability (CA)

Timmis v. Kaiser Permanente

This lawsuit seeks to enjoin Kaiser Permanente, California's largest HMO, from forcing its members to accept and manually split prescription pills that are twice the members' prescribed doses. The suit charges that Kaiser's policy endangers the health of patients, who receive uneven medication doses, solely to improve Kaiser's bottom line. In April 2003, the trial court granted Kaiser's motion for summary judgment on grounds of judicial abstention. The plaintiffs have appealed. The plaintiffs are represented by lead counsel Mark P. Robinson, Jr. and Sharon J. Arkin of Newport Beach, CA; co-counsel Thomas R. Grande of Honolulu; and TLPJ's Arthur Bryant and Victoria Ni.

HMO Double-Billing (MD)

Riemer v. Columbia Medical Plan, Balthrop v. Kaiser Foundation Health Plan of the Mid-Atlantic States, Singh v. Prudential Health Care, and several similar cases

These consumer class actions argue that HMOs violated the Maryland HMO Act by charging their members for subrogation. The first of these cases, *Riemer v. Columbia Medical Plan*, was filed in 1996. The case was removed to federal court on the grounds that ERISA preempted the plaintiffs' state law claims. The district court held that ERISA preempted the claims of all persons who received their HMO membership through an ERISA plan and dismissed those persons' claims, but remanded the claims of all persons who were not members of an ERISA plan to state court. That order was reversed on August 5, 2002, and the case was shortly thereafter remanded to state court. In March of 2000, the



Maryland Court of Appeals held in *Riemer* that the Maryland HMO statute did, in fact, prohibit HMOs from charging subrogation. Shortly afterward, the Maryland legislature passed a law that retroactively permitted HMOs to charge for subrogation. On August 30, 2002, in *Harvey v. Kaiser*, the Maryland Court of Appeals held that the retroactive portions of this law violated several provisions of the Maryland State Constitution. On July 3, 2003, the U.S. Court of Appeals for the Fourth Circuit held in *Singh v. Prudential* that ERISA does not eliminate the plaintiffs' claims, but that those claims must be brought in federal court. Three of the cases are currently pending in federal court, and two are pending in state court. In both *Riemer* and *Balthrop v. Kaiser*, the trial courts have certified the cases as class actions and have granted summary judgment to the plaintiffs on the issue of liability.

Insurance Company Fraud (IL)

State Farm v. Avery

In this case, a jury found that State Farm had breached its contract with its customers and violated the state's deceptive practices statute by using replacement parts to repair damaged vehicles that were not as good as the parts originally installed by the manufacturer. The case is on appeal in the Illinois Supreme Court, where the principal issue is whether the lower court properly certified the case as a class action. TLPJ's Paul Bland filed an *amicus* brief arguing that it is proper and legal to bring a nationwide class action in state court and to apply the laws of that state, when the defendant is based in that state and conducted illegal activities there. The case was argued on May 13, 2003, and we await a decision.

Insurance Company Fraud/Project Access (OR)

Foltz v. State Farm

This Project ACCESS challenge seeks to unseal court records containing evidence that State Farm cheated

See Case Updates, page 14.

its policyholders by using a fake medical utilization review process. The case files were removed from the courthouse and erased from the court docket and computer following a secret settlement. The court granted TLPJ's motion to order the return of the case files, but refused to unseal many of the key pleadings in the case without making any specific findings that secrecy was warranted. That decision was overturned by the U.S. Court of Appeals for the Ninth Circuit, which sent the case back to the district court to determine whether compelling reasons exist for secrecy. Matthew Whitman and Kathryn Clarke of Portland, OR are co-lead counsel. TLPJ's Leslie Brueckner is co-counsel.

Lap/Shoulder Harnesses (MA)

Heinricher v. Volvo Corp.

TLPJ is handling the appeal of a ruling that common-law claims that a 1990 Volvo Sedan was defective because its rear-center seat was equipped with a two-point lap belt, instead of a three-point lap/shoulder harness, are preempted by a federal regulation that gave car manufacturers a choice between installing lap belts or lap/shoulder harnesses in that seating position. The decision is on appeal to the Massachusetts intermediate appellate court. Oral argument has not yet been scheduled. TLPJ's Leslie Brueckner is handling the appeal, with assistance from Michael Quirk. William B. Doyle and Deborah Santello of Boston are trial counsel.

Tire Safety/Public Access (IL)

Northern Trust v. Goodyear Tire & Rubber Co.

This Project ACCESS challenge seeks access to key court records concerning tread separation problems on certain Goodyear tires. On May 7, 2003, when the parties were on the verge of settling the underlying personal injury case, Goodyear filed a motion requesting the immediate return of

all court records that Goodyear had rubber-stamped as confidential. TLPJ moved to intervene in the case on behalf of the Center for Auto Safety (CAS), and argued that the information should be kept in the courthouse and unsealed, especially in light of the public interest in the materials. The trial court denied the motion to intervene on the ground that CAS had failed to demonstrate a sufficient interest in the records to warrant intervention. That decision is currently on appeal to the Illinois intermediate appellate court. TLPJ's legal team in the *Northern Trust* court secrecy case includes TLPJ's Rebecca Epstein, Joseph A. Power, Jr., and Devon C. Bruce of Power, Rogers & Smith, P.C. in Chicago, and Chicago's Keith L. Davison.

Tire Safety/Public Access (NJ)

Frankl v. Goodyear Tire & Rubber Co.

This Project ACCESS challenge seeks access to discovery materials and testimony about tread separation problems on Goodyear tires. The trial court granted TLPJ's motion to intervene on behalf of the Center for Auto Reliability and Safety on December 18, 2001, and partially granted our motion to unseal discovery documents on July 10, 2002. Goodyear appealed the portion of the order that unseals documents it claims contain trade secrets; TLPJ cross-appealed the portion of the order that keeps "self-critical analyses" secret. On September 16, 2003, the Appellate Division ruled that there was no right of access to *any* of the discovery materials at issue despite the trial court's conclusion that there was no good cause for secrecy with respect to many of the documents sought by TLPJ. TLPJ's petition for review by the New Jersey Supreme Court is pending. TLPJ's Rebecca Epstein, Arthur Bryant, and Leslie Brueckner represent the intervenor, along with Chris Placitella and Jennifer Sarnelli of

Trenton, NJ, and Tab Turner of North Little Rock, AR.

ENVIRONMENTAL ENFORCEMENT PROJECT

Coal Mine Bonding (WV)

West Virginia Highlands Conservancy v. Norton

This suit against federal and state officials challenges the adequacy of West Virginia's bonding system for surface coal mines under the federal Surface Mining Act. The court has found that the federal officials violated their duty to require the state to correct serious defects in the bonding system. In January 2003, the court declined



to set aside federal approval of the state's plan to correct these defects, but retained jurisdiction to make sure the plan is implemented. Joe Lovett of Lewisburg, WV, Pat McGinley and Suzanne Weise of Morgantown, WV, and TLPJ's Jim Hecker are co-counsel.

Steel Mill Pollution (KY)

Ellis v. Gallatin Steel Co.

Four Kentucky residents have filed citizen suits against a steel mill in Kentucky to stop dust emissions from its melt shop and against a nearby slag dumping and processing area. After a bench trial, the court enjoined further illegal emissions, appointed a special master to monitor compliance, and awarded compensatory and punitive damages. Both sides have appealed. The special master plans to install continuous video monitoring equipment to ensure compliance. Jeffrey Sanders and Robert Sanders of Covington, Kentucky, Jon Conte of Cincinnati, and TLPJ's Jim Hecker are co-counsel.

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Water Pollution (PR)

In Re: Corralations, Inc. and Centro de Accion Ambiental, Inc.

In Re: Aquadilla Regional Wastewater Treatment Plant

Puerto Rican environmental groups filed these two appeals with the U.S. EPA's Environmental Appeals Board challenging two EPA decisions to waive Clean Water Act treatment requirements and allow two Puerto Rican municipal treatment plants to discharge partially treated sewage into the ocean. Oral argument took place in October 2003. Cindy Gines of Mayaguez, Puerto Rico and TLPJ's Jim Hecker are co-counsel.

Water Pollution (PR)

Puerto Rico Campers' Ass'n v. Puerto Rico Aqueduct & Sewer Authority

This is a citizen suit under the Clean Water Act for violations of a discharge permit by a waste water treatment plant in Puerto Rico. In August 2002, the court denied most of PRASA's motion for summary judgment. Discovery and settlement discussions are continuing. Cindy Gines of Mayaguez, Puerto Rico and TLPJ's Jim Hecker are co-counsel.

Water Pollution (WV)

Ohio Valley Environmental Coalition v. Whitman

This suit on behalf of twenty environmental groups and ten individuals claims that the U.S. EPA's approval of West Virginia's stream protection rules violates the Clean Water Act. The district court upheld seven of TLPJ's thirteen claims, vacated EPA's decision, and remanded the case to EPA for reconsideration. EPA filed, and then withdrew, its appeal to the Fourth Circuit. Joe Lovett of Lewisburg, WV and TLPJ's Jim Hecker are co-counsel.

CIVIL RIGHTS

Discriminatory Scholarship Program (MI)

White v. Engler

TLPJ is co-counsel with the ACLU Fund of Michigan, the NAACP-Michigan State Conference, and MALDEF in this federal class action challenging a Michigan college scholar-

ship program as discriminatory. The suit charges that the state's reliance on the Michigan Educational Assessment Program (MEAP) test as the sole criterion for awarding scholarships discriminates against racial and ethnic minorities. Recent U.S. Supreme Court decisions in unrelated cases eviscerated plaintiffs' disparate impact discrimina-

tion claim. As a result, plaintiffs agreed to dismiss that claim and to proceed with their intentional discrimination claim based on a "deliberate indifference" standard. Plaintiffs are taking discovery and have filed a motion to compel. Defendants have until January 31, 2004 to file a motion for summary judgment. TLPJ State Coordinator Michael Pitt of Royal Oak, MI and Kary Moss of Detroit's ACLU are co-lead counsel. Co-counsel are Michael Steinberg of Detroit's ACLU; Alonzo Rivas of Chicago's MALDEF; Peggy Goldberg Pitt of Royal Oak, MI; Judith Martin of Okemos, MI; John Johnson of Detroit's NAACP; and TLPJ's Adele Kimmel and Rebecca Epstein.



Employment Discrimination (OH)

Maxe v. Alcoa, Inc.

This class action lawsuit was filed on behalf of African-American and Hispanic hourly employees in Alcoa's Cleveland Works plant, charging that Alcoa's system of selecting trade apprentices discriminates on the basis of race and ethnicity. Specifically, the complaint charged that the standardized tests and other procedures Alcoa used to select skilled trade apprentices discriminated against minorities, disproportionately excluding them from opportunities for advancement. On September 25, 2003, the federal district court approved a landmark settlement pursuant to which Alcoa will revamp its method for selecting trade apprentices nationwide, establish a special apprentice program open only to class members, pay damages to class members who took the disputed tests but were denied entry into the apprentice program, and establish a \$500,000 educational fund to benefit minority com-

munities in Cleveland. Class counsel are monitoring Alcoa's compliance with the settlement. Cyrus Mehri of Washington, D.C., Johnnie L. Cochran, Jr. of New York, and Armand Derfner of Charleston, SC are co-lead counsel. Co-counsel are Bruce Elfvin of Cleveland; Pamela Coukos, Lisa Bornstein, and Chris McGinn of Washington, D.C.; D. Peters Wilborn, Jr. of Charleston, SC; and TLPJ's Adele Kimmel and Rebecca Epstein.

Sex Discrimination (MA)

Moran v. Fraternal Order of Eagles

This sex discrimination lawsuit challenges the male-only membership policy of the national and local chapters of the Fraternal Order of Eagles, a civic organization with over 1.25 million members. We filed a complaint with the Massachusetts Superior Court in February 2003 and discovery is underway. On January 6, 2004, plaintiffs filed an unopposed motion for entry of default against a local Eagles chapter based on its failure to respond to the complaint. The plaintiffs are represented by lead counsel Edward Rapacki of Boston and TLPJ's Rebecca Epstein and Adele Kimmel.

Sex Discrimination (RI)

Cohen v. Brown University

In this precedent-setting sex discrimination lawsuit, the First Circuit upheld the district court's ruling that Brown University is discriminating against its female athletes in violation of Title IX. In October 1998, the court gave final approval to a settlement requiring Brown to provide women with opportunities to participate in intercollegiate athletics at a rate tracking their undergraduate enrollment rate and to guarantee enhanced funding and treatment to four women's teams. We recently settled the remaining issues regarding attorneys' fees, but are still monitoring Brown's activities to ensure on-going compliance with the settlement. Lynette Labinger of Providence, RI is TLPJ's lead counsel. Amato DeLuca and Ray Marcaccio, both of Providence, Sandra Duggan of Philadelphia, and TLPJ's Arthur Bryant and Leslie Brueckner are co-counsel.

See Case Updates, page 16.

AMICUS BRIEFS

Access to Justice – Attorneys’ Fees for “Catalyst” Parties (CA)

TLPJ filed *amici* briefs in October 2003 on behalf of itself and more than two dozen public interest groups and practitioners in *Graham v. Daimler Chrysler Corp.* and *Tipton-Whittingham v. City of Los Angeles*, urging the California Supreme Court to uphold the “catalyst theory” as a basis for seeking attorneys’ fees under a California statute that permits fee awards for successful private attorneys general. The catalyst theory allows a party who has attained her litigation objectives to recover attorneys’ fees as a “successful party” under fee-shifting statutes, even in the absence of court-ordered relief. The brief argues that the catalyst theory is vital to the rigorous enforcement of many statutory and constitutional rights in California. TLPJ’s Victoria Ni, Paul Bland, and Kerry-Ann Powell drafted the brief.

Access to Justice – Race Discrimination (FL)

TLPJ joined an *amici* brief submitted to the Florida Supreme Court in *NAACP, Inc. v. Florida Bd. of Regents*. The brief argues that the NAACP, through its Florida conference of state branches, has standing to challenge new administrative rules that prohibit Florida’s university system from considering race in admitting students. Defendants moved to dismiss the complaint on the ground that the NAACP failed to demonstrate how the administrative rules would injure its members. On November 13,

2003, the Court ruled 4-3 that the NAACP has legal standing to challenge the rules eliminating affirmative action policies at state universities. TLPJ’s Rebecca Epstein and Kerry-Ann Powell assisted on the brief.

Retaliation Under Title IX (VA)

In *Litman v. George Mason University*, TLPJ joined an *amici* brief by the National Women’s Law Center urging the U.S. Court of Appeals for the Fourth Circuit to hold that the Supreme Court’s decision in *Alexander v. Sandoval*, which held that there is no private right of action to enforce Title VI’s disparate impact regulations, does not preclude private plaintiffs from filing retaliation suits under Title IX and its implementing regulations. TLPJ’s Adele Kimmel and Rebecca Epstein assisted on the briefs. Oral argument was scheduled for October 2003, but did not occur because all the parties and *amici* requested that the case be decided on the briefs on the ground that the Fourth Circuit is bound by its recent decision in *Peters v. Jenney*, which held that there is a private right of action for retaliation under Title VI and its implementing regulations. The Court granted the request to decide the case on the briefs. Defendant then requested that the Court stay its decision until the Supreme Court either denies *certiorari* in or decides an Eleventh Circuit case raising the same issue as *Litman*. The Court has not ruled on the stay.



Sex Discrimination – Victims’ Rights (OR)

In *Gleason v. Salem State College*, TLPJ joined an *amici* brief by the National Women’s Law Center urging the First Circuit to hold that Congress intended victims of sex discrimination to have rights and remedies under both Title IX and the U.S. Constitution – and that Congress intended the remedies provided by the former to supplement, not supplant, the remedies provided by the latter. TLPJ’s Arthur Bryant assisted on the brief. We await a decision.

CLASS ACTION ABUSE PREVENTION PROJECT

Fen-Phen (PA)

In re: Diet Drugs

On June 4, 2003, TLPJ filed an *amicus* brief in support of a Third Circuit appeal of a decision restricting the rights of individuals who excluded all of their claims from a nationwide class action settlement involving the prescription drug Fen-Phen from introducing certain key evidence in their individual cases against the drug manufacturers. TLPJ’s brief argues that the evidentiary restrictions violate the class members’ opt-out rights guaranteed by Federal Rule of Civil Procedure 23 and the due process clause of the U.S. Constitution. TLPJ’s Leslie Brueckner authored the brief, with assistance from Michael Quirk. Oral argument took place on December 10, 2003, and we are awaiting a decision. ■

TLPJ/THE TLPJ FOUNDATION STAFF

Arthur H. Bryant, Executive Director

National Headquarters Staff
Trial Lawyers for Public Justice
Leslie Brueckner, Staff Attorney

Adele Kimmel, Staff Attorney/Management Liaison

F. Paul Bland, Jr., Staff Attorney

Rebecca Epstein, Staff Attorney

Michael J. Quirk, Staff Attorney

Jim Hecker, Environmental Enforcement Director

Richard Frankel, Goldberg-Deitzler Fellow

Barbara Reeves, Administration & Finance Director

Jean Hansen, Bookkeeper

Clarisa Lovelace, Senior Legal Assistant

Paula Athey, Legal Secretary

Lynette Hutton, Receptionist

Sam Lawson, Network Administrator

The TLPJ Foundation

Kathryn Mitchell, Development Director

Jonathan J. Hutson, Communications Director

Susan Gombert, Meetings & Events Planner

Latifa Lyles, Membership Program Manager

Cassandra R. Goings, Outreach & Development Coordinator

Janice Anderson, Development Assistant

Franklin Nickerson, Development Assistant

West Coast Office Staff

Arthur H. Bryant, Executive Director

Victoria Ni, Staff Attorney

Kate Gordon, Baron-Brayton Fellow

Public Justice is edited by Jonathan Hutson and designed by Lee Ann Lawlor.

Foundation Unveils 20th Anniversary Wall of Honor

With great anticipation, over 100 public interest advocates from the Washington, D.C. metropolitan area gathered with The TLPJ Foundation's Board of Directors, Committee Members, and Wall of Honor supporters for a reception the evening of November 14, 2003. The center piece of the celebration was the unveiling of TLPJ's special commemorative 20th Anniversary Wall of Honor. TLPJ Foundation Board Members **Sandra Robinson** (DC) and **Barry Nace** (DC) generously sponsored the reception.



20th Anniversary Wall of Honor

Photos by Jonathan Hutson

Prior to the unveiling, **President Gary Gwilliam** (CA) acknowledged the 64 stalwart supporters named on the Wall of Honor for their exceptional contributions to the organization in recognition of TLPJ's 20 years of fighting for public justice. Then the veil was lifted, revealing a blonde wood plaque featuring TLPJ's logo in blue lacquer with each name on the Wall of Honor engraved on a brushed aluminum tag.

Executive Director Arthur Bryant, making his first trip to national headquarters since his August 2002 accident, moved the audience with a speech thanking everyone for their generous support during the past year, and look-



Sandra Robinson



Barry Nace

Photos by Kathryn Mitchell

ing forward to more decades of advocacy and service in the public interest.

We are extremely grateful to Robinson and Nace for their sponsorship of this reception, as well as to each of the 64 contributors to the 20th Anniversary Wall of Honor (listed in the Fall 2003 issue of *Public Justice*) for their incredible dedication, tenacity and support for TLPJ's two decades of advocacy and accomplishments for the cause of public justice. ■

TLPJ Foundation Receives Four *Cy Pres* Awards Totaling Over \$250,000 During 2003

During December 2003, The TLPJ Foundation was extremely fortunate to receive *cy pres* awards totaling over \$250,000 in support of our public interest work resulting from two class action settlements. We are grateful for – and honored by – these generous awards.

First, we want to thank **Philip Friedman** of Friedman Law Offices in Washington, D.C. for the exceptionally generous \$200,000 check representing one-fourth of the *cy pres* award reached in connection with the settlement of *Grunewald v. Storage U.S.A.*, a class action seeking the recovery of late fee charges.

Second, **David R. Donaldson** and **David J. Guin** of Donaldson Guin in Birmingham, Alabama designated The TLPJ Foundation as the recipient of *cy pres* funds totaling \$39,225 in connection with *Hines v. Mendel*, a case recently settled in the U.S. District Court for the Middle District of Alabama.

The two year-end 2003 *cy pres* distributions are in addition to two awards totaling \$16,000 resulting from settlements in cases in which **Bryan Kemnitzer** of Kemnitzer, Anderson, Barron & Ogilvie, LLP in San Francisco nominated The TLPJ Foundation as one of the organizations promoting consumer rights to receive a portion of the settlement proceeds. *Public Justice* reported these generous distributions earlier in the year.

The TLPJ Foundation is extremely grateful to be the designated recipient in the above cases, and sends a special thank-you to all involved. By furthering TLPJ's public interest activities, the *cy pres* distributions will indirectly benefit the class members who could



Phil Friedman



David Donaldson



David J. Guin

not be directly compensated. For more information about *cy pres* awards, visit TLPJ's homepage, www.tlpj.org, and click on the button that reads "*Cy Pres* Awards: Serving the Class and the Public Interest."

If you are interested in designating The TLPJ Foundation as a *cy pres* award recipient, please contact Development Director Kathryn Mitchell at 202-797-8600 or via email at kmitchell@tlpj.org. ■

Thanks to Our 2003 Major Donor Contributors

We are extremely pleased and honored to recognize the following individuals and law firms that contributed \$2,500 or more during 2003, or nominated The TLPJ Foundation for a grant or *cy pres* award during 2003. Generous contributions were made for individual or firm memberships, to support our 2003 Special Gift Campaign, to sponsor our 2003 Presidents' Party

in Maui and our Annual Gala in San Francisco, and/or to fund TLPJ Fellowships in our D.C. Headquarters and West Coast Office. On behalf of the Board and staff of The TLPJ Foundation and Trial Lawyers for Public Justice, we thank you all and are grateful for your exceptional support.

We also gratefully acknowledge the thousands of other generous friends who are not individually

listed below, but who generously contributed during 2003 in annual member dues, and to support our Environmental Enforcement Project, our work battling HMO misconduct and mandatory arbitration abuse, and other key cases, as well as sponsorships for our Presidents' Party and Annual Gala, and other special gifts. Our precedent-setting work would not be possible without your generous support.

Over \$50,000
Baron & Budd

\$30,000 - \$49,999
John Bair, Forge Consulting
Alan R. Brayton, Brayton Purcell

Cotchett, Pitre, Simon & McCarthy
Jeffrey M. Goldberg
Richard Halpern, The Halpern Group
Power, Rogers & Smith, P.C.
Brent Rosenthal

\$20,000 - \$29,999
Peter G. Angelos
Russell W. Budd
Harry G. Deitzler
James L. Ferraro
Jack Meligan, Settlement Professionals
S.C. 'Buster' Middlebrooks
Robins, Kaplan, Miller & Ciresi, L.L.P.
Silber Pearlman
Stritmatter Kessler Whelan Withey Coluccio
Thornton & Naumes, L.L.P.
Weitz & Luxenberg, P.C.
Michael L. Williams

\$15,000 - \$19,999
Beasley, Allen, Crow, Methvin, Portis & Miles
Consumer Attorneys Association of LA

The Jacob D. Fuchsberg Law Firm
Gwilliam, Ivary, Chiosso, Cavalli & Brewer
David L. Perry
Mona Lisa Wallace

\$10,000 - \$14,999
Thomas M. Dempsey
Early, Ludwick & Sweeney
Goldberg, Persky, Jennings & White, P.C.
Illinois Trial Lawyers Association
Kramer, Dillof, Livingston & Moore
Michael P. Malakoff
Paul, Hanley & Harley LLP
Albert M. Pearson, III
Bruce R. Pfaff
Reyes & O'Shea, P.A.
Gerson H. Smoger, Ph.D.
Roger G. Worthington

\$5,000 - \$9,999
Abraham Fuchsberg Family Foundation
Sharon J. Arkin
Elizabeth J. Cabraser
Mark A. Chavez
Robert Clifford
Thomas V. Girardi
Grover G. Hankins
Shepard Hoffman
James L. Holman
Robert L. Jennings, Jr.
Steve Baughman Jensen

Kazan, McClain, Edises, Abrams, Fernandez, Lyons & Farris
Lief, Cabraser, Heimann & Bernstein, L.L.P.
Milberg Weiss Bershad Hynes & Lerach, L.L.P.
Mark R. Mueller
John Quisenberry
Winslow Remley
Lee J. Rohn
Stephen Sheller
Paul L. Stritmatter
Waters & Kraus
Williams, Cuker & Berezofsky
Michael E. Withey

\$2,500 - \$4,999
Edwin Beachler III
Isaac K. Byrd, Jr.
Chavez & Gertler, L.L.P.
Chimicles & Tikellis, L.L.P.
Colson, Hicks, Eidson
Roxanne Barton Conlin
Jeffrey P. Foote
Greene, Broillet, Panish & Wheeler, L.L.P.
William Harrell
Keith Hebeisen
Gerald I. Holtz
Frank J. Janecek, Jr.
John Kralovec
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Peter Perlman
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Saltz, Mongeluzzi, Barrett & Bendesky, P.C.
Charles S. Siegel
Richard J. Simons
Stephen M. Smith
Stanley, Mandel & Iola, L.L.P.
Kenneth M. Suggs
Ernie Teittel
Les Weisbrod
Stephen I. Zetterberg

TLPJ Fellowship Support (\$25,000 each)
Fred Baron and Lisa Blue
Alan R. Brayton
Joseph W. Cotchett
Harry Deitzler
Jeffrey M. Goldberg
Joseph A. Power, Jr.

Cy Pres Awards
Donaldson & Guin (\$39,225)
Philip Friedman, Friedman Law Offices (\$200,000)
Kemnitzer, Anderson, Barron & Ogilvie (\$16,000) ■

Thanks to Our 2003 Special Gift Contributors

We are pleased to specially acknowledge and thank the following who contributed special gifts to The TLPJ Foundation – *over and above annual membership dues* – in recent months. It is only through the generosity and commitment of our members and Special Gift supporters that TLPJ is able to pursue its precedent-setting public interest cases.

First, we wish to thank the Dallas, Texas law firms of **Baron & Budd** and **Silber Pearlman**, and TLPJ Foundation Board member **Brent Rosenthal** of Baron & Budd in Dallas, for contributing \$25,000 each at the end of 2003. We also wish to thank the Minneapolis law firm of **Robins, Kaplan, Miller & Ciresi** for their year-end 2003 special gift contribution of \$15,000. Special thanks also goes to the **Kazan, McClain, Edises, Abrams, Fernandez, Lyons & Farris Foundation, Inc.** in Oakland, California, who directed a \$25,000 2004 donation from the firm's gen-

eral foundation funds, from which all partners contribute.

Special thanks also goes to **Jere Locke Beasley** and the law firm of **Beasley, Allen, Crow, Methvin, Portis & Miles** in Montgomery, Alabama, who contributed an additional year-end gift of \$7,500 on top of the \$10,000 donation reported in our last newsletter.

In addition, we wish to acknowledge and thank **Bruce Pfaff** of Bruce R. Pfaff & Associates in Chicago for donating 165 shares of Amgen in December 2003, which were worth \$10,177 as of date of transfer. Special thanks also go to the following who gave individual gifts of \$10,000 each within the last few months: **The Jacob D. Fuchsberg Law Firm** in New York; **Michael Malakoff** of Malakoff, Doyle & Finberg, P.C. in Pittsburgh; **Consumer Attorneys Association of Los Angeles**; TLPJ Foundation Board members **Buster Middlebrooks** of Gardner, Middlebrooks, Gibbons & Kitrell in Mobile, Alabama and **Mona Lisa**

Wallace of Wallace & Graham in Salisbury, North Carolina. Special thanks also go to TLPJ Foundation Board member **Steve Baughman Jensen** of Baron & Budd for making a year-end donation of \$7,500.

We also wish to thank the law firm of **Williams, Cuker & Berezofsky** in Cherry Hill, New Jersey who made a \$5,000 special gift, as well as a \$1,020 special gift contribution on behalf of several of its colleagues. We are also extremely grateful to the following individuals who recently gave \$5,000 each to The TLPJ Foundation: **Mark Chavez** of Chavez & Gertler, LLP in Mill Valley, California; **Denise Abrams** and **Frank Fernandez** of Kazan, McClain, Edises, Abrams, Fernandez, Lyons & Farris Foundation, Inc. in Oakland, California; Dallas attorney **Shepard Hoffman**; and **David L. Perry** of Perry & Haas in Corpus Christi, Texas. ■



Fred Baron



Jere Locke Beasley



Thomas J. Methvin



Mike Ciresi



Steve Baughman Jensen



Rosalind Fuchsberg Kaufman



Steve Kazan



Mike Malakoff



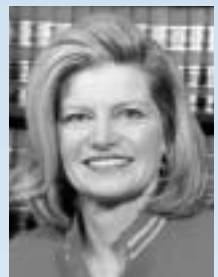
Buster Middlebrooks



Bruce Pfaff



Brent Rosenthal



Mona Lisa Wallace

Nominations Sought for TLPJ Foundation Board

The TLPJ Foundation's Nominating Committee Seeks Recommendations for Nominees to the 2004-2005 Foundation's Board of Directors

If you are interested in serving as a Board member of The TLPJ Foundation beginning in July 2004, or if you would like to recommend another TLPJ Foundation member for consideration, please write, fax, or e-mail your nomination to the attention of Executive Director Arthur Bryant in our West Coast office by Thursday, April 1, 2004.

Write to: Arthur Bryant, Executive Director, TLPJ Foundation, One Kaiser Plaza, Suite 275, Oakland, CA 94612-3684

Fax to: 510-622-8155

E-mail to: abryant@tlpj.org ■

Fighting for Public Justice: Cases and Trial Lawyers That Made a Difference

By Wesley J. Smith

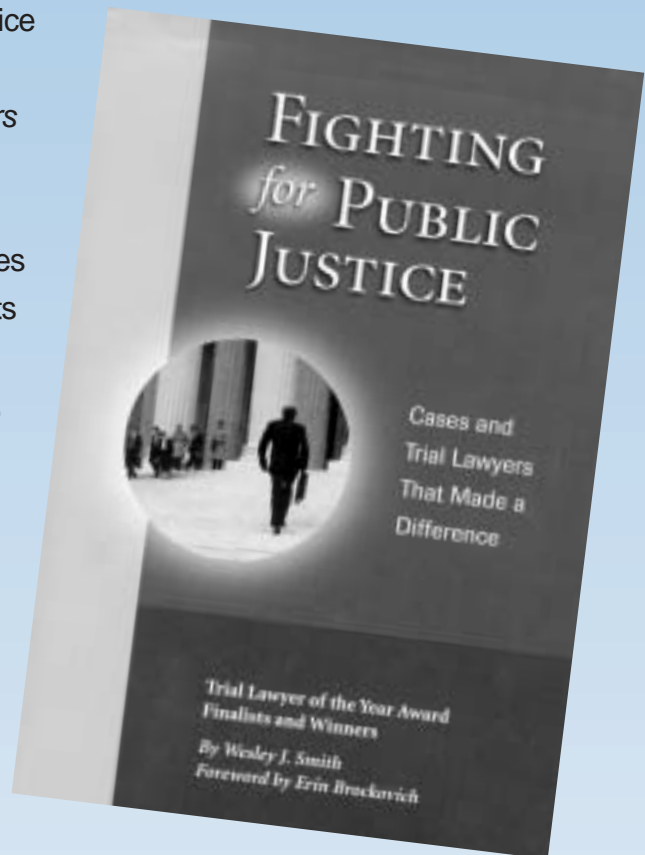
Foreword by Erin Brockovich

Gerry Spence says, "Everyone who cares about justice should buy this book!"

Fighting for Public Justice: Cases and Trial Lawyers That Made a Difference shows what our civil justice system is all about – trial lawyers battling for people against power. This unique book focuses on the cases brought by the Trial Lawyer of the Year Award finalists and winners in TLPJ's first two decades.

By recounting the dramatic facts of their cases, *Fighting for Public Justice* documents the crucial role of our jury system and trial lawyers in exposing the truth and holding wrongdoers accountable. And it proves that trial lawyers – working individually and together – can be an enormously powerful force for the public good.

To order, click on the Internet button on TLPJ's homepage, www.tlpj.org, or contact Janice Anderson at TLPJ, 202-797-8600 x 252, e-mail janderson@tlpj.org. ■



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 Party and Awards Dinner at the Westin Copley Place in Boston on Tuesday, July 6, 2004.

Descriptions of recent Trial Lawyer of the Year Award finalists and winners are posted on TLPJ's web site, www.tlpj.org. ■

NEW EDITION NOW AVAILABLE!

Consumer Arbitration Agreements: Enforceability and Other Topics (December 2003 Edition with Dozens of New Cases)

This manual and CD-Rom set is designed to be an attorney's primary practice guide and legal resource in the battle against mandatory arbitration.

An ever growing number of consumer lawsuits are being forced into binding arbitration based upon the fine print in the original contract, shielding corporations against class actions, punitive damages, discovery, and other consumer remedies. No matter what type of consumer lawsuit you bring, odds are you will have to deal with the enforceability of a binding arbitration clause!

You'll get in-depth case law analysis and innovative ways to challenge an arbitration clause's enforceability that have met the test of actual litigation.

Experts Explain the Latest Theories to Defeat Arbitration Requirements

- Whether high fees and limits on statutory remedies conflict with federal statutory rights
- The Magnuson-Moss Warranty Act and the FAA
- Unconscionability, fraud, illegality, and other contract defenses
- Whether a binding arbitration agreement has been formed
- Scope of the arbitration agreement
- Waiver of right to enforce arbitration agreement
- Where state law trumps the FAA

Other Key Tactics to Respond to Arbitration Clauses

- Right to take discovery on arbitration issues

- Right for a jury to decide the issue of enforceability
- Bringing a class action in an arbitration proceeding
- Right to appeal order requiring arbitration
- Judicial review of arbitrator's decision

\$70 for the manual and CD-Rom set, plus \$5.00 for UPS shipping and handling per book.

A portion of the proceeds from the sale of this set will go to support TLPJ's Mandatory Arbitration Abuse Prevention Project. To order, click on the Internet button on our homepage, www.tlpj.org, or contact Janice Anderson, 202-797-8600 x 252, e-mail janderson@tlpj.org. ■

Lady Justice Can't Be Bought.

But She Likes to Buy... at Our Annual Auction!

Don't know what to do with all the stuff in your attic?

Do you have vacation property? Silver tea sets? Rare books? Autographed memorabilia? A case of fine wine? Perhaps some eclectic collectibles or quality ephemera slated for the flea market or possibly the antique store?

By donating an item to TLPJ's Annual "Bidding for Justice" Auction you become eligible to deduct the full amount of the donation from your 2004 taxes!

TLPJ will host its 22nd Anniversary Gala and Auction on July 6, 2004 at the Westin Copley Place in Boston. If you have an item to donate or have any questions, please contact Meetings & Events Planner Susan Gombert at 202-797-8600, or complete the form below and fax to National Headquarters in Washington, D.C. at 202-232-7203.

Yes, I would like to make a donation to the TLPJ Annual "Bidding for Justice" Auction

I will donate the following:

Item: _____

Estimated Value: _____

I am interested in making a donation, please contact me to discuss further:

Name: _____

Phone Number: _____

Fax back to Susan Gombert, Meetings & Events Planner, at 202-232-7203.



Photo by Jonathan Huson

Here's just a sample of the fabulous items donated to last year's Annual "Bidding for Justice" Auction:

- Dinner with Joan Claybrook and Morris Dees
- Artwork by Trevor Goring
- Norman Rockwell Lithograph
- Silk "Day in Court" Men's Tie
- Handmade Pottery Teapot
- Antique Japanese Bronze Statue
- "Women in Law" Lithograph
- Autographed Books by Mike Papantonio
- Gourmet French Dinner for Eight
- French Farmhouse in Bordeaux for a Week
- Super Bowl and World Series Tickets
- Original Artwork by Cindy Wallace
- TLPJ Canvas Brief Case & Denim Shirt
- *To Kill a Mockingbird* Autographed by Harper Lee
- Charming House in Clear Lake, CA for a Week
- Exclusive California Wines
- House in Palm Springs, CA for a Week
- Gold & Silver Charms Featuring San Francisco Landmarks
- A Long Weekend in Atlantic City
- Janis Joplin CD Set
- Autographed Book by John Grisham

Celebrate Public Justice by the Pool at TLPJ's Annual Presidents' Party in Orlando, February 17

For almost two decades, the Presidents and Presidents-Elect of The TLPJ Foundation and the Association of Trial Lawyers of America (ATLA) have co-hosted TLPJ's "Presidents' Party" during ATLA's Winter Convention. This fun and *free* event is scheduled to begin at 5:00 p.m. on Tuesday, February 17, at the Upper Pool Deck of the Hyatt Regency Grand Cypress Resort in Orlando, Florida.

Please join TLPJ Foundation **President Gary Gwilliam** and **President-Elect Jeffrey Goldberg** and **ATLA President David Casey** and **President-Elect Todd Smith** as co-hosts of this reception. This party by the pool will provide an excellent opportunity to visit with long-time friends or even meet a few new faces. Both ATLA and TLPJ share an important mission on behalf of the public and trial lawyers across the country. Not only do our organizations share much of the same leadership, and many of the same members, but more often than not we are able to enjoy the success of each other's work. TLPJ's Annual Presidents' Party provides an opportunity to recognize and celebrate this working relationship and further the bonds between ATLA and TLPJ.

Because the event is *free*, The TLPJ Foundation is seeking tax-deductible-



Photo courtesy of Hyatt Regency Grand Cypress Resort

The Presidents Party will take place at 5:00 p.m. on Tuesday, February 17, at the Upper Pool Deck of the Hyatt Regency Grand Cypress Resort in Orlando, Florida.

sponsorships to defray reception costs. We want to specially thank the **Poorman-Douglas Corporation** of Beaverton, Oregon, which has already pledged to sponsor the event at the \$5,000 Magic Kingdom level, as well as help defray the costs of the event with additional contributions. The names of all sponsors will be publicly

displayed throughout ATLA's 2004 Winter Convention and in an upcoming issue of *Public Justice*. If you or your firm would like to sponsor the Presidents' Party, or want more information about the event, please contact Meetings & Events Planner Susan Gombert at 202-797-8600, ext. 235 or e-mail sgombert@tlpj.org. ■

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. ■

New and Upgraded Foundation Memberships

The following is a list of members who joined The TLPJ Foundation as new members or upgraded their annual membership since our last issue of *Public Justice*. Members who recruited members are listed in italics. We thank them all.

Patron (\$10,000)
Reyes & O'Shea, P.A. -
Al Brayton

Benefactor (\$5,000)
Beasley, Allen, Crow, Methvin,
Portis & Miles, P.C.
Philip Friedman (upgrade)
John Quisenberry

Advocate (\$2,500)
Jere Locke Beasley (upgrade)
Chimicles & Tikellis, L.L.P.
(upgrade)
Roxanne Barton Conlin
(upgrade)
John Kralovec (upgrade)
Michael Maher (upgrade)
Ernie Teitell (upgrade)

Sustaining Member
(\$1,000)
Wylie A. Aitken (upgrade)
Steve Angstreich
Ben Bailey
Charles H. Baumberger
(upgrade) - *Gary Gwilliam*
John Echeverria
Luke Ellis - *Gary Gwilliam*
Jeffrey L. Fazio -
Jim Sturdevant
Brian Glasser
Louis Hilfman (upgrade) -
Jeff Goldberg
F. Dulin Kelly
Renee Melancon
Kay Gunderson Reeves
(upgrade) - *Steve Jensen*
Sanford Rosenbloom -
Michael Kaplen
Andrew M. Scherffius

Adam K. Shea (upgrade) -
Chris Spagnoli
Dan Wilcoxon (upgrade) -
Gary Gwilliam
Supporting Member (\$500)
Virginia Adams (upgrade)
John D. Allison (upgrade) -
Paul Stritmatter
James J. Bedortha (upgrade)
C. Michael Bee (upgrade) -
Michael Kaplen
Jeff Bloomfield (upgrade) -
Lisa June Cox
Joseph J. Cirilano
Lane A. Clack (upgrade)
Michael P. Cogan (upgrade) -
Jeff Goldberg
Bruce S. Conley (upgrade) -
Lisa June Cox
Joe K. Crews (upgrade) -
Roger Mandel
Aaron J. DeLuca
Tom Domonoske (upgrade)
Drew & Martindale, P.C.
(upgrade) - *Lisa June Cox*
Michael End (upgrade)
Stuart B. Esner (upgrade) -
Chris Spagnoli
Gary Farmer (upgrade)
Leonard V. Fodera (upgrade)
Elizabeth Jesukiewicz Frey
(upgrade) - *Sandra Robinson*
James F. Gilwee -
Gary Gwilliam
Kathleen M. Gros (upgrade) -
Jeff Goldberg
Michael A. Haggard (upgrade)
Brian S. Kabateck (upgrade) -
Gary Gwilliam
Ray Kahler (upgrade) -
Paul Stritmatter
Lisa Kivett (upgrade)
Rick Kraemer - *Chris Spagnoli*
Elizabeth F. Kuniholm
(upgrade)
Jack Landskroner (upgrade)
Kent Lilly (upgrade)
Jeffrey M. Marks (upgrade)
Bruce E. Mattock (upgrade)
Charles J. McLeigh
Mark C. Meyer (upgrade)

Edward Moody (upgrade)
David Morrison (upgrade)
Peter O'Neil (upgrade) -
Paul Stritmatter
David Pritchard (upgrade) -
Jeff Goldberg
David B. Rodes (upgrade)
Reed Schifferman (upgrade) -
Paul Stritmatter
Phillip Sieff (upgrade) -
Marti Wivell
Martin A. Smith (upgrade) -
Jeff Goldberg
Michael A. Stratton (upgrade)
Paul Whelan (upgrade) -
Paul Stritmatter
Amy Wood - *Paul Stritmatter*
Wendy Zeller (upgrade) -
Marti Wivell

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TLPJ Speakers Educate and Inspire Lawyers, Law Students and Public Interest Advocates

Our staff members and activists educate audiences of trial attorneys, law students, and allied public interest groups about the vital role of the civil justice system and TLPJ's public interest impact litigation work. Following is a list of recent and upcoming TLPJ speaking engagements and events.

If you would like to volunteer to speak or arrange for a TLPJ speaker at your law school, Trial Lawyer Association, public interest organization, or other event, please contact Outreach & Development Coordinator Cassandra Goings, tel. 202-797-8600, ext. 244, e-mail: cgoings@tlpj.org.

September 25-26, 2003 – BNA Litigation Forum – Washington, DC

Staff Attorney Paul Bland participated in a panel discussion during BNA's Litigation Forum on "Electronic Discovery & Document Retention." The event was held September 26 at the Washington Marriott. For more information, contact Scott Sleek at 800-255-8131.

October 1-3, 2003 – American Bar Association – Boston, MA

Staff Attorney Paul Bland was a panelist discussing "Use of Arbitration Clauses to Block Class Actions." The event was held October 2 in the Le Meridien Boston Hotel. For more information, please contact the ABA at 202-662-1000 or visit www.abanet.org.

October 10, 2003 – CPR Institute for Dispute Resolution – Chicago, IL

Staff Attorney Paul Bland and Alan Kaplinsky debated whether arbitration clauses may ban class actions. The event was held at the Four Seasons Hotel. For more information, please contact Peter Phillips at 212-949-6490 or visit www.cpradr.org.

October 23, 2003 – Equal Justice Works Career Fair – Washington, DC

Staff Attorney Adele Kimmel conducted a "table talk" session and inter-

views with law students interested in summer intern positions.

October 24, 2003 – American Bar Association – San Francisco, CA

Executive Director Arthur Bryant was a panelist discussing class action settlements during the ABA's 7th Annual National Institute on Class Actions. For more information, please contact Scott L. Nelson at 202-588-7724 or visit www.abanet.org.

October 24-27, 2003 – Consumer Rights Litigation Conference – Oakland, CA

Executive Director Arthur Bryant was one of the speakers during a class action symposium. Also, Staff Attorney Paul Bland spoke about "Arbitration Developments" and "More on Attacking Arbitration Clauses." Other speakers included TLPJ Foundation Board Members Joe Cotchett and Jim Sturdevant. The events were held at the Oakland Marriott City Center. For more information, contact Debbie Parziale at 617-542-8010 or visit www.nclc.org.

October 25, 2003 – Equal Justice Works (formerly NAPIL), Annual Fellowships Retreat – Washington, DC

Staff Attorney Michael Quirk led two sessions on class action litigation for current fellows at their annual retreat at the Washington Hilton. For more information, visit www.equaljusticeworks.org.

November 6, 2003 – American Bar Association – Washington, DC

Staff Attorney Leslie Brueckner was a panelist discussing class action settlements during the ABA's 7th Annual National Institute on Class Actions. For more information, please contact Scott L. Nelson at 202-588-7724 or visit www.abanet.org.

January 31, 2004 – UCLA Public Interest Career Day – Los Angeles, CA

TLPJ Foundation Board Member and HI State Co-Coordinator Diane Abraham participated in the UCLA Law School public interest career fair. She met law students who want to pursue a public interest career. For more information, contact Catherine Mayorkas at 310-206-9155.

February 17, 2004 – TLPJ's Annual Presidents' Party – Orlando, FL

Join the Presidents and Presidents-Elect of ATLA and The TLPJ Foundation for a *free* reception on Tuesday, February 17, 2004, at the Hyatt Regency Grand Cypress Resort, Upper Pool Deck, from 5:00-7:00 p.m. Please contact Kathryn Mitchell for sponsorship opportunities, tel. 202-797-8600, ext. 234. Any sponsorship funds raised in excess of event expenses will be used to support TLPJ's public interest litigation work.

March 11-12, 2004 – Consumer Financial Services Litigation – New York, NY

TLPJ Staff Attorney Paul Bland will be one of the speakers during the Practicing Law Institute (PLI) event. He will discuss "Arbitration: Where We Go from Here." The event will be held March 11 from 2:45-3:45 p.m. at the PLI New York Center. For more information, please contact PLI at 1-800-260-4754 or visit their web site at www.pli.edu.

June 23-26, 2004 – National Employment Lawyers Association (NELA) – San Antonio, TX

Staff Attorney Paul Bland and Baron-Brayton Fellow Kate Gordon will participate in a panel discussion about mandatory arbitration during the NELA Annual Convention. The event will be held at the Hyatt Regency San Antonio. Date and time of event TBA. ■

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TLPJ Foundation Supporter Beverly Moore, Jr. Passes Away

Beverly C. Moore, Jr. – Editor and Publisher of *Class Action Reports* and a good friend of TLPJ – passed away on November 14, 2003. Beverly had suffered a head injury and entered a coma from a recent fall. He was 58.

“He was a warm and generous person, devoted to the public interest, and a strong supporter of TLPJ,” said TLPJ Executive Director Arthur Bryant. “His death is a loss to the cause of public justice.”

The funeral service took place in Burlington, North Carolina on November 29, and friends, family and colleagues gathered for a memorial service on December 12 at the Monaco Hotel in Washington, D.C.

Beverly was a name partner in the Washington, D.C. law firm of Moore & Brown, which was founded in 1990 as a successor to the Law Offices of Beverly C. Moore, Jr. (1979). He was a 1970 *cum laude* graduate of Harvard Law School, after which for about five years he worked for consumer advocate Ralph Nader. In late 1974, Beverly took over the publication of *Class Action Reports*, a legal periodical that had been started by others in 1972. Since then, he has expanded the *Class Action Reports* coverage to include virtually all class action cases in all areas of the law. In his capacity as Editor and Publisher of *Class Action Reports*, Beverly had become an acknowledged national expert in class action jurisprudence. Starting in about 1979, Beverly also began litigating class action cases involving securities, consumer protection, and mass tort claims. In 1997, he shared in our Public Justice Achievement Award for his role in TLPJ's national polybutylene plumbing class action litigation.

Beverly was a long-time member of The TLPJ Foundation. In 1998, he was instrumental in recommending a *cy pres* award for the Foundation in the case of *Bailey v. Lomas*. Over the

years, he provided assistance on – and filed affidavits in support of – several TLPJ Class Action Abuse Prevention Project challenges to class action abuses, including, most recently, an

expert affidavit he filed in April 2003 in support of TLPJ's successful objections to the proposed settlement in *Dotson v. Bell Atlantic-Maryland, Inc.* (See related article on page 7 concerning this proposed Maryland class action settlement that would have given the class less than \$125,000 and class counsel \$13 million).

Moore grew up in Greensboro, North Carolina, and graduated from the University of North Carolina Chapel Hill in 1967.

Beverly is survived by his wife Deanna Moore, daughter Caroline Hargrove Moore Rodier, daughter Alice Cooper Mitchell Moore, mother Irene Mitchell Moore, and sister Irene Warren Moore Miller.

Because Beverly was so supportive of and committed to our work, the family has asked that donations be sent in lieu of flowers to The TLPJ Foundation, 1717 Massachusetts Avenue, NW, Suite 800, Washington, DC 20036, tel. (202) 797-8600.

To date, 24 contributions to The TLPJ Foundation totaling \$13,720 have been made in Moore's memory. The TLPJ Foundation thanks the Malakoff Family Foundation, which contributed \$10,000, and all other contributors who have made special gifts to honor the memory of Beverly C. Moore, Jr. ■



Beverly C. Moore, Jr.

Courtesy of Deanna Isley Moore

PUBLIC JUSTICE

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SAVE THE DATE!

Mark your calendar for Tuesday, July 6, 2004, for TLPJ's 22nd Annual Party and Awards Dinner in Boston at the Westin Copley Place. During this special event, TLPJ will honor the finalists for the 2004 Trial Lawyer of the Year Award and announce the winner(s). For information on how to submit a nomination for this nationally prestigious award, see related article on page 21.

Join Us for Phonathon and Fun in Chicago

Mark your calendar for The TLPJ Foundation's exciting, competitive, and highly productive Super Thursday Phonathon on Thursday, April 22, 2004 in Chicago. The Phonathon will take place at the Allerton Crowne Plaza, and will feature several hard-fought contests for special prizes. Then we'll convene for an awards dinner and costume party at the **Howl at the Moon** nightclub! For more information, call Membership Program Manager Latifa Lyles, tel. 202-797-8600 ext. 253, or e-mail llyles@tlpj.org. ■



President Gary Gwilliam salutes Roy Orbison.

Photo by Seattle Photography, Inc.

Staff Update

We are delighted to welcome a new fellow to our National Headquarters staff in Washington, D.C.

Richard H. Frankel joined TLPJ on October 7, 2003 as our first Goldberg-Deitzler Fellow. Richard received his J.D. from Yale Law School in 2001, and his B.A. from Yale College in 1997. Prior to joining TLPJ, he clerked for Judge Henry H. Kennedy, Jr. of the U.S. District Court for the District of Columbia in Washington, D.C., and then for Judge William Canby of the U.S. Court of Appeals for the Ninth Circuit in Phoenix. This fellowship is made possible by the generous donations of Jeff Goldberg and Harry Deitzler. We are happy to have him with us. ■



Richard H. Frankel

Photo by Jonathan Hutson

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