

Seeger Weiss makes the Hot List 3 Years in a Row



“...Seeger Weiss’s experienced trial lawyers have earned their reputation as a ‘go to’ law firm...” ~ “...gained the respect of the plaintiffs and defense bar alike for its willingness to ‘always take on the tough cases’ and ‘jump right into the heart of everything when everyone else is afraid...” ~ “...Seeger Weiss attorneys consistently “rank among the country’s top plaintiffs’ lawyers.” ~ “It’s no surprise, then, that the NLJ has named Seeger Weiss to its prestigious Plaintiffs’ Hot List three years running.” ~ “Seeger Weiss Secures \$4.85 Billion Vioxx Settlement from Merck” ~ “Called a ‘renaissance litigation boutique,’ Seeger Weiss has a broad span of cases apart from its core strengths in pharmaceuticals and mass torts” ~ “...Seeger Weiss’s experience and their reputation as a ‘go to’ law firm...” ~ “...gained the respect of the plaintiffs and defense bar alike for its willingness to ‘always take on the tough cases’ and ‘jump right into the heart of everything when everyone else is afraid...” ~ “...Seeger Weiss attorneys consistently “rank among the country’s top plaintiffs’ lawyers.” ~ “It’s no surprise, then, that the NLJ has named Seeger Weiss to its prestigious Plaintiffs’ Hot List three years running.” ~ “Called a ‘renaissance litigation boutique”

These are the firms to watch

WHO WOULD HAVE thought we'd be handing out kudos to Milberg LLP three years after firm predecessor Milberg Weiss Bershad & Schulman was indicted for kicking back legal fees to class action plaintiffs? Who would have thought the firm would survive in any way, shape or form—much less that it would continue scoring significant settlements?

Funny thing about plaintiffs' attorneys: They're a tenacious bunch. Milberg partner Brad Friedman summed up the mindset when the NLJ's Jeff Jeffrey asked him recently why he hadn't jumped ship during the drama.

"I was going to be good and damned if the government was going to chase me out of my firm and away from the people I liked working with," he said.

The other firms we included in this eighth annual National Law Journal Plaintiffs' Hot List didn't tend to have Milberg's kind of problems, but they had plenty to contend with. To name one cause of action, securities class action filings declined by 22.3% during the first half of 2009, according to Stanford Law School's Securities Class Action Clearinghouse. That organization counted 87 filings during the period, compared to 112 in each half of 2008. Of course, 2008 saw a 19% surge in such filings compared to 2007, with almost half targeting—surprise!—the financial sector. Financial services firms remain a frequent target this year, representing 66.7% of filings through June. Still, U.S. securities filings during the second quarter fell 11% below the average for the past 12 years. Plaintiffs, the clearinghouse explained, were running out of major financial houses to sue.

We asked our readers to nominate firms in the United States that did exemplary, cutting-edge work on the plaintiffs' side between the summer

of 2008 and the summer of 2009. Firms needed at least one significant win and an impressive track record within the previous three to five years. A "significant" win meant prevailing in a bench or jury trial when the stakes were high, meaning that a substantial amount of money was at issue, or that the case could affect the litigation strategy or outcome of similar cases nationally. We also looked for wins that could effect significant social change or civil rights gains. Firms needed to devote at least 50% of their litigation resources to plaintiffs' work.

We don't pretend this is anything but our subjective take on the major players in the plaintiffs' bar. We looked for firms that struck us as representing the bar's best qualities and that demonstrated unusual flair and creativity. We understand that major class litigation is a collaboration and regret that space doesn't permit us to credit every firm that contributed to the cases we highlight here.

Milberg, for example, has been missing from this list since the indictment, even as it continued to score in court. By this time, the firm has purged its ethically-challenged attorneys and otherwise cleaned up its act. Beyond that, it helped win a \$750 million recovery in a case alleging accounting shenanigans by Xerox Corp. As Jeffrey explains in his article ["Milberg lives long after all—and prospers," Page S3], the firm threw lawyers with serious accounting skills at the Xerox files. "It was possible to look at a highly incriminating report and not know you had gold in your hand without some pretty sophisticated knowledge of accounting principles and practices," Friedman said.

Less money but plenty of principle was at stake in litigation undertaken on behalf of an aging cadre of Mexican "braceros," laborers recruited to work in U.S. fields, beginning during World War

II. Their employers withheld part of their wages, ostensibly to save it on the workers' behalf, but government-affiliated Mexican banks refused to hand over the money. The challenge against powerful defenses including sovereign immunity scared off the plaintiffs' bar until 2001, when Chicago-based Hughes Socol Piers Resnick & Dym and San Francisco's Lief Cabraser Heimann & Bernstein joined forces on the workers' behalf.

The team prevailed, regular NLJ contributor Emily Heller reports. But it was a matter of refusing to take "no" for an answer through three—count 'em—reversals in federal court. The U.S. government extracted itself from the litigation. The Mexican government and banks finally bowed to moral pressure that the litigation helped to stoke.

"I actually expected, to tell you the truth, at some point that the plaintiffs would just give up because it was so hard, but they never did," U.S. District Judge Charles R. Breyer remarked.

Speaking of tenacity, here's Coughlin Stoia Geller Rudman & Robbins (formerly affiliated with Milberg Weiss; we must note that former partner William Lerach is now in jail for participating in the kickback scheme). The firm took long odds in 2002 that any money it could squeeze out of Enron Corp.'s enablers would cover its litigation expenses in a climate growing ever more hostile to scheme-liability suits. The firm extracted \$7.2 billion in settlements and a nice share of \$688 million in attorney fees.

"It was the biggest securities fraud going on, and we're the biggest securities class action firm, so we wanted to be involved, even with those risks," Coughlin told the NLJ's Amanda Bronstad.

Yeah. That's what we're talking about.

—MICHAEL MOLINE

Seeger Weiss

New York-based Seeger Weiss is a self-described "renaissance litigation boutique," handling a broad span of cases apart from its core strengths in pharmaceuticals and mass torts. Ten years since its founding, Seeger Weiss has about 30 lawyers and 100 staff professionals in five offices. During the past 12 months, Seeger Weiss put together a string of favorable verdicts and settlements, in pharmaceutical-related matters alone recovering more than \$1 billion. Name partner Stephen Weiss was among the first to bring Madoff-related investor suits.

NOTEWORTHY CASES

■ *In re Bextra and Celebrex Mktg., Sales Practices and Prod. Liab. Litig.*, nos. 05-cv-01699-CRB, MDL-1699 (N.D. Calif.). Co-lead counsel Christopher Seeger and David R. Buchanan. The firm was among the first to file complaints over the pain medications Bextra and Celebrex and sat on the plaintiffs' steering committee. Seeger was one of the first attorneys to reach specific settlement terms with Pfizer. The settlement provides \$745 million for 7,000 claimants.

■ *Speisman v. Hoffmann-La Roche Inc.*, No. ATL-L-196-05 (Atlantic Co., N.J., Super. Ct.). David R. Buchanan, backed by Michael L. Rosenberg, was co-lead counsel in two consolidated cases on behalf of plaintiffs who traced their inflammatory bowel disease to their use of Hoffman La Roche Inc.'s anti-acne drug Accutane. The team recovered \$23.5 million for four plaintiffs. Buchanan and Christopher are primary or liaison counsel on another 600 Accutane cases.

■ *In re New Jersey Vioxx Litig.* No. 825, No. ATL-L-2534-08 (Atlantic Co., N.J., Super. Ct.). Lead counsel Christopher Seeger, David Buchanan, Diogenes Kekatos, Jeffrey Grand and James O'Brien. Having helped secure the \$5 billion settlement in the first round of Vioxx litigation, the firm went back after Merck & Co. Inc. on behalf of third-party purchasers of the drug, securing an \$80 million settlement. In total, it recovered \$140 million for third-party payors during the past year.

THE PLAINTIFFS' HOT LIST

Even global crises have a bright side

ARE THESE THE plaintiffs' bar's salad days?

Hear us out. That the global economic system is teetering on the brink of a pit has not escaped our notice. The failure of financial monuments like Lehman Brothers Holdings Inc., American International Group Inc., Fannie Mae and Freddie Mac seem to have taken the wind out of stockholder lawsuits intended to recoup some of investors' staggering financial losses. Even if such suits succeed, the vaporization of hundreds of billions of dollars in assets might complicate collecting any money. On top of everything, the U.S. Supreme Court seems inclined, with rulings like *Stoneridge Inv. Partners v. Scientific Atlanta*, to make it harder for plaintiffs to make financial evildoers—and their henchmen—pay.

It's impossible to know how all of this will end, but we wouldn't count out this country's plaintiffs' lawyers. They've shown in the past that their capacity for innovation is at least a match for the corporate world's capacity for mischief.

More settlements

Events are moving way too fast, but it's worth remembering that notwithstanding tort reform, the number of settlements reached hit an all-time high in 2007, according to the Securities Class Action Services' annual survey of top plaintiffs' law firms. The number of cases in the pipeline was trending upward even then. The top five firms by settlement value brought in more than \$13.75 billion, up from \$12.8 billion in 2006.

"This is the time when as an investor—institutional or individual—you really appreciate that there are legal remedies in our country," said Gerald H. Silk of Bernstein Litowitz Berger & Grossmann in New York.

This is the seventh year for the NLJ's Plaintiffs' Hot List, our survey of the country's most impressive plaintiffs' firms. We asked our readers to nominate firms in the United States that did exemplary, cutting-edge work on the plaintiffs' side between the summer of 2007 and the summer of 2008. Firms needed at least one significant win and an impressive track record within the previous three to five years. A "significant" win meant prevailing in a bench or jury trial when the stakes were high, such as a substantial amount of money, or the case could affect the litigation strategy or outcome of similar cases nationally. Eligible firms needed to devote at least 50% of their litigation resources to plaintiffs' work.

We don't pretend the results are scientific, and concede that some excellent firms don't appear here. We looked for firms that struck us as representing the best qualities of the plaintiffs' bar and that demonstrated unusual dedication and creativity.

Firms like San Francisco's Lief Cabraser Heimann & Bernstein and St. Louis' Korein Tillery, to name two examples.

These were among the plaintiffs' firms that weren't afraid to take on one of the business world's great white whales. De Beers S.A. diamond merchants had flouted the authority of

U.S. courts for years, simply declining to show up if any court had the temerity to assert jurisdiction over the self-avowed monopoly. The plaintiffs' firms' pluck, and some luck, resulted in a \$295 million settlement for De Beers' customers. If the agreement fell short of the billions of dollars the plaintiffs might have held out for, it nevertheless secured De Beers' pledge to abide by federal and state antitrust laws and accept court oversight to ensure compliance, as NLJ contributor Emily Heller explains inside.

That case raises an important point about this list. Major class actions are the work of many plaintiffs firms—something like 10 in the De Beers case. We regret that space didn't allow us to list all of the co-counsel firms involved in some of the cases listed here, but it's worth remembering that many of the most important courtroom victories are the product of collaborations.

Elsewhere inside, Staff Reporter Peter Page brings us up to date on the Vioxx litigation. He reports that a series of trial wins prompted Merck & Co. Inc. to settle after spending \$1.9 billion defending its anti-inflammatory drug—but that Merck might have done pretty well for all that.

Additionally, contributor June D. Bell tells how a plaintiffs' firm found a way to place value on the ineffable.

—MICHAEL MOLINE

Seeger Weiss

Seeger Weiss deserves a party. The 30-attorney, New York-based firm turns 10 next year, and has spent the past 12 months outdoing itself in pharmaceutical and securities litigation. It is exploring new fields, having filed some of the first suits in the country for auction-rate securities investors who claim that Wall Street brokers misled them about the risks.

NOTEWORTHY CASES:

■ **Humeston v. Merck & Co. Inc.**, No. ATL-L-2272-03 (Atlantic Co., N.J., Super. Ct.). Christopher A. Seeger was co-chair of the plaintiffs' steering committee and a member of the negotiating committee that reached a \$4.8 billion settlement with Merck & Co. Inc., the maker of the pain drug Vioxx. The firm helped soften Merck's resistance by winning this \$47.5 million verdict against the drugmaker in New Jersey last year. Seeger then helped sell the deal to other plaintiffs attorneys around the country. In the end, 97% of eligible claimants had opted into the settlement. The money started flowing to plaintiffs in August.

■ **Kendall v. Hoffman-La Roche Inc.**, No. ATL-L-8213-05-OMT (Atlantic Co., N.J., Super. Ct.). Co-lead counsel David R. Buchanan and Michael L. Rosenberg. The firm secured an initial \$2.6 million verdict last year related to Hoffman-LaRoche Inc.'s failure to disclose a link between its anti-acne drug Accutane and inflammatory bowel disease. In April, a New Jersey jury awarded \$10.6 million to a Utah girl who lost part of her colon to the malady. The firm is liaison counsel in another 500 cases in New Jersey.

■ **Ecker v. Ford Motor Co.**, No. BC 278074 (Los Angeles Co., Calif., Super. Ct.). Co-lead counsel Christopher A. Seeger, Jonathan Shub and Scott Alan George. Seeger Weiss led discovery in the case and turned up internal e-mails suggesting the company was aware of a premature wear problem in brake pads on the Ford Focus. Ford signed a deal in July that could pay up to \$10 million.

THE PLAINTIFFS' HOT LIST

The plaintiffs' bar isn't dead yet

FUNNY THING about the death of the class action: Someone forgot to send the memo to the plaintiffs' bar.

Judging from the dozens of nominations we received for this, our sixth, annual list of the country's most prominent plaintiffs' firms, the plaintiff's bar is as aggressive as ever, maybe even more so. Plaintiffs' attorneys racked up impressive verdicts and settlements in the usual areas like securities fraud and products liability since last year, while exploring fresh ground against self-serving managers and controlling shareholders in corporate deal-making.

They even got something like a class action to fly in Europe, as staff reporter Vesna Jaksic discovered.

The bottom lines on these cases look bigger, too. The top five firms in the Securities Class Action Services ranking of plaintiffs' firms by settlement value brought in nearly \$12.8 billion in 2006, compared with a shade less than \$9.8 billion in 2005.

What we've got here, said Stanley Bernstein of Bernstein Liebhard & Lifshitz in New York, is "the law of unintended consequences of the Securities Reform Act" and other tort reforms.

That process has culled the herd of weaker cases, but freed plaintiffs' counsel to more vigorously litigate the cases that remain. Witnesses who might have escaped notice in the past are more likely to find themselves in a deposition room now.

"When you finally survive all the hurdles that Congress and the courts have put in the way, you've got an unbelievable case—and that case is going to be pursued to the very end," Bernstein said. "The ultimate dollars paid are going to be bigger."

"Good firms are creative and tenacious and will find ways to win," said Sherrie R. Savett, a partner at Philadelphia's Berger & Montague. "Even if the cases are difficult and there are obstacles—legal obstacles, difficult judges, evidentiary problems."

As Bernstein noted: "Fraud's the same." And a vigilant plaintiffs' bar is perhaps the best corrective, as staff reporter Lynne Marek reports. Our regular contributor Peter Page found another example involving health insurers accused of gaming the system to deny or delay reimbursements to doctors. Matthew Hirsch of NLJ affiliate *The Recorder* examines what happens when a settlement doesn't stay settled.

The Hot List is our unscientific survey of the litigation scene since the summer of 2006. We asked our readers to nominate exemplary firms that devote at least half of their resources to plaintiffs' work, and which have achieved at least one significant win during that period. "Significant" means winning an awful lot of money through a bench or jury verdict, or otherwise defining industry practices or the progress of related litigation.

We also considered firms' track record over the preceding five years, and supplemented the fat pile of nominations we received with our own research. We recognize that important cases don't always end in verdicts, so we highlight a number of significant settlements here. We admit that the process was subjective, and that some wonderful firms didn't quite make the cut.

Of those that did, seven firms were on last year's list—including Coughlin Stoia Geller Rudman & Robbins, minus former name partner William S. Lerach, one of the year's casualties.

—MICHAEL MOLINE

Seeger Weiss

Don't let their relative youth mislead you. The attorneys at New York-based Seeger Weiss are all on the dewy side of 50, but rank among the country's top plaintiffs' lawyers. Name partner Christopher A. Seeger, for example, was appointed plaintiffs' co-lead attorney in the Vioxx multidistrict litigation in New Orleans, and in 2005 was chief negotiator in a \$700 million settlement for patients who took Eli Lilly & Co.'s anti-schizophrenia drug Zyprexa, which has been linked to diabetes. Stephen A. Weiss, meanwhile, has been causing a stink over pollution caused by factory farms.

NOTEWORTHY CASES:

■ **Humeston v. Merck & Co.**, No. ATL-L-2272-03 (Atlantic Co., N.J., Super. Ct.). Lead co-counsel Christopher A. Seeger, David R. Buchanan, Moshe Horn, Laurence Nassif and Jeffrey Grand. Houston-based Lanier Law Firm participated in the first stage of the litigation. Vioxx litigation was supposed to be cooling down, but here the trial team persuaded the judge to toss a defense verdict, and then secured a jury verdict that Merck failed to warn of cardiovascular risks posed by the anti-arthritis drug. The team went on to win awards totaling \$20 million for heart attack victim Frederick Humeston and his wife, plus \$27.5 million in punitive damages.

■ **Adwell v. Contigroup Cos.**, No. 02-CV-221544 (Jackson Co., Mo., Cir. Ct.). Co-lead counsel Stephen A. Weiss and Michael S. Farkas. This \$4.5 million verdict for six neighbors of a massive hog farm is believed to be one of the largest to date involving industrial agriculture, and could prove a bellwether for another 250 plaintiffs whose claims remain pending. After the jury concluded that there were grounds for punitive damages, the defense agreed to settle for the amount awarded in compensatory damages.

■ **McCarrell v. Hoffmann-LaRoche Inc.**, No. ATL-L-1951-03 MT (Atlantic Co., N.J., Super. Ct.). Co-lead counsel David R. Buchanan and Michael L. Rosenberg, with Hook, Bolton, Kirland & McGhee of Pensacola, Fla. This was the first of 400 similar cases to reach trial in Roche's home state, and the \$2.6 million plaintiffs' verdict doesn't bode well for the company. The jury found that LaRoche failed to warn that its anti-acne drug Accutane could cause debilitating inflammatory bowel disease.