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THE PLAINTIFFS' HOT LIST

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A different sort of trial for plaintiffs

As we prepared this, the fifth annual installment of *The National Law Journal's* Plaintiffs' Hot List, one newsroom wag suggested a more appropriate title might be "The Not List."

He didn't mean to suggest that the plaintiffs' bar had dried up and blown away, exactly. The 11 firms we highlight here all managed impressive feats of lawyering, including verdicts and settlements worth billions of dollars.

It was more of a comment on the difficulties plaintiffs have been attempting to cope with in light of advances by the tort reform: once friendly jurisdictions in Texas, Mississippi and elsewhere that gradually have grown cold; the trend toward removing class actions to less accommodating federal courts; and the increasingly combative mindset that the defense bar is bringing to cases.

And the full-on train wrecks, like the indictment of Milberg Weiss Bershad & Schulman, or the silica litigation in Texas that collapsed when the defense persuaded a federal judge that the plaintiffs and their doctors were manufacturing claims. Federal law enforcement and congressional investigators have been nosing around in that case. It would appear that the days when plaintiffs' attorneys could tuck "junk cases" amid strong ones and slide the package through the courts appear to be over, as staff reporter Peter Geier reports. [See "The path gets rocky and steep".]

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Malaise no doubt is too strong a word for it. But it's telling when the Association of Trial Lawyers of America feels compelled to change its name to a presumably more felicitous American Association for Justice.

All that notwithstanding, the plaintiffs' bar showed glimmers of real brilliance over the past year. Motley Rice parlayed a public nuisance theory into a verdict against three former lead paint manufacturers estimated to be worth perhaps \$3.5 billion, as staff reporter Sheri Qualters reports. [See "Novel theory pays off big".] The firm represented the state of Rhode Island in that action, and has been talking to authorities about launching similar litigation in other states.

Elsewhere, plaintiffs' firms are on the front lines of the struggle over control of corporate boardrooms, using litigation on behalf of large institutional investors. Our regular contributor Emily Heller reports on the situation. [See "Investors press their demands".]

Other litigators are getting all touchy-feely on us. Inspired by legal legend Gerry Spence, these attorneys practice the art of "psychodrama." They attempt to get into the head of plaintiffs and jurors—the better to drive home what's at risk in a

case on an emotional level, in a way they don't teach in law school, Matthew Hirsch of our San Francisco affiliate, *The Recorder*, reports. [See "Getting inside a client's head".]

The Hot List itself was based on our survey of the litigation scene over the past 12 months. We asked our readers to nominate plaintiffs' firms with at least one significant win within the period, plus an impressive record of victories over the preceding five years. That meant prevailing in a bench or jury trial worth lots of money or testing a legal theory with the potential to shape future litigation. We looked for firms that devoted at least 50% of their resources to plaintiffs' work.

We acknowledge that the results are highly subjective. Our methods worked against firms that reached significant settlements, particularly when the terms were confidential. Some settlements reached over the past year were just too big for us to ignore, however—particularly since it so often takes skilled lawyering in the courtroom to get the other side to agree to see reason.

Some cases we talked about last year continue to produce plaintiffs' recoveries—the opt-out cases from the WorldCom Inc. securities litigation, for example.

We note that only six of the firms on last year's list make reappearances here—testimony to the cyclical nature of life in a plaintiffs' firm, perhaps, and a reminder that "justice," to borrow the trial attorneys' word, isn't necessarily an easy way to earn a living. **NLJ**

Girardi & Keese

Girardi & Keese reports recoveries of more than \$1 billion since its founding in 1965. With expertise in business litigation, entertainment law, personal injury, products liability and more, the firm is perhaps best known for pursuing toxic torts. It was Girardi & Keese, with Engstrom, Lipscomb & Lack, which beat Pacific Gas & Electric Corp. in the groundwater contamination case, launched by the late Ed Masry, immortalized in the movie *Erin Brockovich*. The 22-lawyer firm maintains offices in Los Angeles and San Bernardino, Calif.

NOTEWORTHY CASES:

■ **Natural Gas Antitrust Cases I, II, III & IV**, nos. JCCP 4221, 4224, 4226 & 4228 (San Diego Co., Calif., Super. Ct.). Co-lead counsel Thomas V. Girardi, with Pierce O'Donnell of O'Donnell and Schaeffer, and Engstrom, Lipscomb & Lack. O'Donnell presented jurors with the antitrust case against Sempra Energy arising from the California energy crisis, while Girardi engaged in more than 100 negotiation sessions with Sempra. In the end, Sempra agreed to pay \$377 million in cash, plus discounts and other savings for a total recovery of nearly \$1.9 billion for ratepayers.

■ **Allen v. Aerojet-General Corp.**, No. 97AS06295 (Sacramento, Calif., Super. Ct.). Lead counsel John Courtney with Gary Praglin of Engstrom, Lipscomb & Lack. The plaintiffs secured a \$14 million verdict over groundwater pollution near a rocket fuel manufacturing plant, plus a finding that the plaintiffs were entitled to punitive damages. The case settled for \$25 million in the early morning hours following the verdict.

■ **Aguayo v. PG&E Corp.**, No. BC123749 (Los Angeles Co., Calif., Super. Ct.). Co-lead counsel Thomas V. Girardi, with Engstrom, Lipscomb & Lack. This case, sometimes referred to as "Erin Brockovich II," featured similar claims and settled for \$300 million.