

Perspectives

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Compensatory Damages Against Philip Morris Et Al Sets Record

Compensatory damages of \$37.5 million, the largest award ever against the tobacco industry, was awarded to John and Yolanda Lukacs by a Miami-Dade jury after a two-week trial before Judge Amy Donner. Phil Gerson tried the case with co-counsel Steve Hunter and Miles McGrane. The trial was limited to compensatory damages since the Engle class action had already determined punitive damages on behalf of the entire class.

The issues in the Lukacs trial were further limited to causation, reliance upon industry fraud and misrepresentation and alleged comparative negligence of the client. In his opening statement, Phil Gerson chronicled the life of John Lukacs in the years 1925 to 2002, including references to the various US presidents during the plaintiff's life.

Gerson used a metaphorical time machine to bring the jury through Mr. Lukacs's childhood, adolescence, military career, education, childrearing, professional career and prolonged illness.

He effectively cross-examined the tobacco industry historian, who ultimately admitted his opinions were not "fair." Industry advertisements in Life Magazine were presented to show reliance by the plaintiff. (???) Along with Steve Hunter, Phil Gerson discredited the tobacco company's medi-



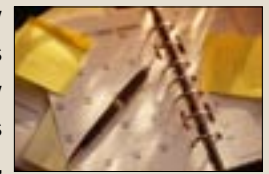
cal experts who tried to attribute the plaintiff's tongue and bladder cancer to other causes. Phil handled all the damage witnesses and argued damages to the jury. The request for \$25 million for the plaintiff and \$12.5 million for his wife was exactly what the jury came back with. "We did our own focus groups and mock trials in our office several months before trial. This research helped us prepare our damage case and damage prayer to the jury," Gerson stated. ???

The jury verdict was the largest amount ever awarded for compensatory damages to a single individual and spouse in Miami-Dade County as well as the largest verdict anywhere against the tobacco industry. Gerson & Schwartz is grateful that the trial judge allowed an early trial based on Ms. Lukacs's declining health, despite vigorous tobacco industry opposition that included interlocutory appeal of the order denying defense motions for continuance and further delay.

On a sad note, our client, John Lukacs, a distinguished and admired lawyer himself, died of cancer caused by cigarette smoke in October of this year. Our heartfelt sympathies are with the entire Lukacs family for their great loss. ■

2002 Winning Case Record

2002 was a busy year: The firm was involved in five jury trials, close to its busy 2001 schedule,



when it tried six. The partners' thirty-two years of practice and 300 jury trials are a milestone matched by very few lawyers. "This record reflects our determination to get a full cup of justice for our clients. We won't cave in and settle unless its fair and our client wants to settle the case," says Phil Gerson.

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Significant Settlements

Sometimes it seems like we try every case. Although we are known in the defense bar as lawyers who will not cave in and settle for less than our client deserves that reputation helps us get good settlements. Here are some of the most interesting cases this year.



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Last Year's Trials

We recently handled two significant tobacco cases. In Lukacs, we represented a smoker, the first Engle class member case to be tried since the class-action trial in 1999. This case resulted in a record-setting verdict of \$37.5 million. (see p. ___ for more information about this case). The other tobacco case involved a flight attendant exposed to second-hand smoke. Although there was a defense verdict post trial, proceedings are ongoing and more flight attendant trials are set for this year.



This year's trial calendars will include two automobile cases. One involves a toddler pedestrian hit by a tourist rental car driver. Fortunately, the child's injuries were modest but when former counsel proposed a small settlement for court approval, respected trial lawyer Mike Josephs acting as guardian **ad-litem** refused to recommend the settlement. Gerson & Schwartz was substituted and after three days of trial, a far better settlement was achieved. The structured settlement will provide significant future benefits and was approved by the guardian and the court. A guardian **at litem** who spoke up for what is right and our hard work paid off in obtaining a fair result.

In the other auto case, we received a verdict against State Farm for an uninsured motorist's negligent maintenance of the vehicle's hood support mechanism, resulting in a hand injury. The insurance company made no offer to settle. During cross-examination, the defense doctor was discredited and the jury awarded \$300,000 for injury to the tips of the plaintiff's 4th and 5th fingers.

Our final trial of the year was a nursing home case. We finished out the year with a verdict over \$900,000 on the Friday before Christmas. (See page 4 for more information about this case) ■

From Page 1

Significant Settlements

Sometimes it seems like we try every case. Our reputation among the defense bar for our refusal to cave or settle for less than our client deserves helps us get good settlements. Our most interesting cases this year include the following:

\$1.6 MILLION SETTLEMENT FOR CLIENT WHOSE DEFECTIVE TRUCK WAS REAR-ENDED

A Haitian immigrant and flea-market vendor was on her way to the Thunderbird drive-in outdoor sale in Broward when her slow-traveling derelict vehicle was rear-ended by a utility company truck. The plaintiff, who was unbelted, fell from her panel truck onto the interstate, where she was run over by her own vehicle, which then left the roadway and wound up in a roadside cemetery. Despite substantial comparative negligence, we **achieved a confidential** settlement of \$1.6 million for the plaintiff's orthopedic injuries. Experts on liability and damages were enlisted to focus the injuries and convince the defendant that settlement was in its best interests. ■



\$2.1 MILLION SETTLEMENT FOR JOGGER HIT BY DRUNK DRIVER

An intoxicated driver struck a midnight jogger, causing mild brain injury. The trial case required significant preparation and analysis by our legal team, ranging from accident reconstruction, human factors and toxicology reports to vocational ____, the employment of a rehabilitation/life care planner for the plaintiff and an expert economist.

Ed Schwartz's research and **memo-randa of law (??)** convinced the judge that the statutory \$100,000 cap on the leased vehicle's liability did not apply because of variances in the lease and statutory requirements. **Liability** of the

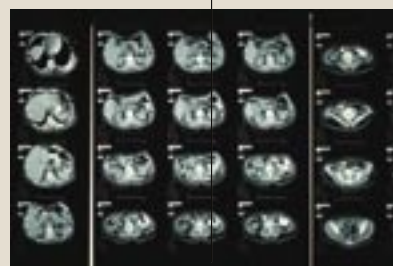


leasing company was therefore not limited to the \$100,000 primary liability insurance. State Farm, the liability carrier, attempted to pay the plaintiff's medical bills as part of the defendant's probation sentence that we helped to negotiate in the criminal case. Afterward, we succeeded in establishing that the payments were voluntarily and that State Farm remained liable for its policy limits, which were paid. Gerson & Schwartz also insisted on a **substantial out-of-pocket** contribution from the intoxicated driver before settling for a total of \$2.1 million dollars. ■

\$500,000 SETTLEMENT FOR DIABETIC IN FENDER BENDER

A 30-year-old who had undergone a kidney-pancreas transplant noticed knee pain after a minor accident. While in the hospital several months later, a previously undiagnosed heel ulcer was noticed by hospital personnel. Careful review of extensive medical records and interviews with

her physicians **led to a \$500,000** settlement. **Structuring benefits to protect a minor child and a special needs trust to protect public assistance benefit eligibility were solutions to practical problems which otherwise would have made settlement impossible.** ■



About Gerson & Schwartz, P.A.

Gerson & Schwartz, P.A. is recognized within the legal profession for its expertise, lengthy and successful track record, and commitment to its clients. The firm's attorneys have extensive experience assisting accident victims in automobile, aviation, marine, premises liability, medical malpractice, defective product and violent crime cases.

Gerson & Schwartz, P.A. helps clients through all phases of injury and/or death claims, from initial investigation, to both trial and appellate representation, as required. Contrary to the trend with law firms in practice today, Gerson & Schwartz, P.A. has remained small in order to ensure a high degree of personalization and quality.

Each client case is worked on by all three of the firm's senior attorneys, so no client is ever passed off to a junior or inexperienced lawyer. All of the firm's lawyers are honors graduates of the University of Miami School of Law, where legal studies emphasize Florida law. Furthermore, each has practiced extensively in all state and Federal Florida Courts.

Practice Areas

Gerson & Schwartz, P.A. specializes in all types of personal injury and wrongful death cases. Sub-specialty practice areas include:

- **Motor Vehicle Accidents**
- **Marine and Airline Accidents**
- **Slip and Fall Accidents**
- **Medical Malpractice**
- **Defective Products**
- **Victims of Criminal Acts**

Motor Vehicle Accidents

Motor vehicle accidents are the most common types of personal injury cases handled by law firms. Gerson & Schwartz, P.A. is at the forefront in its creative use of video, animated reconstruction and computer graphics. The firm's use of advanced technology is just one of the methods it uses to bring about just and successful outcomes for clients.



Marine Accidents

Pleasure boat operation, cruise ship passenger and seaman claims have been part of Gerson & Schwartz, P.A. practice for many years. G&D lawyers fully understand both the international and local rules of law applicable to admiralty and maritime



Airline Accidents

Passengers on commercial airlines and small private aircraft also need protection from the dangers of air travel, including pilot error, neglect of proper maintenance or defective design. Gerson & Schwartz, P.A. lawyers have handled numerous cases involving both domestic and international aircraft accidents.



Slip And Fall Accidents

From supermarket spills to defective stair tread design, Gerson & Schwartz, P.A. has helped accident victims recover damages from landlords and business operators. The firm has sought and obtained justice for its clients from virtually every type of premises liability case, from drownings, collapsing structures, electrocution, and fire to hidden defects.



Medical Malpractice

According to the National Academies, every year, more Americans are killed by medical negligence than die in automobile accidents. Countless more victims survive with lifetime disabilities.

For three decades, members of the firm have fought back against doctors and hospitals to recover just compensation for victims. Gerson & Schwartz, P.A. has experience in almost every medical specialty, undertaking difficult cases to help define the standard of practice under the law: Recently, the firm broke new ground in medical malpractice law by successfully recovering damages for loss of cryopreserved embryos.



Before a medical malpractice case is accepted, it is reviewed by at least two medical experts. We consult with leading experts in all fields of medicine routinely. Most often, medical scholars from other states are used to consult and, if necessary, to testify.

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Practice Areas

Defective Products

Consumers expect products to be safe. Against the enormous economic power and might of manufacturers, the plaintiff's bar has fought for the public's right to products free of defects. Gerson & Schwartz, P.A. has experience with defective automobiles and trucks, tires, medical devices, industrial equipment and other products. Most cases have involved design defects. The firm collaborates with leading engineers to identify defects and demonstrate alternative safer and improved designs.



Crime Victims

Philip M. Gerson has been a national leader in the fight to obtain compensation from property owners and business operators for foreseeable and preventable crimes that victimize tenants and members of the public. We have been innovative in the use of expert witnesses to establish legal responsibility for crime victims. Our lawyers have written and lectured extensively in this growing area of the law.



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