

CRAIN'S LIST 2004'S BIG LITIGATION

Verdict **Appealed** **Settled**

More than \$1 billion at stake

Case open

We went in search of the big cases Chicago lawyers worked on in 2004. Not surprisingly, the cases run the gamut from class actions to antitrust to pro bono work. Given that variety, we make no attempt to rank the 25 cases listed here, but present the results as a study of prominent and important work performed by Chicago lawyers this year.

Research by Kathryn Peterson

U.S. v. Big Tobacco
The Lawyers: David M. Bernick (Kirkland & Ellis LLP), Dan K. Webb (Winston & Strawn LLP)
The Clients: Brown & Williamson Tobacco Corp., Philip Morris USA Inc.
Venue: U.S. District Court, Washington, D.C.
Case description: *Civil racketeering.* Mr. Bernick is defending Brown & Williamson and Mr. Webb is defending Philip Morris in the Justice Department's \$280-billion case alleging the tobacco industry knowingly deceived the public about the health risks of smoking. Trial began Sept. 22.

Mash v. Brown & Williamson Tobacco Corp.
The Lawyer: Andrew R. McGaan (Kirkland & Ellis LLP)
The Client: Brown & Williamson Tobacco Corp.
Venue: U.S. District Court, St. Louis.
Case description: *Wrongful death.* The first individual-smoker case to be tried since the merger of R. J. Reynolds Tobacco Co. and Brown & Williamson Tobacco Corp. A St. Louis jury returned a verdict Sept. 30 that Brown & Williamson was not responsible for the illness of Stella Hale, a smoker who died of lung cancer. Brown & Williamson successfully argued that Ms. Hale had long been aware of the health risks of nicotine, but chose to smoke anyway.

Pritzker v. Pritzker
The Lawyers: Dan K. Webb (Winston & Strawn LLP), Lazar Raynal (McDermott Will & Emery LLP); Barry S. Rosen (Sachnoff & Weaver Ltd.)
The Clients: Matthew, Liesel and Robert Pritzker
Venue: Cook County Circuit Court
Case description: *Breach of fiduciary duty.* Pritzker heirs Matthew Pritzker, 22, and Liesel Pritzker, 20, claim their father, Robert Pritzker, and 11 older cousins looted more than \$1 billion from their trust funds. Mr. Webb represents Matthew and Mr. Raynal represents Liesel. Mr. Rosen is defending their father.

Jays Foods Inc. v. Frito-Lay Inc.
The Lawyer: Paul R. Garcia (Kirkland & Ellis LLP)
The Client: Jays Foods Inc.
Venue: U.S. District Court, Chicago
Case description: *False advertising.* A federal judge issued an injunction ordering snack food giant Frito-Lay to stop an advertising campaign that claimed Chicagoans prefer Lay's potato chips over Chicago-based Jays' chips. The parties reached a confidential settlement in August.

Equal Employment Opportunity Commission v. Morgan Stanley & Co.
The Lawyer: Emily Nicklin (Kirkland & Ellis LLP)
The Client: Morgan Stanley & Co.
Venue: U.S. District Court, New York City
Case description: *Discrimination.* Ms. Nicklin defended Morgan Stanley against claims filed by dozens of women who accused the investment firm of systematically denying them promotions and pay increases. The case settled in July for \$54 million. As part of the settlement, Morgan Stanley agreed to institute steps to ensure equal opportunity for women in the future.

UAL Corp. bankruptcy
The Lawyer: Jamie Sprayregen (Kirkland & Ellis LLP)
The Client: UAL Corp.
Venue: U.S. Bankruptcy Court, Chicago
Case description: *Bankruptcy.* Mr. Sprayregen is representing the parent of the world's second-largest air carrier, United Airlines, and 27 affiliates and subsidiaries in UAL's Chapter 11 bankruptcy filing. The case is among the largest bankruptcy actions ever filed, with assets and liabilities in excess of \$20 billion.

Cook County Administration Building fire (Wheeler E. Chapman III et al. v. 69 W. Washington Management Co. LLC)
The Lawyers: Dan Boho (Hinshaw & Culbertson LLP); Robert Clifford, Kevin Durkin (Clifford Law Offices)
The Clients: 69 W. Washington Management Co. LLC; Wheeler E. Chapman and others
Venue: Cook County Circuit Court
Case description: *Wrongful death, negligence.* Hinshaw and Clifford lawyers face off in litigation involving six people who were killed and more than a dozen who were injured in a fire at the Cook County Administration Building in October 2003. Mr. Clifford leads the plaintiff team; Mr. Boho is defending the building management firm against the 20 lawsuits filed.

E2 nightclub litigation
The Lawyers: Michael Freeborn (Freeborn & Peters LLP), Oran F. Whiting (Sedgwick Detert Moran & Arnold LLP)
The Clients: Clear Channel Broadcasting Inc.
Venue: Cook County Circuit Court
Case description: *Wrongful death, negligence.* Dozens of lawsuits were filed on behalf of 21 people who died or were injured at E2 nightclub on Feb. 17, 2003, when hundreds of patrons were trampled trying to flee the club after security guards pepper-sprayed the crowd to break up a fight. Messrs. Freeborn and Whiting represent Clear Channel, which promoted the event and employed the DJ who allegedly urged security

Emerald Casino Inc. bankruptcy
The Lawyers: Jamie Sprayregen, Joseph U. Schorer (Kirkland & Ellis LLP)
The Client: Emerald Casino Inc.
Venue: U.S. Bankruptcy Court, Chicago
Case description: *Bankruptcy.* Under Emerald's proposed bankruptcy plan—brokered by Kirkland lawyers after intense negotiations with creditors, investors and the government—the casino company would pay off its creditors in full with interest. In reorganizing its \$500-million gaming operations, Emerald auctioned off its assets.

Equal Employment Opportunity Commission v. Custom Cos. et al.
The Lawyers: Diane E. Gianos, Bennett Epstein, David B. Goroff (Foley & Lardner LLP)
The Client: Custom Cos.
Venue: U.S. District Court, Chicago
Case description: *Class action, sex discrimination.* Establishing a firm cutoff date in a sexual harassment action, Judge Harry D. Leinenweber ruled that Northlake-based shipping firm Custom Cos. could not be sued for sexual harassment by female employees who left the company before March 20, 1998. Judge Leinenweber threw those cases out because the women left the company more than 300 days before the Equal Employment Opportunity Commission received its first harassment complaint about Custom. Judge Leinenweber's ruling conflicted with a prior court decision in 2001 holding that a class of female employees who left Dial Corp. prior to the 300-day cutoff could pursue their claims as long as they proved that the company had engaged in a long-standing practice of sexual harassment.



guards to use pepper spray on patrons, resulting in a stampede. More than 25 lawyers from various Chicago law firms are representing the plaintiffs.

Sept. 11 litigation
The Lawyers: Michael R. Feagley (Mayer Brown Rowe & Maw LLP); Gary Westerberg (Lord Bissell & Brook LLP)
The Client: UAL Corp.
Venue: U.S. District Court, New York City
Case description: *Wrongful death, negligence.* Mr. Feagley is defending United Airlines against 125 lawsuits arising from the Sept. 11 terrorist attacks. Mr. Westerberg is representing defendant Globe Aviation Services Inc., an airport security contractor. The claims, filed in late 2001, seek billions of dollars in recovery for the deaths of the passengers aboard the aircraft and property damage to the



World Trade Center. The lawsuits allege that negligence by United, American Airlines, Globe, the airports, other airlines and Boeing Co. enabled the terrorists to succeed in a plot to hijack planes and fly them into the World Trade Center and the Pentagon.

In re Oracle Corp.
The Lawyers: Alan Salpeter, Javier Rubinstein (Mayer Brown Rowe & Maw LLP)
The Client: Oracle Corp.
Venues: Delaware Court of Chancery, California Superior Court in San Francisco
Case description: *Breach of fiduciary duty.* Mayer Brown attorneys are defending Oracle CEO Larry Ellison and Chairman Jeff Henley against allegations that the software giant made overly optimistic projections about its third-quarter 2001 financial performance. Oracle shareholders sued after Oracle missed its earnings projections, causing its market value to tumble \$3 billion.

Memisovski v. Maram (pro bono case)
The Lawyers: David J. Chizewer, Frederick H. Cohen (Goldberg Kohn Bell Black Rosenbloom & Moritz Ltd.)
The Clients: On behalf of 600,000 children
Venue: U.S. District Court, Chicago
Case description: *Class action.* A federal judge ruled in August that the Illinois Department of Public Aid and the Illinois Department of Human Services unlawfully denied equal access to health care to 600,000 Medicaid-eligible children in Cook County. Messrs. Chizewer and Cohen served as lead trial counsel in cooperation with Chicago-based Health & Disability Advocates and the Sargent Shriver National Center on Poverty Law. John Huston, a welfare litigator from the Illinois attorney general's office, represented the state departments. The case is now in the remedy phase.

Chicago Board of Trade "minority" members (Feldheim v. Sims)
The Lawyers: Barry S. Rosen (Sachnoff & Weaver Ltd.); Garrett B. Johnson (Kirkland & Ellis LLP)
The Client: Chicago Board of Trade
Venue: Cook County Circuit Court
Case description: *Class action.* Mr. Rosen represented 2,200 Chicago Board of Trade members seeking a larger allocation of shares when the board becomes a for-profit entity. After four years and two appellate victories, Mr. Rosen obtained a settlement, approved in September, which granted minority members an additional 10.4% equity allocation, valued at more than \$200 million. The settlement opens the door for the exchange to restructure. Mr. Johnson represented the defendants.

U.S. v. Alan MacKenzie et al.
The Lawyer: Robert W. Tarun (Latham & Watkins LLP)
The Client: TAP Pharmaceutical Products Inc.
Venue: U.S. District Court, Boston
Case description: *Fraud.* Mr. Tarun defended TAP and the company's national sales director against criminal charges of defrauding the federal government by giving kickbacks to doctors in violation of the Prescription Drug Marketing Act. The U.S. attorney's office in Boston called the case the biggest health care fraud trial in the country. Before trial, the company pleaded guilty. As part of a plea deal with federal prosecutors, TAP agreed to pay an \$885-million fine. The sales director and 10 co-defendants were acquitted in July after a three-month jury trial.

Rhode Island nightclub fire
The Lawyer: Edward M. Crane (Skadden Arps Slate Meagher & Flom LLP)
The Client: Anheuser-Busch Inc.
Venue: U.S. District Court, Providence, R.I.
Case description: *Wrongful death, negligence.* A fire that broke out during a rock show in February 2003 at the Station Night Club in West Warwick, R.I., led to dozens of personal injury and wrongful death actions against Anheuser-Busch, which had sponsored the event. Seven actions are pending in federal court in Rhode Island, asserting claims on behalf of 100 people who were killed or injured in the fire, caused by pyrotechnics used during the performance.

In re high-fructose corn syrup antitrust
The Lawyers: Michael J. Freed (Much Shelist Freed Denenberg Ament & Rubenstein P.C.); Terry M. Grimm and Joseph A. Spiegler (Winston & Strawn LLP)
The Clients: Archer Daniels Midland Co.; A. E. Staley Manufacturing Co.
Venue: U.S. District Court, Peoria.
Case description: *Class action.* After six years of discovery, Staley Manufacturing, the last defendant in a high-fructose corn syrup price-fixing class action, settled the case in July by agreeing to pay \$100 million to the plaintiffs, which included Coca-Cola Co. and PepsiCo Inc. Staley's payout brought total settlements to \$531 million, making the corn syrup litigation one of the nation's largest antitrust class-action settlements. Co-defendant Archer Daniels Midland settled in June for \$400 million. Earlier this year, Cargill Inc. and American Maize-Products Co. settled for a combined total of \$24 million.

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Pickett v. Tyson Fresh Meats Inc.

The Lawyer: Bill Baumgartner (Sidley Austin Brown & Wood LLP)

The Client: Tyson Fresh Meats Inc. (formerly IBP Inc.)

Venue: U.S. District Court, Montgomery, Ala.

Case description: *Class action.* The case was filed against IBP Inc. in 1996 by six cattle ranchers who alleged that IBP had used marketing agreements to drive down cattle prices. A jury returned a verdict for the plaintiffs in February, but in April a judge threw out the \$1.28-billion-plus verdict, saying the company had not illegally manipulated cattle prices. Tyson Foods Inc. acquired IBP in 2001.



Original IFPC Shareholders Inc. as assignee of the Goeken Group Corp. and In-Flight Phone Corp. v. AT&T Wireless Services Inc.

The Lawyers: John Bannon, Roger Pascal, Charles Peters, Linda Stevens (Schiff Hardin LLP); John Kincaid (Mirabella & Kincaid P.C.)

The Client: AT&T Wireless Services Inc.

Venue: DuPage County Circuit Court

Case description: *Class action.* A team of Schiff Hardin lawyers successfully defended AT&T and Claircom Communications at trial against allegations of trade secret misappropriation involving air-to-ground telephone service technology for airline passengers. The plaintiffs sought more than \$2 billion in damages. In-Flight Phone Corp. is pursuing an appeal of the jury verdict in favor of AT&T despite filing for bankruptcy this year.



F. Hoffman-La Roche Ltd. v. Empagran S.A.

The Lawyer: Stephen M. Shapiro (Mayer Brown Rowe & Maw LLP)

The Client: BASF Corp.

Venue: U.S. District Court, Washington, D.C.

Case description: *Class action.* This case was one of 75 civil actions filed in the wake of the Justice Department's criminal investigation into allegations of international price fixing at BASF and other vitamin manufacturers in the mid-1990s. Mr. Shapiro, who defended the vitamin sellers, successfully argued the case to the U.S. Supreme Court, which ruled 8-0 on June 14 that the plaintiffs—vitamin buyers from the Ukraine, Australia, Ecuador and Panama—cannot sue in U.S. courts for antitrust violations that occurred overseas. The foreign buyers were seeking billions of dollars in damages. The Supreme Court sent the case back to the lower court to determine whether the plaintiffs could pursue the case on different grounds.



Conseco Inc. bankruptcy

The Lawyers: Jamie Sprayregen, Anne Marrs Huber, Anup Sathy (Kirkland & Ellis LLP)

The Client: Conseco Inc.

Venue: U.S. Bankruptcy Court, Chicago

Case description: *Bankruptcy.* While representing Conseco in its Chapter 11 bankruptcy filing, Kirkland's lawyers got court approval to sell the assets of Conseco's finance subsidiaries for more than \$1 billion in cash. The firm also represented Conseco affiliates in the resolution of contract disputes with Donald Trump

and the resulting \$1.4-billion sale of Mr. Trump's interest in the General Motors Building in New York.



In re Cendant Corp. securities

The Lawyers: Alan Salpeter, Caryn Jacobs (Mayer Brown Rowe & Maw LLP)

The Client: Ernst & Young

Venue: U.S. District Court, Newark, N.J.

Case description: *Class action.* Ernst & Young is facing several consolidated federal securities fraud class actions, opt-out lawsuits and Securities and Exchange Commission proceedings arising out of a \$500-million earnings restatement by Cendant that was announced in 1998. After the company's disclosures, it lost more than \$15 billion in market capitalization. Cendant's internal investigation revealed a conspiracy among 20 high-level financial reporting employees to falsify the company's earnings and mislead the auditors. Ernst & Young and Cendant reached separate settlements in the primary class-action case brought by Cendant shareholders. However, both companies are suing each other to recover the money they paid Cendant shareholders in the two settlements. Cendant is suing Ernst & Young to recover \$2.85 billion it paid shareholders in the settlement; Ernst & Young is countersuing Cendant for \$335 million.

Drake Hotel arbitration

The Lawyer: Howard J. Swibel (Arnstein & Lehr LLP)

The Client: Hilton International Co.

Venue: Private arbitration

Case description: *Lease dispute.* Mr. Swibel defended the hotel company, which owns and operates the Drake Hotel, during arbitration over a claim by the partnership that owns the land beneath the hotel. The partnership had asked for a 75% increase in rent, which had not been raised since 1999. On Oct. 5, the arbitration panel decided that rent would be raised by less than 12%.



Sims v. Allstate Corp.

The Lawyer: Margo Weinstein (Sonnenschein Nath & Rosenthal LLP)

The Client: Allstate Corp.

Venue: St. Clair County Circuit Court

Case description: *Class action.* In April, a jury sided with insurance giant Allstate in a class action brought on behalf of 387,000 policyholders who claimed the Northbrook-based auto insurer owed its customers more than just the repair or replacement of vehicles after accidents. An East St. Louis couple filed the suit last year, claiming the company failed to pay them the amount their vehicle decreased in value after two separate accidents. Plaintiffs sought approximately \$300 million in damages. But the verdict, a victory for the insurance industry, makes Allstate responsible only for repair costs.



State of New York v. Richard Grasso

The Lawyer: Dan K. Webb

(Winston & Strawn LLP)

The Client: New York Stock Exchange

Venue: U.S. District Court, New York City

Case description: Mr. Webb led an internal investigation of New York Stock Exchange compensation and corporate governance practices related to a \$139.5-million pay package that led to the resignation of the exchange chairman, Mr. Grasso. Mr. Webb also represents the stock exchange in litigation brought by New York Attorney General Eliot Spitzer against the stock exchange and Mr. Grasso, alleging violations of New York's not-for-profit corporation law relating to excessive compensation. Mr. Grasso has denied wrongdoing and is countersuing the exchange.