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Lawyer-Created Class Actions: Defeating, Dismissing, and Defending Standing, Causation, Typicality, and Adequacy

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Today's faculty features:

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Lawyer-Created Class Actions: Defeating, Dismissing, and Defending

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LAW ELEVATED

What's past is prologue.

Aggregate litigation like class actions is nothing new.

- Yesterday it was mass toxic tort suits joining hundreds to thousands of claimants filed in overburdened jurisdictions with “specialized” procedures for such cases.

- In one infamous case, the West Virginia Supreme Court rejected a defendant’s pretrial challenge to a decision by the state’s “Mass Litigation Panel” to “consolidate thousands of unrelated individual asbestos personal injury claims into a single trial” (supposedly to have been conducted in the Charleston Coliseum).*

* *State ex rel. Mobil Corp. v. Gaughan*, 563 S.E.2d 419 (W. Va. 2002).

Aggregate litigation like class actions is nothing new.

- The litigation landscape has changed much in the past two decades.
- State tort reform and other forces have curbed some of the most egregious abuses of the traditional mass torts of yesteryear.
- But, as they say, THE MORE THINGS CHANGE, THE MORE THEY STAY THE SAME…

Lawyer-driven “entrepreneurial model” class actions are the new mass tort.

So what is the "entrepreneurial model"?

The Entrepreneurial Model

- A shift “from the traditional model of an injured person seeking a lawyer” to “an entrepreneurial model under which plaintiff lawyers and their agents actively recruited hundreds of thousands of potential litigants who could claim . . . exposure to asbestos containing products.”*

- Professor Brickman: “[A] substantial percentage of these” claimants “had no disease caused by asbestos exposure” and that “the claims were often supported by specious medical evidence and entrepreneurially generated witness testimony.”*

* Lester Brickman, On The Applicability Of The Silica MDL Proceeding To Asbestos Litigation, 12 Conn. Ins. L. J. 35, 36 (2006) [hereinafter Brickman, Silica MDL and Asbestos].

The Elements

The Entrepreneurial Model: Client Recruitment

- A “massive client recruitment effort.”*
- Equally critical for lawyer-driven class actions, but far easier.
- A class action just takes one-and it may only be a friend or co-worker away!

*Brickman, *Silica MDL and Asbestos* at 37.

The Entrepreneurial Model: Client Recruitment

- *Bohn v. Pharmavite, LLC*, No. CV 11-10430-GHK AGRX, 2013 WL 4517895, at *3 (C.D. Cal. Aug. 7, 2013):
  - Noting plaintiff's and class counsel's "eight-year friendship involving weekly gatherings."

- *English v. Apple Inc.*, No. 14-CV-01619-WHO, 2016 WL 1188200, at *13 (N.D. Cal. Jan. 5, 2016):
  - "Two of the three original named plaintiffs in this case, Adkins and Galindo, either were working or had worked for class counsel at the time they purchased AC+ and filed this lawsuit."

The Entrepreneurial Model: No *bona fide* injury

- "[N]o medically cognizable ...injury."*
- Translation for class actions: no economically or legally cognizable injury arising from the defendant's alleged violation.
- That means NO ARTICLE III STANDING (more on this later).

*Brickman, *Silica MDL and Asbestos* at 37.

The Entrepreneurial Model: Manufactured Evidence

- Claims “supported by entrepreneurially generated evidence” and “litigants’ testimony that is often the product of entrepreneurial witness preparation techniques.”*

- Example:
  - Plaintiff’s “testimony” is based “on a memory that reconstructed the relevant events around her discussions with [class counsel] and the filing of this suit,” indicating “that Plaintiff has, at least unknowingly, tailored aspects of her memory to fit the narrative of this action.”**

*Brickman, *Silica MDL and Asbestos* at 37-38.

**Bohn, 2013 WL 4517895, at *2

The Entrepreneurial Model: Manufactured Evidence

- Example:
  - "[T]he law firms would instruct the student loan debtors to call plaintiff, using a script provided by the law firms, to revoke their consent to receive calls from plaintiff about their loans. The law firms would then instruct the student loan debtors not to answer any calls from plaintiff, and instead to tally the number of calls they received. The law firms operated under the belief that every one of these calls was a TCPA violation because . . . the recipient ha[d] revoked his or her consent to receive such calls."*

**Navient Sols., LLC v. L. Offs. of Jeffrey Lohman*, No. L19CV461LMBTCB, 2020 WL 1917837, at *1 (E.D. Va. Apr. 20, 2020).

The Entrepreneurial Model: Maximizing Settlement Pressure

- Filing cases “mostly in a small number of jurisdictions” and “in selected courts.”*

- Then leveraging that pressure to force defendants to “adopt settlement strategies that include payment of compensation irrespective of whether the litigants had suffered any actual injury.”**

*Brickman, *Silica MDL and Asbestos* at 38.

***Id.*

The Entrepreneurial Model: Maximizing Settlement Leverage

- Example: the “Food Courts.”
  - A recent study by the U.S. Chamber found that in 2020 75% of all food and beverage litigation was filed in New York (50%) and California (25%).*
  - It also found that food and beverage marketing class actions have increased 52 percent since 2017, with 2021 on track to set another record.
- The threat of class certification takes care of the rest.

* Cary Silverman, *et al.*, The Food Court: Developments in Litigation Targeting Food and Beverage Marketing, U.S. Chamber of Comm. Inst. for Legal Reform (Aug. 2021).

The Entrepreneurial Model: Beware the entrepreneurial plaintiff

- Sometimes the lead plaintiff needs no encouraging.

  - *Guttmann v. Nissin Foods (U.S.A.) Co., Inc.*, No. C 15-00567 WHA, 2015 WL 4881073, at *1 (N.D. Cal. Aug. 14, 2015): “Our plaintiff, Victor Guttmann, seeks to eradicate artificial trans-fat from food and, to that end, has sued five different manufacturers over artificial trans-fat.”

  - *Fishon v. Pelton Interactive, Inc.*, No. 1:19-cv-11711, ECF No. 138 (Oct. 15, 2021): Lead plaintiff attempted to conceal at deposition that “he had served as lead plaintiff in at least seven cases identified by Peloton’s counsel.”

Leveraging a Case's Entrepreneurial Features

Standing

Standing: The Framework

- *Spokeo v. Robbins,* 578 U.S. 330, 339 (2016), narrowed the universe of alleged harms sufficient to confer Article III standing to sue:
  - "To establish injury in fact, a plaintiff must show that he or she suffered **an invasion** of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical."
    - "Invasion" defined by Webster's as "an act of invading"; "invade" defined as "to encroach upon; infringe."

Standing: The Framework

- And *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) makes clear that:

  - In order to confer standing, “the alleged injury to the plaintiff” must have “a ‘close relationship’ to a harm ‘traditionally’ recognized as providing a basis for a lawsuit in American courts.”

Entrepreneurial misconduct should preclude standing

- *Spokeo*: "The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing the[] elements [of standing]."

- That the injury underlying a class action — or any action, for that matter — was effectively manufactured by counsel (or the plaintiff) for the purpose of bringing a lawsuit should preclude the plaintiff from meeting her burden of establishing standing.

Entrepreneurial misconduct should preclude standing

- First, the plaintiff hasn't "suffered **an invasion** of a legally protected interest"; the alleged harm is self-inflicted.
    - *Stoops v. Wells Fargo Bank, N.A.*, 197 F. Supp. 3d 782, 800 (W.D. Pa. 2016): "Because Plaintiff has admitted that her only purpose in using her cell phones is to file TCPA lawsuits, the calls are not "a nuisance and an invasion of privacy."
- Same rationale should apply where the alleged harm was incurred at the direction of lawyers.

Entrepreneurial misconduct should preclude standing

- Second, self-inflicted or lawyer-driven harms do not have "a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts."
  - "[S]tanding cannot be conferred by a self-inflicted injury."*
  - "An injury sufficient to confer standing cannot be manufactured for the purpose of litigation."**

**Zimmerman v. City of Austin, Texas*, 881 F.3d 378, 394 (5th Cir. 2018).

** *Id.* at 394.

Entrepreneurial misconduct should preclude standing

- Although *Zimmerman* and similar authorities typically involve attempts to obtain standing to challenge legislative enactments, their rationale should apply equally to entrepreneurially manufactured statutory violations and other alleged harms underlying consumer class actions.

- *In re: Dollar Gen. Corp. Motor Oil Marketing and Sales Prac. Litig.*, 4:16-md-2709-GAF (W.D. Mo.):
  - Court learned that certain class counsel may have directed individuals to purchase the allegedly mislabeled products at issue in order to "recruit" them as plaintiffs: "[I]t's clearly not appropriate and clearly not permissible. A plaintiff of that nature . . . would . . . lack standing to proceed."*

**Id.*, ECF No. 16; Hr'g Tr. (July 14, 2016) at 14:8-23; ECF No. 118.

Class Certification

Class Certification

- Under Fed. R. Civ. P. 23(a), in order for a class to be certified, *inter alia*:
  - "the claims or defenses of the representative parties are typical of the claims or defenses of the class;"
    - i.e., **Typicality**, and,
  - "the representative parties will fairly and adequately protect the interests of the class,"
    - i.e., **Adequacy** of representation of both plaintiff and class counsel.

Entrepreneurially generated claims are NOT typical

- *Weisberg v. Takeda Pharms. U.S.A., Inc.*, No. CV 18-784 PA (JCX), 2018 WL 4043171, at *7 (C.D. Cal. Aug. 21, 2018):
  - No typicality because "idiosyncrasies pervade Plaintiff's claims and allow for unique defenses" where "Plaintiff admits to having hired a lawyer after learning the cost of the 90-day supply – the purchase for which Plaintiff now seeks restitution and damages – six days **before** completing the purchase."
  - "Takeda asserts that these facts allow for unique defenses, including as to reliance, causation, and injury, which Plaintiff would have to prove for his consumer law claims. Takeda further contends that Plaintiff lacks Article III standing because he manufactured his injury."

Entrepreneurial model counsel and plaintiffs are NOT adequate

- *Weisberg*, 2018 WL 4043171, at *7:
  - "In addition, Plaintiff has not established that he is an adequate representative because these unique defenses may require him to devote more of this litigation to the defense of his personal claims, potentially to the detriment of the proposed class members."

Entrepreneurial model plaintiffs and counsel are NOT adequate

- *Bohn*, 2013 WL 4517895, at *2:
  - Based on the “Plaintiff recall[ing] the events in a way that fits the narrative of this lawsuit” and her “eight-year friendship involving weekly gatherings” with class counsel, the court concluded “that Plaintiff may have, at best, unduly relied on her close friend [class counsel], or, at worst, have no real interest in prosecuting this action other than to assist her close friend in recovering a sizeable fee award relative to the small individual recoveries of the class members.”

Entrepreneurial model plaintiffs and counsel are NOT adequate

- *English*, 2016 WL 1188200, at *13-14:
  - Court observed that two of the original plaintiffs—who the evidence suggested had "purchased [the product at issue] at class counsel's direction for the purpose of initiating this lawsuit . . . using funds class counsel had given them . . . would not have been adequate class representatives had they remained in the case[.]"
  - As to the remaining plaintiff, the court found that class counsel, who was the case's "source and its driver" and who "commenced" the case in the aforementioned "dubious manner," was not adequate under Rule 23(a)(4)—even with the addition of co-counsel.

Entrepreneurial model plaintiffs and counsel are NOT adequate

- Opportunities to further develop the law regarding the inadequacy of entrepreneurial model class counsel?

The Merits

Reliance, causation and damages

- *Guttmann*, 2015 WL 4881073, at *3;
  - "Guttman [argues] a 'typical consumer' would not understand that ingredient includes artificial trans-fat."
  - "This order need not determine whether a typical consumer could have a claim for breach of the implied warranty of merchantability because Guttmann is not a typical consumer but is **a self-appointed inspector general roving the aisles of our supermarkets. He continues on a five-year litigation campaign against artificial trans-fat and partially-hydrogenated oil and has admitted that he has inspected products for those ingredients before**. Guttmann's apparent refusal to inspect Nissin's noodles for an alleged defect despite his extensive knowledge of and concern for this particular ingredient is fatal to his claim for breach of the implied warranty of merchantability."

Reliance, causation and damages

- *Clark v. Hershey Co.*, No. 18-CV-06113 WHA, 2019 WL 6050763, at *4 (N.D. Cal. Nov. 15, 2019):
  - Granting summary judgment where claimant's "decision to stop purchasing the product was due to learning from her attorneys that the product contained an artificial flavor. . . . there is no genuine dispute of fact that she did not rely on the label."

Exposing a Case's Entrepreneurial Features

Be Aggressive and Creative

- Obtain critical facts as early as possible, including:

1. The plaintiff's relationship to counsel.
2. When the plaintiff first communicated with counsel regarding a potential claim
3. The date of the purchase or other event giving rise to the claim.
4. The plaintiff’s involvement in other suits.

Be Aggressive and Creative

- Rather than filing a facial motion to dismiss and, if unsuccessful, waiting for general discovery to develop facts that may support a fact-based challenge to standing, consider if possible to obtain necessary facts at the outset.

- "A factual attack on the subject matter jurisdiction of the court challenges the facts on which jurisdiction depends and matters outside of the pleadings, such as affidavits and testimony, are considered. The court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case."*

**Patterson v. Rawlings*, 287 F. Supp. 3d 632, 637–38 (N.D. Tex. 2018).

Be Aggressive and Creative

- Federal Rules of Civil Procedure 26 and 42 grant district courts broad discretion regarding the timing, sequence and bifurcation of discovery.
  - Rule 26(d)(3): Court may make orders regarding sequence of discovery "for the parties' and witnesses' convenience and in the interests of justice.");
  - Rule 26(f)(3): The parties' discovery plan must address "whether discovery should be conducted in phases or be limited to or focused on particular issues."

Be Aggressive and Creative

- If under certain circumstances a plaintiff may be entitled to preliminary discovery of facts uniquely within a defendant's possession in order to establish personal jurisdiction . . .

  - Then surely a defendant potentially should be entitled to discovery of facts uniquely within a plaintiff's possession bearing upon the threshold issue of subject matter jurisdiction upon which plaintiff bears the burden of proof.

Be Aggressive and Creative

- *Guttmann v. Nissin Foods (U.S.A.) Co., Inc.*, No. C 15-00567 WHA, 2015 WL 4881073 (N.D. Cal. Aug. 14, 2015) provides a roadmap.

- After parties briefed motion to dismiss, court ordered limited discovery on lead plaintiff's "litigation campaign," including his knowledge of the product in question, and permitted supplementation of briefing.

- Based on facts developed during limited discovery, court granted motion.

No once size fits all approach

- Early discovery of facts related to standing may not always be the best approach.
- Likely best suited to cases where there is some existing indicia of potential impropriety, like past conduct of the plaintiff or counsel.
- Facial challenge to standing may sufficiently strong.

A note on privilege

- Basic facts regarding when plaintiff contacted and hired attorney are not privileged.

- Unsolicited communications from a lawyer directing an acquaintance to do something for the purpose of generating a claim should not be protected because it does not meet the threshold requirement that the communication be made for the purpose of the client obtaining legal advice.*

**See CSX Transp. Inc. v. Peirce*, No. 5:05-cv-00202-FPS-JES, ECF No. 1093 at 7 (N.D. W. Va. June 6, 2012); 2012 WL 12892846, at *2 (N.D. W. Va. Oct. 9, 2012).

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Crime-fraud exception?

- A “lawyer or law firm may not engage in fraudulent or criminal activity and then hide behind any privilege to protect the firm's or the individual lawyer's interests.”*

- “[I]t is clear that discovery of the communications at issue, which concern an allegedly sweeping scheme to defraud one of the country's largest loan servicers at the expense of student loan debtors, is consistent with the principles underlying the attorney-client privilege and would both serve the public good and advance the search for truth. Accordingly, the crime-fraud exception can apply where, as here, the attorney alone purportedly committed a crime or fraud of which the client was a victim.”**

*_CSX Transp. Inc. v. Peirce_, No. 5:05-cv-00202-FPS-JES, 2009 WL 1528190, at *3-7 (N.D. W. Va. May 29, 2009).

** _Navient Sols., LLC v. L. Offs. of Jeffrey Lohman_, No. L19CV461LMBTCB, 2020 WL 1917837, at *6 (E.D. Va. Apr. 20, 2020).

Turning the tables:
Potential claims against bad actors

Turning the tables

- The first and primary line of defense should **always** be an aggressive defense on the merits targeted at exposing and leveraging a case's entrepreneurial features.

- But what if a case's problematic features emerge only after it has been resolved?

- Defendants harmed by entrepreneurial misconduct may have civil recourse under both federal law and state common law.

Turning the tables

- Some states (like Texas) have what purport to be absolute 'litigation privileges," but often state litigation privileges contain exceptions for intentional or fraudulent misconduct.*

- In any event: "A state absolute litigation privilege purporting to confer immunity from suit cannot defeat a federal cause of action" like RICO.**

**See, e.g., Clark v. Druckman*, 624 S.E.2d 864 (W. Va. 2005) ("[T]he litigation privilege does not apply to claims of malicious prosecution and fraud.").

** *Steffes v. Stepan Co.*, 144 F.3d 1070, 1074 (7th Cir. 1998).

CSX v. Peirce, et al.

FROM THE COURTS

Asbestos lawyers hit with fraudulent claim verdict

by Amaris Elliott-Engel
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Two Pittsburgh attorneys, as well as a doctor they hired to read X-rays, were found liable by a federal civil jury in West Virginia for violating the federal Racketeer Influenced and Corrupt Organizations Act and for state-law fraud by prosecuting 11 fraudulent asbestos claims by railroad employees against CSX Transportation.

On Friday, the jury in the U.S. District Court for the Northern District of West Virginia awarded $429,240.47, which was the amount CSX said it spent to defend 11 claims it said exemplified a wider practice.

Peirce

Attorneys Robert N. Peirce Jr. and Louis A. Raimond and Dr. Ray A. Harron were found liable for fraud-based RICO claims, common law fraud and fraud conspiracy claims. The jury also rejected the lawyer defendants' counterclaims for fraudulent misrepre-

EMILE WANSTEKER/BLOOMBERG NEWS

Two attorneys and a doctor they hired to read X-rays were found liable by a federal civil jury for prosecuting 11 fraudulent asbestos claims by railroad employees against CSX Transportation.

Jacksonville-based CSX argued that the lawyers' firm retained clients by procuring medical diagnoses through "deliberately unreliable mass Buffalo, John Roven Esq. in Florida and Georgia, etc.) were conducting litigation screenings. ... Many of these other firms, like the Peirce firm, were filing 'mass made by a Peirce firm lawyer at a union meeting," according to court papers.

At least some of the cases were filed in the West Virginia

tem of justice must be fair, clean and honest."

"We presented testimony of two radiologists, who read the X-rays of these 11 plaintiffs, who testified they were positive and consistent with asbestosis," Peirce said in a statement. "We presented the testimony of witnesses, including a prominent West Virginia trial lawyer who testified we not only had a reasonable basis to file the lawsuits but we were obligated to do so. For reasons that we cannot understand the jury ignored this testimony."

Harron's counsel, Jerald E. Jones, of West & Jones in Clarksburg, W.Va., said the evidence did not support the verdict and his argument was that Harron was handling asbestos cases in keeping with National Institute for Occupational Safety and Health standards and International Labour Organization standards.

"I didn't think there was sufficient evidence to support a RICO verdict," Jones said.

Lead trial counsel for CSX was Ronald G. Franklin, a partner with McGuireWoods' Houston office.

Turning the tables: *CSX v. Peirce*

- CSX brought claims for civil RICO, common law fraud, and conspiracy against lawyers and their expert radiologist for manufacturing and prosecuting fraudulent asbestos claims. Prevailed on all claims in federal jury trial and ultimately recovered $7.3 million.

- Key allegations were that lawyers knowingly used radiologist, Dr. Ray Harron, who intentionally generated fraudulent x-rays reads used to support claims and also fabricated plaintiff's occupational exposures to asbestos.

The Defendants

Turning the tables: *CSX v. Peirce*

- A jury could "reasonably conclude the lawyer defendants committed an act of fraud by falsifying the occupational exposure required as a necessary element of the asbestos claim they filed."*

- "This Court notes that the jury was presented with a great deal of evidence during the two-week long trial that supported the jury's findings on the RICO, fraud, and conspiracy claims. Thus, this Court cannot find that the jury only rendered a verdict in CSX's favor as a result of passion and prejudice, as suggested by the lawyer defendants."**

*_CSX Transp., Inc. v. Gilkison_, 406 F. App'x 723 (4th Cir. 2010).

**_CSX Transp., Inc. v. Peirce_, 974 F. Supp. 2d 927, 934 (N.D.W. Va. 2013).

Turning the tables: *CSX v. Peirce*

- "Assuming without deciding that the *Noerr–Pennington* doctrine is even applicable in this case . . . CSX produced sufficient evidence to establish the sham exception's two prong test."*
- "First . . . CSX produced sufficient evidence to show that the underlying lawsuits were objectively baseless. The jury found that the lawyer defendants acted fraudulently in filing the lawsuits, and based on the record, CSX produced sufficient evidence to allow the jury to make such a finding."*
- "Further, this Court agrees with CSX . . . that it produced sufficient evidence to prove that the lawyer defendants filed the underlying lawsuits as a way to extract settlements from the plaintiff. This Court finds that such an intent is clearly an abuse of process, and thus satisfies the sham exception's second prong."**

*_CSX Transp., Inc. v. Peirce_, 974 F. Supp. 2d 927, 942 (N.D.W. Va. 2013).

**_Id._ at 943.

The Fourth Circuit Agrees (again)

JUDGE NIEMEYER: . . .The real question you're raising, I think the core question, is whether conduct which constitutes fraud on the court in some sense can support a RICO claim.

***

JUDGE DUNCAN: Well, let me ask then please, you don't, as a predicate, you don't dispute, do you, CSX's recitation of the facts regarding the use of the x-ray technician, the manner in which clients were solicited, the powers of attorney, the sample questionnaire. You're not disputing any of that. Those are a given.

[ ]

JUDGE DUNCAN: But how is that not a fraud on the court?

-CSX Transp., Inc. v. Peirce, Oral Argument (4th Cir. Oct. 28, 2014), 2014 WL 11872075.

The Fourth Circuit Agrees (again)

JUDGE NIEMEYER: *Chambers* said Rule 11 is just one way to give sanctions. But you also have 28 U.S.C. § 1927, which is often alluded to, and ***you also have the basic fundamental duty of an attorney not to commit a fraud on the court***.

MR. RUSSELL: That's undoubtedly true, but the question...

JUDGE NIEMEYER: And that's a separate fraud claim.

***

JUDGE NIEMEYER: ***The false representation is that I have a lawsuit for someone and I'm filing this suit, claiming that they have been injured, and I know they have not been injured***.

-*Id. (emphasis added).*

The Fourth Circuit Agrees (again)

JUDGE DUNCAN: . . .You don't dispute the facts, you don't dispute the fact that there was some solicitation of clients, that there was a questionable x-ray technician relied upon. You don't dispute any of those facts and as a result of those facts CSX was put to the expense of defending. How is that, the extent of defending, not a reliance on what the jury apparently found to be a fraud?

MR. RUSSELL: Because they would have had to incur those costs anyway. Because no attorney is going to rely on....

JUDGE NIEMEYER: Absent fraud they wouldn't have.

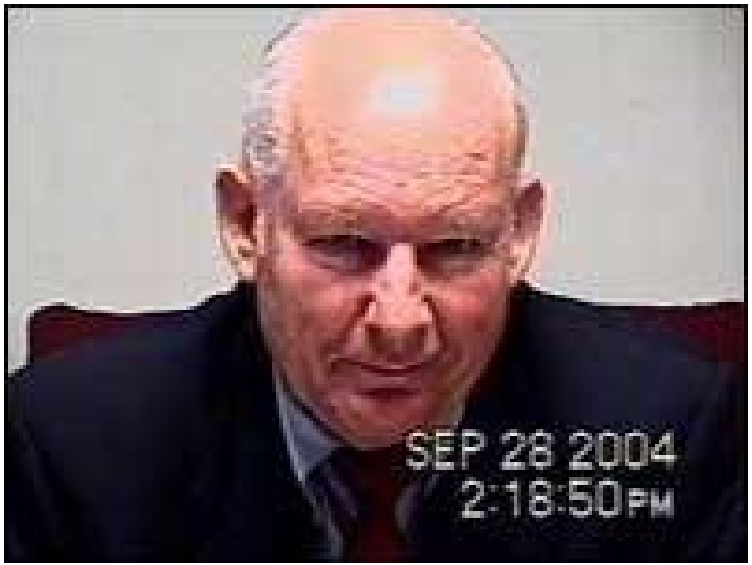
JUDGE DUNCAN: They wouldn't have.

MR. RUSSELL: Well, absent the filing of the baseless lawsuit they wouldn't have had to defend it.

JUDGE DUNCAN: Exactly.

-*Id.* (emphasis added).

What about Dr. Harron?



Turning the tables: *CSX v. Peirce*

- "Harron contends an independent basis (Breyer's B-read of [the] x-ray) exists to sustain the award of summary judgment as to him. We disagree. From the record evidence, a reasonable jury could conclude Harron falsely certified Baylor's x-ray and that Breyer was also involved in a similar scheme particularly if the jury found Breyer's B-read came after receiving Harron'' previous diagnosis. Thus, material facts remain in dispute as to Harron which preclude summary judgment upon the current record."

  -*CSX Transp., Inc. v. Gilkison*, 406 Fed. Appx. 723, 734 (4th Cir. W. Va. 2010).

Turning the tables: *Navient Solutions v. Lohman, et al.*

- Student loan servicer follows *CSX v. Peirce* model to sue based on manufactured TCPA claims.*
- Prevailed on claims in multi-day jury trial in September 2021.
- Defendants' pending post-trial motions challenge verdict on similar grounds rejected in *Peirce*, i.e., that conduct protected under *Noerr-Pennington*, no reasonable reliance, and litigation can't constitute racketeering activity.**

**See Navient Sols., LLC v. L. Offs. of Jeffrey Lohman*, No. L19CV461LMBTCB, 2020 WL 1917837, at *1 (E.D. Va. Apr. 20, 2020).

***See id.* at ECF Nos. 528, 547-551, 545.

Questions or Comments?

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