

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

DOUBT OF THE BENEFIT
A WIN FOR PENSION-WORRIED CARPENTERS SHOWS WHY
PAUL WEISS LITIGATORS RULE THAT FIRM'S ROOST

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Actuarial methodology. The words alone are enough to induce sleep. Such was Lewis Clayton's challenge. For four weeks in the winter of 2001, the partner with New York's Paul, Weiss, Rifkind, Wharton & Garrison had to keep a New Haven, Conn., jury attuned to the arcana of mortality tables and unfunded accrued liability.

His client, the 6,000-beneficiary Connecticut Carpenters Pension Fund, was squared off in trial against Watson Wyatt & Company, one of the country's largest actuarial firms. The carpenters had filed suit in 1999, after learning they had not contributed enough to their pension fund to cover future benefit obligations. They sought more than \$40 million in damages from Watson, which had advised them on how to structure the fund.

Even before the carpenters filed suit, Watson admitted fault for the fund's shortfall. But it denied that the carpenters had been damaged -- the fund had not yet had to scrimp on benefits, Watson argued, and the fund could cure its shortfall by simply collecting extra pension payments in the future. Still, on the eve of trial in federal court, Watson offered \$19.5 million to settle the case.

It was a tempting offer, says Clayton. There was no precedent for how to calculate damages, he says, and no guarantee that a jury would understand or care about the issues. "People don't make movies about actuarial malpractice," says the 48-year-old lawyer. "We'll never have a TV series about a first-year actuary at an actuarial firm." This Hollywood oversight notwithstanding, Clayton decided to take his chances at trial.

To get through to the jury, he peppered his presentation with visuals (charts and videotaped depositions) and gut-wrenching, average-Joe metaphors. He repeatedly likened his clients, for example, to parents who had learned -- thanks to bad professional advice -- that they hadn't socked away enough money for their kids' college tuition.

On Feb. 23 the carpenters rested their case. It took the jury less than three hours to award them \$32 million. U.S. District Court Judge Ellen Burns tacked on another \$7.5 million in interest. The carpenters thus doubled Watson's settlement offer. It wasn't a grand-slam result. The jury didn't award punitive damages. And it didn't even award all of the actual damages that the carpenters had requested, notes Watson's lawyer, Peter Biagetti, a partner with Boston's Mintz, Levin, Cohn, Ferris, Glovsky and Popeo. But it was still a win.

It was also the sort of live-action scuffle that Paul Weiss lawyers claim is their forte. Other firms may be good at "litigating" -- filing motions and crafting settlements -- but, the lawyers say, Paul Weiss is particularly good at backing up the talk in court.

This is a common trial-lawyer boast, but it underscores the extent to which the courtroom is hallowed ground at Paul Weiss. At other top litigation firms (Davis Polk & Wardwell, for example), trial lawyers share top billing with corporate partners. Not at Paul Weiss. "If I were a litigator and wanted to go [to a New York firm] where I could rule the roost and think, this place beats for me, I'd go to Paul Weiss or Cravath [Swaine & Moore]," says John Lovi, a partner in the New York offices of Chicago's McDermott, Will & Emery.

Beyond his firm's reputation, Clayton says he landed the carpenters' case because of his history of handling benefit matters. When he looks back at the case, he is particularly pleased by a certain post-trial exchange. In a motion to amend the judgment, Watson argued that the jury must have glossed over the "daunting actuarial concepts" in light of its lightning-quick verdict.

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The judge rejected the argument, noting in a final order: "This jury was one of the most attentive this court has seen." Actuaries, perhaps, aren't so boring after all.

SIZE OF DEPARTMENT:

Partners: 30
Associates: 125
Staff Attorneys: 40
Paralegals: 70

DEPARTMENT AS PERCENT OF FIRM:

Partners: 30 percent
Associates: 35 percent
Staff Attorneys: 90 percent
Paralegals: 70 percent

EST. PERCENT OF FIRM REVENUE, 2001:

40 percent

CASES TRIED TO VERDICT SINCE 1/1/00:

7

PRO BONO HIGHLIGHT:

On Aug. 10, 2000, Paul Weiss partner Maria Vullo won a \$745 million verdict for a group of women who had suffered rape and physical torture during the war in Bosnia. They brought suit in 1993 against Radovan Karadzic, a Serbian political and military leader and compatriot of former Serbian president Slobodan Milosevic.

DEPARTMENT HIGHLIGHTS: Represented Morgan Stanley & Co. in unlawful discharge and discrimination case brought by Christian Curry, who agreed to dismiss his discrimination claim; took 36 depositions on five continents representing MEASAT Broadcast Network Systems, a Malaysian satellite broadcaster -- settling after only two weeks; currently representing New Jersey Sen. Robert Torricelli.