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# THE PLAINTIFFS' HOT LIST

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## THE COCHRAN FIRM

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MONDAY, OCTOBER 6, 2008

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## The Cochran Firm makes the Plaintiffs' Hot List 2005 • 2008

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# THE PLAINTIFFS' HOT LIST



James Montgomery, Sr.  
and James Montgomery, Jr.



Joe Lane, Keith Givens,  
Angela Mason and Farrest Taylor



Jane Sams,  
Shean Williams,  
and Kenneth Lester

## The Cochran Firm 2008

The Cochran Firm, founded by the late Johnnie Cochran Jr. in 1998, has 139 lawyers in 27 offices in 16 states, with the largest in Los Angeles and administrative offices in Dothan, Ala. The firm has won 11 verdicts exceeding \$100 million. It specializes in personal injury plus products liability, medical malpractice, wrongful death, fraud and auto accident cases.

### NOTEWORTHY CASES:

■ **Perrine v. E.I. du Pont de Nemours and Co.**, No. CV2003-008362 (Harrison Co., W.Va., Cir. Ct.). Co-lead counsel Farrest Taylor, Joe Lane, Keith Givens and Angela Mason. The plaintiffs won a \$381 million jury verdict against DuPont for negligence in creating a West Virginia zinc waste site that put neighbors at risk of cancer, heart disease and lead poisoning.

■ **Grant v. 69 W. Washington Mgmt. Co.**, No. 03 L 12693 (Cook Co., Ill., Cir. Ct.). Counsel James D. Montgomery, Sr. and James D. Montgomery, Jr. The firm won a \$9.6 million settlement from a building management company for the estate of an attorney who was among five people killed in an October 2003 high-rise office building fire in Chicago. The plaintiffs sued the building management company for improperly evacuating occupants of the building, failing to inform firefighters of the evacuation plan and ignoring security console signals that the evacuees were trapped.

■ **Gandy v. Thomas**, No. 2007CV05877-C (Clayton Co., Ga., State Ct.). Counsel Jane Sams, Shean Williams and Kenneth Lester. The Cochran lawyers won a jury verdict of \$20.2 million in the death of a 62-year-old teacher killed when a truck driven by a sleep-deprived driver hit his car. The firm argued that the company violated regulations by failing to ask their employees about second jobs that might impede their performance.

# These are the firms to watch

## THE PLAINTIFFS' HOT LIST

**W**ELCOME to the fourth installment of *The National Law Journal's* Plaintiffs' Hot List, our annual compendium of the plaintiffs' firms doing the most to shape the law.

The first thing the longtime reader will notice about this list is its brevity: 12 firms compared with 20 last year. That's not to imply the country's plaintiffs' attorneys have been slacking off—not when recoveries in the WorldCom and Enron scandals ratcheted above \$6 billion and \$7 billion, respectively.

Rather, it's a reflection of our narrower focus on firms that showed a special spark at trial before a judge or jury. Some settlements were too large to ignore, but we wanted to emphasize firms that secured trial verdicts significant for their size or their reverberations in business and society.

We asked our readers to nominate plaintiffs' firms with at least one significant win within the past year or so, plus an impressive record of victories over the preceding three to 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.

The result, based on those nominations and our own research, is highly subjective. No doubt about it, our approach worked against firms doing important work that ended in negotiated settlements, particularly when the terms were confidential. We felt it would be impossible to give fair weight to such outcomes.

We also excluded solo practitioners and very small firms, notwithstanding significant wins, in favor of plaintiffs' firms of some

left and with solid records of achievement and the potential to continue racking up big wins in the future. (A review of the list will make clear that our advertisers got no special treatment.)

Some of the names on this list will be familiar to long-time readers; others might cause some head-scratching. Notably, The Cochran Firm, like its late namesake, has proved somewhat controversial as a business model, but appears determined to persevere. Elsewhere, we examine litigation against the managed care industry that has resulted in \$1 billion in settlements to date. And we note the trend toward more protracted litigation in securities class actions, some of which settled only well into trial.

Several firms that we didn't include on the list deserve honorable mention. Georgia firm Butler, Wooten, Fryhofer, Daughtery & Crawford secured a \$105.5 million verdict against DaimlerChrysler A.G. in November 2004 over a minivan seat back that failed in an accident, causing a woman to strike and kill her child in the seat behind her. Kohn, Swift & Graf in Philadelphia secured a \$65 million settlement in an international antitrust action involving the pricing of automotive paint. Sayles Werbner of Dallas secured a \$71 million verdict in September 2004 for the victims of a Texas bus crash in which the driver was found to have been under the influence of cocaine and valium. And Colson Hicks Eidson in Coral Gables, Fla., secured a \$65 million verdict against Eller Media Co. for the family of a 12-year-old boy electrocuted at a Miami bus shelter.

—MICHAEL MOLINE

## The Cochran Firm 2005

**J**ohnnie Cochran's namesake firm might seem an odd duck compared to some of the other firms on this list. A collection of regional firms that formed around the legendary litigator, the firm appeared to lose its lodestar when Cochran died from a brain tumor in March. Critics questioned whether it was less a law firm than a franchise operation that would spin off into its component parts without Cochran's gravitational attraction. The surviving partners insist they remain committed to building a successful and ethnically diverse legal enterprise with a focus on civil rights. The firm maintains 20 offices in big cities like New York, Washington, Los Angeles, San Francisco, Las Vegas, Memphis, St. Louis, Chicago, Atlanta and Miami; and in smaller cities like Jackson, Miss., Tallahassee, Fla., and Dothan and Tuskegee, Ala.

### NOTEWORTHY CASES:

■ **Wittaker v. Southwestern Life Ins. Co.**, No. CV-02-41 (Macon Co., Ala., Cir. Ct.). Lead attorneys Jock Smith and Brian Strength. A jury returned a \$1.62 billion verdict against Southwestern Life in February 2004. The plaintiff was a woman who had been paying cash premiums to her insurance agent since 1996, but discovered in 2001 that he hadn't been forwarding the money to the insurer, which had canceled her policy. The firm uncovered the agent's history of similar behavior and sued the insurer for failure to supervise its agents. According to the firm, the verdict has inspired five confidential settlements in similar cases thus far, with another 20 or so under negotiation.

■ **Tolbert v. Monsanto Co.**, No. 2:01-CV-1407-UWC (N.D. Ala.). Lead attorneys Johnnie L. Cochran, Jock Smith and Keith Givens. The firm is still working out payments to individual plaintiffs from a \$700 million settlement for the neighbors of an Anniston, Ala., chemical plant accused of allowing PCBs to contaminate the area.

■ **Ferko v. NASCAR**, No. 4:02-CV-50 (E.D. Texas). Lead attorney Samuel Cherry. The firm negotiated a settlement in a restraint-of-trade action against the National Association of Stock Car Auto Racing Inc. in May 2004, securing an additional race day for its race-track client. The outcome boosted the stock-market valuation of the plaintiff company by an estimated \$200 million.

## UP CLOSE | DEFYING DOUBTERS

## Cochran's firm survives him

By Dee McAree  
STAFF REPORTER

FOR A FIRM that describes itself as "America's Law Firm," The Cochran Firm boasts surprisingly small-town roots.

The firm was started more than a decade ago in a small office in Tuskegee, Ala., by four named partners: Johnnie Cochran, Samuel Cherry, Jock Smith and Keith Givens. What has emerged is the first national plaintiffs' firm, one boasting 19 offices in 14 states, all united behind the banner of a single name: Johnnie Cochran, who died earlier this year of a brain tumor.

"The Cochran Firm is unique in American history in that they have been able to establish a national plaintiffs' network based on the Cochran name," said Theodore V. Wells Jr., a defense lawyer at New York's Paul, Weiss, Rifkind, Wharton & Garrison, who has litigated cases against the firm.

With a history of prominent cases in personal injury, environmental litigation, products liability and other areas, The Cochran Firm boasts an impressive scorecard and a stable of heavyweight lawyers. The firm's lawyers have been behind such record verdicts as a \$1.62 billion bad-faith insurance verdict against Southwestern Life Insurance Co. *Turner v. Southwestern Life*, No. CV-8790 (Macon Co., Ala., Cir. Ct.). The firm recently secured a settlement in a novel antitrust lawsuit against the National Association for Stock Car Auto Racing Inc. *Ferko v. NASCAR*, No. 4:02-CV-50 (E.D. Texas).

The Cochran Firm also gets a fair share of high-profile personal injury cases, representing victims of major accidents like Paul Esposito, who lost both legs in the October 2003 Staten Island Ferry crash in New York, and Nanatta Cameron, killed when scaffolding fell off the John Hancock building in Chicago in March 2002. Both cases are pending.

### Alabama roots

The firm also draws a fair share of criticism. The operation that started out in a single Alabama office has experienced rapid growth by merging other plaintiffs' firms into the Cochran name. The approach has raised some eyebrows. Harvard Law School Professor David Wilkins characterized the firm as "a franchise" in an article published in a sister publication of *The National Law Journal*, *The Recorder*, in April. "It's a little like he licensed his name," said Wilkins.

The firm has been characterized as a loosely affiliated band that uses Cochran's name for marketing and leverage, rather than as a truly integrated national law firm.

Executive partner Keith Givens insists that criticism is unfounded.

"True, we haven't grown by hiring a bunch of associates right out of law school, opening an office and trying to centrally manage it," Givens said. But then, he added, the partners do not believe that is necessarily the best way to practice law.

In part, Givens said, the criticism stems from the fact that The Cochran Firm is daring to break the mold

of how the typical plaintiffs' firm is supposed to operate. "Corporate firms have done it, but plaintiffs' work has traditionally been a boutique practice," Givens said.

The firm has many of the same integrated aspects as corporate firms, he said, with centralized case management and accounting, a central call center, a central information-technology department, handbooks and policies, and so on. But it allows some regional office autonomy, and the level of equity may vary from one regional office to another.

"The philosophy that Johnnie had was a diverse law firm that reflected society and was capable of handling plaintiffs' cases throughout America," Givens said.

The firm is built on that vision—hence the name, he continued. A number of top corporate firms bear the names of their deceased founders without inviting the same criticism, he said. "If you look at the top firms on the AmLaw 200, many of them don't have a single name partner that is still alive."

Brian Panish, a partner at Panish, Shea & Boyle in Los Angeles, has teamed with The Cochran Firm to open a San Francisco office and to serve as co-counsel on about 300 Vioxx cases. He said a national approach to litigating can offer clients the best resources and the best lawyers.

"The concept of the national approach is coming more to the forefront, and they have the biggest stake in it," Panish said of The Cochran Firm.

### Street credibility

Yet, for all the ink on the national growth of The Cochran Firm, its lawyers say its real success lies in its local talent—lawyers like Smith, Cherry and Brian Strength in its Alabama offices, or Harvey Weitz and Derek Sells in New York. These, they say, are hard-hitting lawyers who know their clients, know the local culture and can try a case that resonates with hometown juries.

"The way I speak to juries is in everyday terms," Smith, of the Tuskegee office, said in an interview. Born in New York, Smith has spent most of his legal career in Alabama. He says he focuses on five key subjects that help connect with juries. "I try to keep myself well versed in American history, African-American history, sports, psychology and the Bible," he said.

Smith was behind the \$1.62 billion verdict against Southwestern Life, and was one of the lead lawyers, with Cochran himself, who represented 18,000 plaintiffs in a toxic tort case against a number of chemical companies in Anniston, Ala.

The September 2003 settlement of \$650 million in the Anniston case set a

record—it was twice the size of the recovery in the case made famous in the film *Erin Brockovich*. The money was divided between two groups of plaintiffs, with \$300 million earmarked for The Cochran Firm clients.

That triumph has been somewhat deflated by accusations that the firm's clients have actually seen very little of the money. Smith rejects the criticism, saying that the firm settled the case just in time, with an imminent bankruptcy proceeding looming over one of the defendants, Solutia Inc.

"That case would have been routed to bankruptcy court and in limbo for years," Smith said.

Paul Weiss' Wells, who mediated the deal on behalf of the defendants Monsanto Co., Solutia and Pfizer Inc., conceded that Solutia's bankruptcy was one of the factors on the table.

### Big clients, little clients

The Cochran Firm prides itself on championing small-time plaintiffs wronged by big corporate defendants, but its "little guy" isn't always so little.

Cherry, of the Dothan, Ala., office, represented Speedway Motorsports Inc. (SMI), a company controlled by Texas billionaire Bruton Smith, in the lawsuit against NASCAR.

A NASCAR event can bring in \$40 million for any track that hosts a car-racing event, and shareholders of SMI, facing stagnant stock values, were trying to secure a second racing event at their new facility in Texas. They sued NASCAR, accusing it of monopolistic and anti-competitive activities. NASCAR's owners, the France family, were withholding the race from SMI and giving preferential treatment to their own racetrack company, International Speedway Corp., SMI alleged.

The lawsuit was a challenge because neither side wanted a cloud of litigation that would spook investors and broadcasters, said Cherry.

"SMI shareholders wanted to challenge NASCAR, but they didn't want to kill the golden goose," he said. The case settled in May 2004, with NASCAR agreeing to a second race date for SMI. That company saw its stock-market valuation increase by \$200 million.

Another key to the firm's success is the diversity reflected both in its lawyers and clients, said Derek Sells, a black litigator in the New York office who is considered a rising star by his seniors at the firm. "About 50% of our New York office is minorities, and our clients come from all walks of life," Sells said.

Diversity is a key strength of the firm, Paul Weiss' Wells conceded.

"They're able to tap into white, black, Hispanic communities all across the board," he said. "And that is going to be attractive to whatever jury pool they are working in."



**HARD HITTERS:** From top, Keith Givens, Jock Smith and Samuel Cherry say they know their clients and know how to sell their cases to hometown juries.

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