

THE NATIONAL LAW JOURNAL

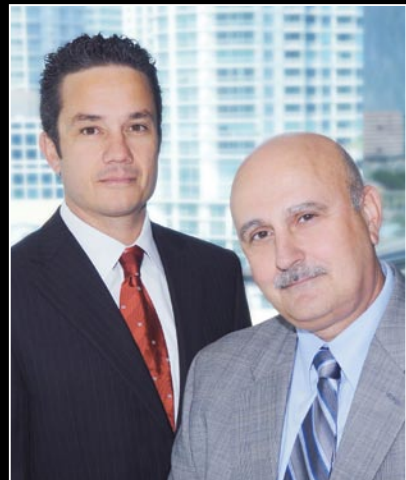
JUNE 22, 2009

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WINNING

Profiles of successful attorneys
and their strategies.



WINNING

The Justice Department must have thought that Val Northcutt was nuts. The government had secured guilty pleas from nine co-defendants in its prosecution of price-fixing and bid rigging in the marine hose industry, and here was Northcutt insisting on a jury trial.

The prosecutors were “flabbergasted,” according to Michael Pasano, one of the Carlton Fields attorneys who represented Northcutt. “It was literally unheard of for someone to say no [to a plea bargain] and go to trial.”

Pasano and his colleague Paul Calli did take the case to trial and, in an impressive feat of lawyering, secured Northcutt’s vindication.

“I will always be grateful for the huge leap of faith these guys took for me,” Northcutt said of the pair.

Faith, aggression, wiliness, dar-

Profiles of successful attorneys and their strategies

ing courage—these are a few of the qualities we found when compiling this year’s edition of “Winning.”

We asked our readers to nominate attorneys who could claim at least one significant bench or jury trial verdict within the past 18 months and who had a record of success over many years. We looked for cases in which substantial damages were at stake, that created precedents or in which the attorneys prevailed in a hostile jurisdiction. (A list of winners dating to 1985 is available at NLJ.com.)

After carefully scrutinizing their records, we settled on the

12 attorneys profiled in these pages. Each exemplifies the qualities that make a great trial attorney. Like Arturo J. González, who lends his clients the same drive and determination that brought him from humble beginnings to leadership of Morrison & Foerster’s trial practice group; the great Ted Wells, who makes his third appearance on this list; Jeffrey Maltzman and Jeffrey Foreman, who through sheer combativeness and a keen eye for detail turned a sure loser of a liability case into an impressive victory.

González summed up the spirit of this enterprise when, in an interview with our reporter, he recollected a trial that he attended as a kid. “I thought two things. No. 1, I thought, ‘I can do this.’ And No. 2, I thought, ‘I can do this better than these people.’” And so he could.

—MICHAEL MOLINE

Defense team found the needle in the haystack

A personal injury suit turned on a detail that almost went unnoticed.

BY JORDAN WEISSMANN

The lawsuit seemed like a plaintiffs' attorney's dream. Eight tourists visiting the British Virgin Islands had been injured when their truck's brakes malfunctioned, causing it to crash into the side of a mountain. There appeared to be ample evidence that the truck's driver knew the vehicle was faulty—meaning that the company that ran the tour could be liable for millions of dollars in damages.

In the end, the tourists won nothing. Thanks to a single photo and an eye for minute detail, Jeffrey Maltzman and Jeffrey Foreman of Miami's Maltzman Foreman instead pulled off one of the unlikeliest courtroom victories of the past year.

The 24-lawyer firm, which began life as a branch office of California's former Kaye Rose & Maltzman, has created a niche for itself handling crisis management and high-stakes litigation for its clients, including several in the travel industry. It guided Princess Cruises through a government investigation after its ocean liner, the *Star Princess*, caught fire. It handled claims against Louis Cruise Lines after its ship, the *Sea Diamond*, sank off the coast of Greece.

The firm's June 2008 victory for Fun Water Tours (co-defendant Cunard Line Ltd., owner of the *Queen Mary 2*, had separate counsel) was particularly sweet, because the odds seemed so slim. Their technique was simply to chip away at the plaintiffs' case until their efforts yielded evidence that toppled the entire suit.

"It's the needle in the haystack that made the case," Foreman said.

ALL DOWNHILL

There was no question that the plaintiffs had suffered an ordeal. In November 2005, the *Queen Mary 2* had made port at the island of Tortola, where the group, mostly friends from Indiana, signed up for a historic tour run by Fun Water. During the trip, smoke began to pour

from the Ford F350's brakes. According to the plaintiffs' testimony, their driver, a man they knew only as "Boots," went to the vehicle's trunk and pulled out a bottle of brake fluid. He poured it into the vehicle and then continued on.

As the tour group turned down a mountainside, the truck's brakes finally gave out. It careened down the hill, repeatedly side-

swiping the mountain before coming to a stop.

The tourists, who had suffered serious injuries, some requiring surgery, sued for \$7.1 million in the U.S. District Court for the Southern District of Florida. Their lawyers, from Indiana's Locke Reynolds (now part of Frost Brown Todd) and the Law Offices of Sean M. Cleary in Miami,

JEFFREY MALTZMAN & JEFFREY FOREMAN

| MALTZMAN FOREMAN



WINNING TEAM: Jeffrey Foreman, left, and Jeffrey Maltzman chipped away at the evidence.

argued that, because Boots—who refused to be deposed—had allegedly carried the brake fluid in the vehicle, he, and the company, must have known about the truck's problems. Neither firm returned calls requesting comment.

The defense originally was led by another firm. Fun Water Tours approached Maltzman Foreman to handle a motion to dismiss. The firm lost, but stayed on the case.

Foreman and Maltzman, joined by their partner Noah Silverman, set an original goal of minimizing damages. They began by digging through health records, looking for signs the plaintiffs had lied about their injuries. They hit paydirt: Two plaintiffs failed to disclose serious pre-existing conditions. Foreman and Maltzman moved to dismiss the case for fraud. The judge ruled against them, but the two plaintiffs quickly settled out of court.

Of the six remaining plaintiffs, Foreman and Maltzman believed that most had exaggerated their suffering. Because the plaintiffs' lawyers planned to put each victim on the stand, the defense had a chance to show it.

Plaintiff Robert Walker had long suffered from severe arthritis and had undergone several knee replacement surgeries. He arrived on the stand walking with a cane. During cross-examination, Foreman got him to admit that he used it because of his weak knees, not because of injuries suffered in the accident. Sandra Kerns, an interior decorator, had claimed she was forced to bring her husband on a business trip to Miami because she was too frail to work without him. Maltzman and Foreman presented evidence that the couple had made the trip into a vacation; now they were allegedly trying to add its cost to the damages.

"There's a saying that pigs get slaughtered," Foreman said. "If you make them

TRIAL TIPS

Look for evidence that the plaintiffs are motivated by greed.

Find the telling detail that the other side might have missed.

"Never stop looking, never stop digging."

look like they're greedy...that usually has a negative impact. So we tried to paint them as greedy, exaggerating, malingering."

Of the six plaintiffs, Maltzman and Foreman managed to impeach five. The one whose credibility remained unscathed was Louise Daniels, an 86-year-old retired librarian from New York. "She's the kind of person that no lawyer wants to cross-examine because everyone instantly fell in love with her. She was like everybody's grandmother," Maltzman said.

Ultimately, though, Daniels' credibility became the plaintiffs' biggest liability. Maltzman and Foreman noticed from her deposition that her story deviated slightly from the other tourists'. The others had testified that the truck had crashed in a remote area and that the driver had taken the brake fluid out from the back of the truck. Daniels, on the other hand, recalled seeing him emerge from a nearby building before filling up the truck.

That detail would blow the lawsuit apart. The plaintiffs claimed to have a

smoking gun photo, a shot of Boots looking under the Ford's hood before the crash. As he sat at trial one day, shuffling through exhibits, Foreman noticed a blurry shape in the background of the photo. The defense lawyers blew up the picture to discover that the detail was in fact a carving of a pelican sitting atop a gate.

The lawyers called their contacts on Tortola and learned that there was only one fence like it on the island, about 30 feet from a country store. The store sold beer, food and auto supplies—including brake fluid.

When it came time to cross-examine Daniels, Maltzman and Foreman used the librarian's own deposition to make her acknowledge that she had seen Boots carry a container that she presumed contained brake fluid from the store. If that was true, it implied that the brake fluid hadn't been in the truck and that the travel company hadn't known about the vehicle's problem. It wouldn't be liable for the accident.

There was one final question, Foreman said: "Would the jury believe that what the little old lady saw was correct, or was what the other five plaintiffs saw correct?"

The "little old lady" won out. When the jury returned, it ruled for Fun Water and Cunard on all counts.

"The odds were overwhelmingly against us at the beginning, and it proves the point: Never stop looking, never stop digging," Maltzman said. "If you thought this case was in the can two weeks before trial, it wouldn't have been won."

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