

MARKETPLACE

Marketscan: *Mayonnaise makers emphasize convenience as sales slip* Page B10.

Who's News: *Hanson to resign as head of California retirement fund* Page B14.

A Crafty Lawyer Turns Up the Heat on Tobacco

By EBEN SHAPIRO

Staff Reporter of THE WALL STREET JOURNAL.

An army of lawyers, led by a flamboyant New Orleans attorney named Wendell H. Gauthier, is taking on the tobacco industry in the most lavishly financed assault to date.

Fifty law firms have promised an initial investment of \$100,000 each to finance a class action on behalf of all people addicted to cigarettes; the first payment of \$25,000 is due by the end of May. More than 100 lawyers are working part time on the suit, and the group is preparing to buy a \$1 million office building in New Orleans to serve as a document depository and headquarters for the case.



Wendell H. Gauthier

Mr. Gauthier filed the putative class action at the end of March in Louisiana federal court. A bantamweight man with a mischievous glint in his eye, Mr. Gauthier describes his lawsuit's strategy as, "You addicted me. You knew it was addicting,

LEGAL BEAT

and now you say it's my fault." Earlier suits unsuccessfully charged that the industry had failed to warn smokers about health risks and sold a defective product. Mr. Gauthier also plans to argue that tobacco companies have targeted teenagers, who are incapable of making a free and informed choice.

The tobacco class action was filed just days after congressional hearings on whether the tobacco industry is intentionally maintaining nicotine at addictive levels in cigarettes. Testimony and recently disclosed internal documents from Brown & Williamson Tobacco Corp. suggest that tobacco executives have long known and suppressed information that nicotine is addictive. That information is expected to test the industry's traditional legal defense that smokers know the health risks of smoking and are free to quit anytime. Tobacco companies have yet to pay a cent in damages for a smoking suit.

Mr. Gauthier and his frequent co-counsel, Stanley M. Chesley of Cincinnati, who has been dubbed the "Master of Disaster" for his victories in big personal injury cases, are moving directly to the tobacco suit after helping negotiate the recent \$4 billion settlement on behalf of women who

claimed injuries from silicone-gel breast implants.

The names of the other lawyers in the suit read like a "Who's Who" of the national plaintiff's bar. They include Melvin M. Belli of San Francisco; John P. Coale of Washington D.C., who is also representing victims of the recent train crash in North Carolina; Ronald L. Motley of Charleston, S.C., a leading asbestos lawyer; and Mark P. Robinson Jr. of Mission Viejo, Cal., who was co-counsel in the 1979 Ford Pinto suit.

Mr. Gauthier, 51 years old, views each new class action as a business start-up, and he functions much like a chief executive, dividing tasks among different law firms. At a recent planning meeting for the tobacco case, he assigned one lawyer to work on the search for a headquarters for the legal team and cut short discussion approving stationery for the suit. He spent more time exploring security issues for the 2.5 million documents that are expected to be disclosed in discovery.

An influential voice in New Orleans, Mr. Gauthier is a confidant of Edwin Edwards, the governor of Louisiana. He is also part owner of the New Orleans Saints football team and the head of a

group of investors in a new casino project. He negotiates the narrow streets of the French Quarter in a Rolls-Royce while talking on his car phone. Local residents approach him on the street and call him by his first name; restaurateurs won't take his money.

Beneath the good old boy demeanor is a killer instinct, say experienced adversaries. Mr. Gauthier is "very aggressive and will do a lot more and go a lot further than most lawyers will," says William P. Kardaras, a New York defense attorney who opposed Mr. Gauthier and a group of lawyers in the case stemming from the 1986 San Juan DuPont Plaza Hotel fire, which was settled for \$235 million. "Whatever it takes to win, within the system, they will do," says Mr. Kardaras. "Whether you call that fair or unfair, I won't characterize."

Mr. Gauthier is known for using unconventional tactics to keep people off guard. He greeted a reporter with an elaborate prank: Wearing a monkey mask and brandishing a fake gun, he posed as an unstable whistle-blower peddling incriminating tobacco industry documents while hidden cameras recorded the whole incident. Another time, he called a partner in the middle of the night and said, "The presi-

Please Turn to Page B12, Column 1

This Crafty Lawyer Raises Heat On the Whole Tobacco Industry

Continued From Page B1

dent of R.J. Reynolds has just confessed everything, get on it" and hung up.

"You tend to discount him as just a clown. It throws you off your game," says Gary L. Bostwick, a defense attorney in the San Juan Hotel fire case. Mr. Gauthier once slipped Mr. Bostwick a pair of plastic handcuffs before a deposition, suggesting that Mr. Bostwick or his client would soon be needing them.

Mr. Kardaras's advice to the cigarette companies: "Get the best defense lawyers they can and stay awake. They are very formidable adversaries."

In the tobacco industry's lawyers, Mr. Gauthier will meet formidable opponents. So far, the tobacco industry has been able to outspend and outlast the small law firms that have pursued smoking liability cases. One experienced tobacco litigator, Marc Z. Edell, largely dropped his tobacco cases in 1992, pleading financial hardship after having spent \$1.2 million in out-of-pocket expenses over 10 years. Tobacco company lawyers tied up one of Mr. Edell's expert witnesses in depositions for 22 days on one case.

"To paraphrase Gen. Patton, the way we won these cases was not by spending all of [RJR's] money, but by making the other son of a bitch spend all of his," an attorney for RJR Nabisco Holdings Corp. wrote in a memo.

"So far, the tobacco industry has had to fight only one victim at a time," says William S. Lerach, a San Diego lawyer pursuing a separate class-action suit on behalf of people who have paid for nicotine patches to overcome their addiction to smoking. The tobacco giants "have been able to grind up every one of the individual victims into a fine powder and get rid of them."

The narrow focus on addiction is "going to be more palatable to a jury," than

previous tobacco cases, says Gregory Mazares, president of Litigation Sciences Inc., a firm that specializes in predicting how jurors will respond.

Tobacco company lawyers say they will continue to prevail. "Jurors believe that people can quit smoking," says Chuck Wall, associate general counsel for Philip Morris Cos. Mr. Wall doesn't believe the courts will certify the new cases as class actions because each smoker's case is different. "I don't think this is a new day," he says.

Mr. Gauthier dismisses the tobacco companies' arsenal with characteristic bravura: "They're not are going to outman us. They're not going to outfund us. And they're not going to outlast us."

Insider-Trading Sentencing

Seymour Gleeman was sentenced to six months in prison and two years of home confinement for his role in an insider-trading ring involving his son and his son's friend, who was a paralegal at the New York law firm Skadden, Arps, Slate, Meagher & Flom.

In imposing sentence, Judge Lawrence M. McKenna said he was particularly disturbed that Mr. Gleeman, a retired International Business Machines Corp. executive, chose to go along with the scheme that prosecutors say his son masterminded rather than attempt to halt the crime. Both his son, Darrin Gleeman, and former Skadden paralegal Christopher Harvey received 300 hours community service and probation for their roles in purloining confidential information on pending takeover deals.

In federal district court in New York, Mr. Gleeman pleaded guilty to conspiracy, wire fraud and obstruction of justice charges in October 1992 and disgorged about \$150,000 in profits.

—Margaret A. Jacobs contributed to this article.