

TOBIN & MUÑOZ, L.L.C.

Spring Newsletter 2011



Tobin & Muñoz, L.L.C. focuses on complex litigation, special regulatory matters and national and international business representation. Attorneys in the firm (clockwise from lower left) are George Muñoz, Tomas Petkus, Karl Schook, Paula Tobin and Craig D. Tobin.

McMahon v. Harley-Davidson

Tobin and Muñoz, L.L.C. had the honor and privilege of representing Chicago firefighter Lt. Jim McMahon and his wife Kimberly in a suit against Harley-Davidson. McMahon was rendered a quadriplegic when his Harley Elektra Glide went out of control as he rode down a highway. Helping Craig Tobin was the nationally-known Texas law firm of Ware-Jackson. Harley-Davidson brought in lawyers from high-priced firms in Philadelphia, Milwaukee and Chicago in an effort to defend its product and deny the McMahons a recovery.

Jim McMahon had a long and successful career as a Chicago firefighter and community leader. After 9/11 he rode his motorcycle to New York leading the charge of Chicago first responders to help their brothers and sisters in New York's Emergency Services.

The jury heard the saga of Jim's recovery and the adversity that he and his wife have faced every day since the wreck. The story of their struggles since was both heartbreaking and inspiring.

Traffic Aide Awarded \$1.55 Million

Jackie Fegan, a City of Chicago Traffic Management Authority supervisor, was falsely arrested, brutalized with excessive force and injured by Chicago police officers because she could not 'fix' a parking ticket. The jury awarded Fegan \$1.55 million dollars for medical bills for surgery on torn ligaments in her wrist, resulting permanent disability, pain and suffering, therapy and lost wages. The jury found the officers guilty of conspiracy to violate Fegan's civil rights.

Fegan attempted to intercede after a TMA Traffic Aide she supervised wrote a parking ticket on a private van, illegally parked midday on Michigan Ave., that turned out to be owned by one of the arresting officers. He and the other three cops arrested, manhandled, handcuffed, picked up and threw Fegan into a squadrol because they did not like her explanation that she did not have any authority to 'fix' parking tickets. When they arrived at the 18th District Police Station they told the watch commander they arrested Fegan for 'jaywalking.'

continued page 3

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Tobin v. Werner Enterprises & Wal-Mart

With a heavy heart we represented the estate of Jaeson Tobin, his lovely widow Julia, and their three beautiful children Kayla, Alaena and Ryan in a wrongful-death lawsuit. Jaeson was a youth pastor and assistant principal at the Tomah Baptist Church and school in Tomah, Wisconsin. Jaeson was Pastor Ronald Tobin's son. Pastor Tobin is Craig Tobin's brother.

Jaeson was killed on a two-lane highway enroute to visit members of the church. A truck owned by Werner Enterprises and driven by Billie Jo Lassell, a trainee driver, was hauling product from a Wal-Mart. The truck had been at a stop sign, but pulled into the two-lane highway into Jaeson's path. He began to make an evasive turn but crashed into the truck. He died November 12, 2009.

We filed a lawsuit in the United States federal court in Madison, Wisconsin. T&M was assisted by Frank Pasternak, who like Craig D. Tobin, is also Super Lawyer, given that distinction by his peers in Wisconsin. The case settled and the lawsuit was dismissed on January 20, 2011.

Agents Raid Wrong House, Terrorize Family and Their Lawyer Fails to Secure Their Rights

Craig D. Tobin and Tomas Petkus represented Debra and Albert White in a federal lawsuit against their former attorneys for failing to protect their claims against the United States Drug Enforcement Agency and members of the Chicago Police Department. The White family suffered a nightmare that is almost beyond belief and then their lawyers missed a critical deadline that left them without recourse. On a quiet evening, the Whites, their children and grandchildren, were victims of an illegal raid.

Debra White was taking out the garbage as she talked on the phone with her sister. When she opened the garage door, men dressed in dark clothes pointed guns at her. She screamed, turned and ran for her safety of her home. The men, as it turns out DEA agents and Chicago Police officers, ran after her, kicked in a family room door and chased her up the stairs. More agents and officers broke in rounding up family members at rifle point. The agents and police had hit the wrong house!

As a child Debra White had been the victim of a brutal home invasion and assault; these events were particularly traumatic for her. Prior to dropping the phone and running for her life Debra yelled to her sister to call the police. After the family was herded together and taken into

custody, another officer said we "hit the wrong house." It was too late as the damage had been done.

The Whites engaged attorney Bruce Elfvin, from Ohio, who had been a family friend and attorney. Elfvin agreed to represent them. The Whites' legitimate claims against the federal government were ultimately denied. Elfvin did not file the claims by the legal deadline. He never investigated the extent of Chicago police involvement and let that deadline pass too.

The federal lawsuit brought by T&M alleged that, in addition to not pursuing the claims in a timely fashion, Elfvin's firm failed to investigate and consider Mrs. White injuries, medical history and the devastating effect the raid and her arrest had upon her.

The case was filed in the United States District Court, was settled and dismissed on February 9, 2011. We were able to recover White's damages and use the same legal system that caused them harm to do them justice.

Restaurateur Turns to Tobin & Muñoz, L.L.C. When Deal Turns Sour

Tobin & Muñoz, L.L.C. successfully represented Johnathan Segal, an investor in Geisha LLC, owner and operator of the popular *Japonais* restaurant in Chicago. His partners, without the knowledge or consent of the other investors, opened up *Japoinais* locations in other U.S. cities capitalizing on the Chicago original's name and goodwill. Mr. Segal initially hired a large Chicago law firm to represent his interests. After years of legal struggles without resolution, he sought new legal counsel. We amended the original complaint adding critical claims that had been overlooked, including breach of fiduciary duty. The new complaint brought Geisha to the table, where after years of bitter battles, Mr. Segal was thrilled to be entirely bought out of his investment.

Tobin & Muñoz, L.L.C. Proves No Consumer Confusion

Tobin & Muñoz, LLC successfully represented a local franchisee of Home Care Assistance, a national company, against the claims of Home Care Assistants. Plaintiff brought actions in Illinois and California for trade name infringement, deceptive trade practices and other claims, alleging that HCA (our client) was purposely misleading consumers by using a similar name and infringing on their trade name. Tobin & Muñoz, L.L.C. was able to show that no consumer confusion had been caused, that the logos are distinctive and no one would be confused. The plaintiffs were unable to produce any evidence during discovery that any consumers were misled. Tobin & Muñoz, L.L.C.

Spring Newsletter 2011

forced plaintiffs to pay the defendant's costs for bringing the case.

Monroe Investments v. Iskra

Tobin & Muñoz, L.L.C. represented Monroe Investments, a nationally known investment hedge fund, in the Circuit Court of Cook County. Monroe sued Milton Iskra, formerly an executive with Monroe, and his subsequent employer. Iskra had stolen proprietary confidential financial information, including price models, cost calculations and client lists while negotiating with competing company for a new job. The defendants were forced to pay a substantial sum and had to purge their computer systems of any information that Iskra had stolen and which they accepted knowing it was unlawfully given to them.

Traffic Aide Awarded 1.5 Million

continued from page 1

The watch commander was not pleased with this story. There is no such 'crime' as jaywalking. Fegan, as a TMA supervisor, had police powers which allowed her to be in the middle of the street, stop and divert traffic and control the movement of cars and pedestrians. Even if jaywalking was a crime, Fegan had immunity based on her position with the city as a TMA Supervisor. The district commander refused to approve the arrest.

When they learned that Internal Affairs was on their way, the officers cooked up a plan to cover up their abuse of their police powers and their constitutional violations. They invented a story that Fegan was the aggressor. They said she was arrested after she became violent and assaulted one of them. Jaywalking, a non-crime, morphed into assault on a police officer – a felony. The jury saw through their perjury and convicted them of conspiracy.

Matt Bartosik of NBC Chicago described the outcome of the incident: "Four Chicago cops just received the most expensive parking ticket ever: \$1.5 million. In May 2006, a Traffic Management Authority employee wrote a parking ticket for an illegally parked minivan in downtown Chicago. That minivan, however, belonged to Officer Robert Reid, a Chicago policeman who was responding to a call. Reid was not pleased to return to his car and find a bright orange ticket on it. He and three other officers argued with the TMA employee who issued the ticket...Fegan stepped in and Reid demanded that she throw out the violation. Fegan refused... the four police officers then grabbed Fegan, handcuffed her and tossed her into a police vehicle..."

We were able to show Reid had a pattern of violent and aggressive behavior. Courtroom observers – and the jury – were deeply affected by the testimony from a woman Reid

previously menaced and arrested for refusing him free parking for his personal vehicle at Navy Pier. The former garage employee, who moved out of state after the incident, painted a chilling picture of how Reid behaved before and then after his ungovernable temper exploded. Her trauma from being menaced, handcuffed, arrested and falsely charged with numerous invented felonies for simply doing her job resonated with the jury. They could feel the same fear, anxiety and pain that Jackie Fegan felt and awarded damages to compensate Fegan for her injuries.

McMahon V. Harley

continued from page 1



Front and center in the case and the courtroom was McMahon's still new but mangled motorcycle that had been his pride and joy. He never had the chance to get any satisfaction from riding it. The bike went into what experts call the "Harley-Davidson Death Wobble" on a dry, defect and debris free road. While taking a gentle curve at highway speed the bike began to shake violently preventing Jim from controlling it. McMahon was thrown after it entered the median, breaking his back.

With the help of the leading experts in the world we were able to shine a light on the design problems that cause the "Harley Death Wobble." Oxford University professor Dr. David Limebeer, an engineer and expert in motorcycles, explained the defective design of the motorcycle and how a simple after market bolt on accessory that makes it safe. Harley dealers across the U.S. sell these inexpensive kits to fix this defect. The dealer McMahon bought the bike from did not tell him these kits existed or their purpose.

Before and during trial and again while the jury was deliberating Harley made settlement overtures. The McMahon's had rejected \$ 9,000,000 the night before the parties finally reached an accord. The settlement imposed a confidentiality agreement preventing disclosure of the dollar amount Harley paid. The settlement has brought

financial security for the McMahons and will allow him the constant care he will require for the remainder of his life.

Tobin Recognized as Nation's Best

Tobin was chosen again this year for inclusion in Best Lawyers in America. He is one of a small and distinguished group of attorneys who have been in "Best Lawyers" over 15 years. T&M was honored to be listed as one of the "Best Law Firms" in U.S. News and World Report.

Recognized as a Super Lawyer since 2006, Tobin has appeared in Chicago Magazine as one of the "Illinois Super Lawyers."

According to the National Trial Lawyers association, Tobin is one of the Top 100 Trial Lawyers of Illinois. Newsweek featured Tobin as a National Top Lawyer in March 2011. He was featured in the Chicago Tribune Magazine as one of the city's best attorneys.

Once again, the firm Tobin & Muñoz, L.L.C. has been listed in the Bar Registry of Pre-eminent Lawyers. According to Martindale-Hubbell, the oldest and most respected attorney rating system, only five percent of all law firms in the U.S. quality. This recognizes Tobin & Muñoz, L.L.C. as one of the most distinguished and respected firms in the country.

Tobin's peers voted him as a Leading Attorney again this year in civil rights, personal injury, commercial litigation, and white collar criminal defense trial lawyer.

George Munoz Renews American Dream

In July 2010, *Renewing the American Dream, A Citizen's Guide to Restoring our Competitive Advantage*, co-authored by George Muñoz was published. The book, which explains how the U.S. needs to strengthen its competitive advantage in the coming decade when China and other countries will be vying for a bigger share of the international market, was featured in three national newscasts, including two on MSNBC and one on Fox Business News. Mr. Muñoz used his experience as the Chief Financial Officer of the U.S. Treasury Department (1993 - 97) and as the President and Chief Executive

Officer of the Overseas Private Investment Corporation (OPIC) as a basis for the book.

When he wasn't busy writing, Muñoz was tapped to advise on a major infrastructure project in the Middle East because of his extensive experience working with emerging market countries and his close working relationship with multi-lateral development banks and export credit agencies. Muñoz also served as legal counsel in international arbitration against Panama before the International Centre



for Settlement of Investment Disputes (ICSID).

Last fall, President Obama appointed Muñoz to the President's Commission on White House Fellowships. He was sworn in by U.S. Supreme Court Justice Breyer.