COMMENT

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In 1974, I was involved in a complex asbestos case in Tyler, Texas, before Judge William Steger of the Eastern District of Texas.[1] Although the case was complex and had approximately 430 plaintiffs, it was one of the most pleasant experiences I have had in my many years of practicing law.

The plaintiffs were all former employees of an asbestos plant in Owentown, near Tyler, Texas. One group of defendants called the Pittsburgh Group—comprised of Pittsburgh Plate Glass, Pittsburgh Corning,[2] and Corning Glass Works—owned and operated the asbestos plant. Another group of defendants, which included various English companies, was called the Cape Group. Seven or eight of these Cape companies mined the raw asbestos in Johannesburg, South Africa, that was shipped to the plant in Tyler. Unarco Industries, Inc., the company that operated the Tyler plant in the early 1970s before selling it to Pittsburgh Corning, and Dr. Lee Grant, the industrial hygienist for Pittsburgh Plate Glass on loan to Pittsburgh Corning, were also defendants. Finally, the Asbestos Textile Institute and the Oil Chemical Workers Union had been impleaded by the other defendants.

The Owentown Plant made Unibestos, a pipe covering made by mixing raw asbestos fibers with mud and water. The raw asbestos was shipped from South Africa in gunny or croker sacks that, at least until 1972, carried no warnings. At the plant, the workers pulled the raw asbestos out of the sacks with their hands. Although the workers were furnished with respirators, after an hour or so, the respirators clogged with asbestos dust.

Records produced during discovery revealed that the employees would rarely last more than six months at the plant before they were fired for minor infractions such as tardiness. I believe the defendants did not dismiss these employees for the minor infractions, but because the defendants felt there was a health problem at the plant and did not want to risk prolonged exposure. As it turned out, the employees' health problems ranged from mesothelioma to lung cancer, and from mild to severe asbestosis.

Soon after the case got started, Judge Steger called all the lawyers together.[3] He told us to go into a room and to come out with a lead counsel for the plaintiffs and a lead counsel for the defendants. He warned that he

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1. *Yandle v PPG Industries, Inc.*, TY-74-3-CA (ED Tex 1974).

2. Pittsburgh Corning was a joint venture, owned in equal shares by Pittsburgh Plate Glass and Corning Glass Works.

3. There were three principal plaintiffs' lawyers: Rex Houston from Henderson, Texas; Fred Baron from Dallas, Texas, who originally filed the case; and myself. With approximately 200 plaintiffs, I probably represented the largest group.

would appoint lead counsel if we failed to select them. I was selected as plaintiffs' lead counsel, and Jack Flock, an attorney I have known and respected for many years, was selected as lead defense counsel.

In those days, if you had a case that had multiple parties with common interests, you were sent before a multi-district panel of judges. When we went before a panel in Washington, D.C., on the question of whether the asbestos cases should be certified as a class action, I was prepared to argue that no one wanted a class action. The first judge said, "The Plaintiffs do not want a class action; the defendants do not want a class action; the government does not want a class action. Need you say anymore?" There went my argument; the cases went back to Tyler.

Back in Tyler, Judge Steger told us that we were going to litigate the cases by his rules. He instructed us to work out our own discovery schedule, and told us he did not want to see us again for six months unless we had a problem that we could not resolve ourselves. After the first six months, we reported our progress to Judge Steger. After that, we met with him every sixty days to give him a status report. Although we conducted discovery all over the world for nearly two years, we saw Judge Steger only once on a matter that we could not resolve ourselves. He resolved the dispute in ten minutes.

After we completed discovery (or nearly completed it[4]), Judge Steger called the lawyers back into court and told us he was setting the case for trial a little more than two weeks from that date. Then he said,

> There is a jury room for the plaintiffs and defendants to meet in. There is another room that the plaintiffs can use to meet privately, and there is a third room that the defendants can use to meet privately. Now get in there, and don't come out until you settle this lawsuit. And if you don't finish it today, come back at 9:00 in the morning. And Mr. Baldwin and Mr. Flock, report your progress to me at the end of the day.

For about two weeks, we all showed up every morning at 9:00 and talked all day long. We finally settled on the Friday before the Monday trial date.

This story is important because it illustrates that some things Judge Steger was doing instinctively in the 1970s have now become rigid rules. The story also shows that you do not have to be bound by technicalities and strict rules to make a large piece of litigation work. Of course, the fact that the case worked out so well is largely a tribute to Judge Steger. He had sense enough to recognize that we were all capable lawyers and to let us do our own thing. Yet he also had sense enough to keep a firm reign on the litigation.

Even with today's rigid rules, successful resolution of mass tort claims still hinges on whether litigators are willing to give and take, and to try to see the other side of the litigation. For example, the success of the Manville Personal Injury Settlement Trust[5] is due in great measure to the makeup of its executive director, Marianna Smith, and her colleagues. The same is also true

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4. Plaintiffs and defendants never "complete" discovery; Judge Steger sensed when we had completed the majority of it.

5. See Marianna S. Smith, *Resolving Asbestos Claims: The Manville Personal Injury Settlement Trust*, 53 L & Contemp Probs 27 (Autumn 1990).

of the Center for Claims Resolution,[6] which is administering the resolution of asbestos claims for nearly twenty-five independent companies, and Larry Fitzpatrick, its president and chief executive officer. Larry Fitzpatrick is one of the great innovators in handling mass tort litigation. He also has the foresight to recognize some of the plaintiffs' problems, as I hope the plaintiffs recognize some of the defendants'.

In short, strict procedure and rigid rules do not guarantee successful resolution of complex litigation. Rather, resolution depends in large part on the personalities of the individuals involved—the judge, the lawyers, and the parties—and their willingness to work together.

6. See Lawrence Fitzpatrick, *The Center for Claims Resolution*, 53 L & Contemp Probs 13 (Autumn 1990).