

BETTING ON THE VERDICT

Rex Carr is one of the best at winning cases for injured clients - and a share of the awards.

By John A. Jenkins

IN THE SOLITUDE OF his makeshift law office two blocks from the St. Clair County courthouse in Belleville, Ill., Rex Carr ponders the irony of his success.

"I frequently get more money in settlements than I believe I can get in a trial," he says. "It's asinine, but some insurance companies, they hear my name and they say, 'Pay that sucker what he wants!' They're fools to do that. But they believe in my reputation, and they pay."

Carr is a plaintiffs' trial lawyer. He is boastful, but he is indeed one of the best among 50,000 lawyers specializing in

John A. Jenkins writes frequently about legal matters for The New York Times Magazine.

cases involving personal injury (unsafe products, medical malpractice, accidents) and catastrophic law. He relishes the good fight, and the opposition's propensity to settle contradicts his own natural law. "I don't want to settle cases," he says. "A judge I know once told me that a poor settlement is better than a good trial. Well, my discovery has been just the opposite: A *poor trial is better* than a good settlement, because I've gotten all my business from publicity about me and my cases. You don't get publicity from a settlement. Nobody even hears about it — nobody but me and my client. And I don't get a single bit of business from it."

Last year, Carr earned \$1 million — nearly five times the national average for partners in the nation's largest, most

Rex Carr outside his law firm's office in East St. Louis, Ill.

Blocked due to copyright.
See full page image or
microfilm.

Blocked due to copyright.
See full page image or
microfilm.

Rex Carr (foreground) interviews Dr. Agnes Lattimer, a witness, in his Belleville, Ill., office with Jerome W. Seigfreid, a co-counsel. Carr is at the peak of a 35-year practice of law.

prestigious law firms, according to a national accounting survey. Now, at the peak of a legal career that has spanned three and a half decades, Carr is litigating his most important case. He is seeking tens of millions of dollars from the Monsanto Company and the Norfolk & Western Railway for the damage he contends they caused by spilling dioxin in a tiny Missouri town.

The locus of his success isn't New York, Washington or any other legal barony. Instead, Carr has honed his craft by practicing in the small, impoverished city of East St. Louis, Ill., and the middle-class counties surrounding it.

But with Carr's steely will to win comes a hubris that could bring defeat in the dioxin case. By taking advantage of laws that, in the past, have often allowed plaintiffs injured elsewhere to file suit in the Illinois counties of Madison and St. Clair, Carr and a few other lawyers handling mainly out-of-town clients have capitalized on the generosity of local juries — amid so much embarrassing publicity that recently the state appellate courts have begun dismissing some lawsuits. The dioxin case is one of those at risk.

Carr's clients include victims disfigured by burns, auto accidents and calamities, all allegedly caused by somebody else's negligence. "You really have to sell that injured person to the jury," he explains. "Once you get a jury's confidence in a trial, then in a closing argument you cash in on that confidence

— you get things that you ask for. Who says that an amputated leg is worth \$2 million? Where's the book that places a value on it? You can look up in the Blue Book and see the value of a used car, but you sure as hell can't look in a book and see the value of a cut-off leg! Who says the pain is worth a thousand dollars an hour? The lawyer says it."

Carr doesn't expect his client to be able to pay for such spirited advocacy. He works on a contingency-fee basis, instead of for an hourly fee. He takes an ownership interest that gives him a clear financial incentive to push for the best judgment. If he wins his suit, he gets one-third of the award plus expenses and gives his client the rest. If he loses, he gets nothing.

Virtually all automobile-accident and other such personal-injury cases are handled in this manner by the trial lawyers' bar. And if this uniquely American system has enriched some lawyers and contributed to the proliferation of lawsuits — an estimated 6 million are filed annually — it has also, some would argue, helped to maintain a measure of equality in our judicial system.

"The contingent fee," says David Shrager, a Philadelphia trial lawyer and immediate past president of the Association of Trial Lawyers of America, "is the average person's key to the courtroom in a civil case."

If the trial lawyer is an entrepreneur taking advantage of the business opportunities the contingent fee provides, then Rex Carr is the embodi-

Blocked due to copyright.
See full page image or
microfilm.

Carr, right, on his sailboat with his 14-year-old son Glenn. A colleague says of Carr's intensity, "He even works at sailing."

ment of the species. It is not merely economic self-interest for him: he has something to prove. "To me," Carr declares, "the trial of lawsuits is the *summum bonum* of this business. This is an arena, it's combat. Me against the other lawyers. I want to win. . . ."

IN COURTROOM 14, Carr is seeking to prove that when a half-teaspoonful of dioxin spilled from a tank car onto a railroad track in Sturgeon, Mo., nearly six years ago, it so permeated the environment that it adversely affected the health of his 65 clients, who are among the hamlet's 901 residents, all of whom had to be evacuated for two days while workers tried to clean up.

"Half a teaspoon of dioxin," Carr told the jury in his opening statement last February. "Perhaps even less. If you took a penny and lost it on the streets of downtown St. Louis, that is one part per billion in that entire area. And that's what we're talking about in this case — parts per billion of dioxin in this tank car."

Although dioxin, an unwanted impurity in some herbicides and wood preservatives, causes cancer in laboratory rats, there is no conclusive evidence that it causes cancer in human beings. Carr contends that his clients suffer from liver damage, headaches, body aches and depression. "Their systems are really fouled up," he says.

Now, in this small oak-paneled courtroom, Carr is seeking compensation. Even before the case came to trial, he had secured a windfall settlement for his clients, who re-

ceived a share in \$5 million from the two companies responsible for making the defective tank car. Each plaintiff got an average of about \$50,000.

But the person who won the most money from the settlement was Carr himself. From that \$5 million settlement, he took \$1.7 million as his fee, turning half over to his firm and the remainder to the Missouri lawyer who referred the dioxin clients to him. (Still awaiting trials are lawsuits filed this year in Missouri, days before the statute of limitation expired, by Carr and his co-counsel on behalf of 112 other victims of the Sturgeon dioxin spill. The two also represent 52 plaintiffs in other cases alleging dioxin contamination in Missouri, and Carr's partner Jerome J. Schlichter represents 85 more plaintiffs in such actions.)

In Carr's view, the companies that settled before this trial began are merely bit players. He had also offered to settle with the remaining two defendants, but he couldn't come to terms with the Monsanto Company, the maker of the substance containing the dioxin, and the Norfolk & Western Railway, which was hauling the tank car when the accident occurred. When the trial began last winter, jurors were told to expect it to last six months to a year. But now even that estimate appears too conservative, largely because of Carr's laborious examination of his own witnesses as he attempts to amass his proof.

Carr's command post for the trial is an office in an old medical building near the Belleville courthouse. Eight filing cabinets are crowded into what once was a nurse's cubicle, and a cast-off confer-

ence table and a gaudy striped sofa decorate a darkly varnished reception area along with a neon sign proclaiming "prescriptions." Carr's office, a converted examination room, is impersonal except for a green-and-white plastic baseball cap emblazoned with "I'm not paid enough to get ulcers" that hangs on the wall.

Gross income at his firm, Carr, Korein, Kunin, Schlichter & Brennan, last year was about \$6.5 million. Like Carr, his partner Sandor Korein, 52 years old, earned a \$1 million share of the profits. Schlichter, who is 36 and started out as a \$9,000-a-year associate 11 years ago, received more than \$600,000; the other six partners make less. The firm's 9 associates made from \$30,000 to \$50,000 plus a share of the new business they brought in. The firm's other 30 employees — including 3 investigators, a photography-lab technician and the pilot of the firm's \$960,000 airplane — each got bonuses of \$2,000 plus one month's salary.

Ninety percent of the firm's gross income comes from contingent-fee cases. Most are settled, providing the cash flow to sustain the few big cases in hopes of a huge recovery years later at trial. In the dioxin case, Carr has already advanced \$1.5 million for expert witnesses, with perhaps another \$1 million to be spent before the trial ends.

His courtroom victories have been notable: a \$7 million verdict in 1975 on behalf of a Madison County youth paralyzed in a diving-board accident at a Washington hotel; \$5.75 million against an Alton, Ill., hospital where a client's small intestine was accidentally removed during a routine gynecological operation ("the guts-out case," Carr says tersely and callously); \$9.2 million in a landmark libel case against The Alton Telegraph (later settled for \$1.4 million, the largest such settlement on record).

His string of victories is so impressive that he was inducted into the prestigious Inner Circle of Advocates, a society whose members are 100 of the leading money winners of the trial lawyers' bar. To earn membership, a lawyer must have tried at least 50 cases and have won at least one million-dollar judgment for compensatory damages.

"The great thing about the trial business is that I have the chance, if I get a million dollars for my client, of making \$333,000 for myself — in

one fee," Carr says. "Now, that's more money than many people will make in a lifetime. It simply is. And for me, a poor kid who was on relief, and who worked his way through law school, that's a lot of money. It gives me an incentive.

"It averages out," he says, referring to the one-third fee. "I've had some cases where I did so much work, I should have gotten 90 percent. Other cases, I got a third when I should have gotten 2 percent, because I did nothing."

Legal-ethics rules require the contingent-fee agreement to be a written contract between lawyer and client, and the trial lawyers association believes that the percentage fee also should be the subject of arm's-length bargaining between the two parties. But even Shrager of the Association of Trial Lawyers of America concedes that is seldom the case. Mostly, the client simply accepts the lawyer's proposal. Shrager defends this, saying: "The client understands what one-third means. There are no extra charges. There is no easier-to-understand agreement between two adults."

Charles H. Baron, a Boston College Law School professor and an expert in legal ethics, says trial lawyers ignore an inherent conflict of interest with their clients: "The client can't shop around, and he doesn't have the power to negotiate. He doesn't know any better. Trial lawyers claim their whopping percentage compensates them for the losers they take. But the fact is, they don't take losers. They're pretty good at smelling them out. They're mostly taking winners and charging people as if they're also getting some losers, when in fact they're not. And I really think that's disturbing."

Indeed, the strongest case will not get Carr's attention unless there is a deep pocket, that of an insurance company, private individual or corporation, from which the defendant's damages can be paid. As for anyone else, "The poor sucker goes without," says Carr matter-of-factly. "What good would it do for me to help him? I can't make money for him. He's out of luck.

"I never go into court with the belief that I'm going to lose that case. I settle the cases where I think there's a risk of losing. I can create my own won-lost record that way."

Ultimately, a lawyer's record is determined by the finder of fact — occasionally

a judge, usually a jury. Carr favors a jury, preferably one of poor people and black people: "Black people are the most compassionate people on earth.

"It's a myth among lawyers that poor people and black people won't give big money. Well, bull! Nobody's used to big money when you're talking about millions of dollars. And poor people would just as soon give away somebody else's money as anybody would."

Carr would rather not have "the bank president, the insurance salesman, the small-business man or the doctor's wife, or any of those other people we consider to be big shots." "You simply don't want those people. They don't have a heart. I try to get jurors that think as decent human beings ought to think — that is, like democrats think: that humans ought to help humans."

Carr recently used a body-language expert to guide his use of peremptory challenges in the jury selection for one case, and the result was a verdict less favorable than the settlement he'd been offered. "Really shook my confidence," he muses. So, in the dioxin case, he relied again on his own instincts. The result was a panel of 12 jurors and six alternates, mostly a middle-age and middle-class jury that included three black women and two black men — a racial proportion closely reflecting the county's 28 percent black population.

BOTTOM-LAND FLAT, the Illinois counties of Madison and St. Clair are due east of St. Louis, directly across the Mississippi River. Belleville, Carr's home and a 20-minute ride from his offices in East St. Louis, is a benignly middle-class city in which the streets have names like Washington, High and Main, and where the county courthouse dominates the green-squared downtown. The tennis star Jimmy Connors is a hometown celebrity and Carr's client, at \$250 an hour for contract and endorsement advice.

Carr may keep his law firm in East St. Louis out of a sense of pride, loyalty and obstinacy. The city of 55,000 is 96 percent black, its median family income the lowest in the nation, its murder rate 13 times greater than the national average for cities its size. But the real center for his firm is in the white enclaves of Madison and St. Clair Counties, once dubbed

by American Lawyer magazine as a "plaintiff's paradise." Fortuities of law, geography and commerce long ago made the area, in Carr's words, "just an ideal place to have lawsuits."

Federal statutes enacted in 1910 and 1915 give injured rail and barge workers the right to file suit anywhere the defendant railroad or barge company does business. Because both counties are major rail and barge centers — more than a dozen railroads have lines there, and the Illinois and Missouri rivers join the Mississippi nearby — and because there is a high concentration of unionized blue-collar workers from which to draw potentially pro-plaintiff jurors, the area's courts routinely produce generous verdicts for injured rail and barge workers.

"If you're hurt in California and that railroad passes through here, this is where you can file suit," Carr explains. "Railroading is hazardous work, so the types of injuries are always bad — legs off, arms off, deaths. A good lawyer, big defendants and sympathetic, working-man-type juries — all that laid the foundation for this area."

In 1982, The St. Louis Post-Dispatch reported that more than a thousand rail and barge lawsuits had been filed in the two counties during the prior two years alone — and that, based on a random sample of those cases, 80 percent involved accidents that had occurred elsewhere. Business is so good that four lawyers in the two counties are members of the Inner Circle of Advocates.

Carr's clients are from all over the Middle West. His partner Korein, who represents the barge workers' National Maritime Union, gets injury cases from up and down the Mississippi as well as from all the rivers flowing into it. The dioxin case (actually 21 separate cases combined in a single trial) was also shipped in, after the Mexico, Mo., lawyer, Jerome W. Seigfreid, who had originally filed it in a Missouri court 150 miles away took a poll and found sentiment running against his clients. (Two defendants had also sought a change of venue.)

By making his local courts the venue of choice for virtually all of his important cases, Carr is "forum shopping," a perfectly legal practice as long as the court allows it. However, recent Illinois appellate-court rulings

have threatened this procedure, specifically in regard to lawsuits filed on behalf of plaintiffs from another state.

One of the cases reversed on appeal was a \$58 million dioxin verdict won by Paul Pratt, another local Inner Circle member. Pratt's case involved the same dioxin spill and the same defendants as Carr's — and drew all of its 47 plaintiffs from central Missouri. The impropriety of filing it in Madison County instead of where the spill occurred seemed obvious to the appellate court, which ruled, "Not even a gossamer thread binds this case to Illinois." After the Illinois Supreme Court refused to hear an appeal, Pratt refiled his case in Missouri. When a similiar argument was raised in Carr's case, however, the trial judge wrote a lengthy opinion differentiating between the two cases, and refused to dismiss.

"I think guys like Rex are bad for the profession," says Morris Chapman, another local trial lawyer and member of the Inner Circle of Advocates. "How much money does he need, beyond a certain point? I've always taken the position that you have to live within the limits of the system. And if you go out and get these \$20 million verdicts for a guy from Podunk, you're going to kill the golden goose! You may win that verdict, but you'll cost every other lawyer the system's viability because the system has only so much resilience. It's happening here because of the people who haul cases in here. The knee-jerk reaction of the courts has been to curtail that entirely."

CARR, AT 57, IS A Bantam lawyer with a larger-than-life reputation who describes himself as "a knowledgeable lawyer, a forceful personality and a skillful talker." Unlike many of his colleagues, he has never watched another trial lawyer try a case. His voice has an imperious flatness to it, perfect for carefully parsed courtroom statements, but somehow unsuited for the coarse language he often uses in private. Graying hair, combed back, frames an angular, softly lined face punctuated by a jutting, slightly cleft chin. In the courtroom, he favors dark suits and wears bifocals.

Out of court, Carr relaxes in blue jeans, a turtleneck sweater and a tattered, quilted navy-blue jacket. Who is there to impress in Belleville? But his choice of car betrays an exceptional ego. His

brand new BMW 733i — a \$35,000 automobile, he proudly announces — sports a license plate that boldly proclaims the name REX. With a radar detector on the dash, he dominates the interstate at speeds surpassing 80 miles an hour. Carr also keeps a 26-foot sailboat on nearby Lake Carlyle and sails whenever he can.

"He's a loner," says Korein, his partner of 12 years. "Rex probably considers me one of his best friends, but we never see each other socially. And he really doesn't have any friends. He's just not gregarious in the slightest."

"He's obsessive," comments Schlichter, another colleague. "He even works at sailing, going out every weekend from April through November, which in this climate is stretching it. I went sailing with him once. I didn't like it. He was just too intense."

Carr sails on a lake 13 miles long and 3 miles wide, a solitary pilot resolutely setting his course for the same tiny island at the lake's far reaches. To circle the island and return is to reconfirm his dominion.

The will to prevail against his environment, be it physical, social or economic, was forged almost from birth. Carr grew up in East St. Louis, the fourth of five boys. His father, an Illinois Central Railroad fireman, deserted his family at the start of the Depression and later was jailed for nonsupport. Carr's mother provided for the family as best she could with a Works Progress Administration job as a mattress stuffer, while 12-year-old Rex peddled newspapers. He later worked as an usher in a movie theater, and, at age 17, took a better-paying job chopping 300-pound blocks of ice for refrigerated railroad cars at the East St. Louis stockyards. To earn his way through the University of Illinois at Urbana, 163 miles away, he would hitchhike home each Friday afternoon to begin an enervating 36-hour shift at the icing docks. Sunday evenings, he hitched a ride back. "I was sleepier than hell in my Monday classes," he recalls. "Didn't wake up until Wednesday."

Carr remembers that when an eighth-grade teacher asked him what he would be when he grew up, he cheerfully answered that he wanted to be a lawyer "just like Daniel Webster and Abraham Lincoln."

"Oh," the teacher replied, "you want to be a liar!"

Carr, who attended the University of Illinois Law School on the G.I. Bill, graduated second in his class in 1949 only to find he still could make more money chopping ice, which he did until shortly before his marriage late the following year.

Carr's three children from his first marriage include a doctor in Chicago; a missionary in Colombia for a charismatic church (sarcastically described by Carr as a filial response to his atheism), and the owner of a limousine service in Malibu Beach, Calif.

Carr's second wife, Edna, is his former secretary. Their 14-year-old son, Glenn, is a student at the local public high school. "Don't go out for football, son," Carr warned him with a grin not long ago. The school and its coaches are being sued by Carr for paralyzing injuries suffered by one of the school's football players during a game.

OUT OF 300 TRIALS and thousands of cases Carr has handled since he began his practice, he recalls losing 10 — "never through my error, though." "I don't know of any case that I've ever lost through my error." Instead, he insists, the mistake was always on the part of the judge, jury or client.

"Rex has intellectual clout," explains Bruce Cook, one of Carr's former partners. "He presents a case very coldly, precisely and intellectually. If Rex says something is the law, even the judges will believe it's true. He dominates people through his intellect, his preparation and his aggression."

"One of the hardest things for a trial lawyer to do is to be an adversary — particularly in a small community like this one. To get the opposing lawyer down and kick him is difficult, but that's our obligation to our client. When most trial lawyers get the other guy down, they step back and give him some air. But Rex doesn't let 'em up. He'll slice 'em. He doesn't care what anybody thinks."

More than a decade ago, Carr tried what would be his first case against the U-Haul trailer-rental company. His client had been severely burned in a U-Haul trailer accident, and Carr's case centered on what he maintained was an unsafe trailer design. "He had a young kid that had been burned up like a cinder," U-Haul's local attorney in that case, Morris Chapman, says now. "Terribly

burned. He wasn't dead, but he would have been better off dead from our standpoint." Damages for pain and suffering can be sought only for the living.

Carr wanted \$150,000 to settle the case, but U-Haul refused. "Our main witness was a U-Haul vice president," Chapman relates. "I had schooled him because I knew Rex's proclivities. Most people are overawed by Rex. He just takes over. If he gets a witness on the stand, he may keep him there two weeks just to break him down. I told our witness, 'Don't even tell him the time of day.'

"Rex kept him on the stand, hammering away, for weeks. The jury just got ticked. They gave him a couple of hundred thousand dollars, but the case was worth a lot more. And after that, he set out to nail U-Haul."

Shortly afterward, a chance referral from another local lawyer pitted Carr against U-Haul again. The prospective client claimed she had suffered a muscle injury in another U-Haul trailer accident. "She didn't even have a broken bone; I told her to go down the street to see Rex," recalls the lawyer, W. Thomas Coghill Jr.

"Rex caught the other side off guard," Coghill continues. "U-Haul had insurance, and the insurance company just treated it like some Mickey Mouse kind of case. But Rex's client in the first U-Haul case was permitted to testify. He was just so grotesquely burned that the jury brought in a punitive verdict."

Schlichter, Carr's partner, adds: "I asked Rex during the trial, 'What do you think the jury's going to do?' And he said, 'I've got U-Haul's annual report. They've got retained earnings of \$5 million — and that's what the jury's going to give me. I'm going to tell the jury to take the profit out of renting those trailers.' He was just unshaken in his conviction that there would be a \$5 million verdict. And that's what the jury came back with: \$5 million in punitive damages, plus another \$225,000 in compensatory damages."

To forestall an appeal, Carr settled for \$1.5 million, taking \$500,000 for his firm, and persuading his client to give the earlier U-Haul victim \$358,000. Three other cases against U-Haul since then have produced settlements totaling \$350,000. Another case, still pending, involves what Carr alleges to be defectively designed lug nuts and

bolts that cause wheels to fall off certain U-Haul trucks. Carr says he will again seek punitive damages. "If they knew they had this defect in their trucks and let these trucks go out on the road . . ." Carr's voice trails off. "They have to learn. They have to learn not to do that."

Michael Shoen, an owner of U-Haul and the son of its founder, acknowledged the design defect, but contended it was the fault of the truck's manufacturer rather than U-Haul. He says nonetheless that his Phoenix-based company has been trying to correct the problem, which has led to more than 175 such accidents but fewer than 10 lawsuits — all of which, except for Carr's, have been settled.

"It's going to be Rex Carr's version of the Nuremberg trials," Mr. Shoen says. "He'll go at it like an obsessed man."

THE ACTUAL LEGAL drama of the dioxin trial unfolds monotonously. One juror could be seen nodding off. "Sleeping doesn't bother me," Carr confides. "The sleeping juror is not ordinarily a strong juror."

What does bother him is a young juror who appears uninterested: "She's shaking her pencil; she's impatient. To me, that's the same as drumming your fingers. It's as if she's already made her mind up and thinks our testimony isn't important enough to listen to."

Carr turns to his expert witness from the Environmental Defense Fund, a group of lawyers, scientists, economists and computer programmers working to find solutions to environmental dilemmas: "Tomorrow, when you answer a question, I want you to look that juror in the eye. Speak directly to her. We need to bring her back to our side."

Months from now, Carr will need the votes of all 12 jurors to win his clients' case.

"I know that I am doing some good," he says in reflection. "It is conceivable that this might be the most important thing I ever do, if I really succeed in putting the onus on Monsanto, where it belongs. It's egotistical, maybe, to think that, but it's a possibility. And that's what I would really be proud of, if I could think that the insignificant role that I've played in life thus far could have some importance of that sort. I would like to think that that could occur. And it might occur, who knows?" ■