

Small-Firm Lawyer Hands Tobacco Industry Historic Defeat

*Has 400 More Cases
Slated For Trial*

By Bill Ibelle

NORWOOD "WOODY"
WILNER

Jacksonville, Fla.
Seven-lawyer firm

On Aug. 9, Woody Wilner mounted a pink bicycle, pedaled through the St. Petersburg traffic with his handlebar basket piled high with case files, and did what an army of big-firm lawyers and the attorneys general in 16 states have been unable to do so far:

He beat the tobacco companies.

Wilner's \$750,000 verdict for a 66-year-old smoker with lung cancer sent shock waves through Wall Street. Tobacco stocks plummeted by \$12 billion within an hour of the verdict.

It was a shocking defeat for an industry that had never paid a dime in damages in 43 years of tobacco litigation.

Even more striking was the fact that this case, *Carter v. Brown & Williamson Tobacco Company*, was engineered, start-to-finish, by a seven-lawyer firm, says Richard Daynard, chairman of the Tobacco Products Liability Project at North-

LAWYER
OF THE YEAR

Wilner took on the tobacco giants and won, thus proving his radical theory that the invincibility of the tobacco industry was pure myth. He engineered his historic victory with modest financial resources and in record time — 14 months from filing date to verdict — thus opening tobacco litigation to small-firm lawyers across the nation.

eastern University.

"This landmark verdict proves that it is economically viable for any good attorney to take on the tobacco industry, virtually anywhere in the United States, and win," Daynard says.

Daynard and other experts hail the

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While the big-firm competition rolled through the courthouse in Mercedes-Benz, Wilner arrived on a pink bicycle, looking more like a delivery person than the savvy lawyer who would hand the industry its biggest defeat.

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victory as the turning point in a four-decade battle to hold the tobacco giants accountable for producing a product that is both lethal and addictive.

And *Carter* isn't likely to be an isolated victory. Wilner has filed 400 individual suits against the tobacco companies and has another 2,000 names of potential plaintiffs on file.

Wilner's unprecedented success is based on a novel approach to tobacco litigation: that it's just like any other case.

"They've created this aura of invincibility, but the whole thing is just company propaganda," says Wilner. "We plan to try these as ordinary product liability cases. There's nothing unusual about them."

Cutting Giants Down to Size

The key to this strategy has been a case management order, obtained last January, that sets a one-a-month trial schedule for Wilner's 400 cases. The order eliminated the tobacco industry's most effective weapon — delay.

In the past, the companies routinely dragged out cases and bankrupted plaintiffs with an endless barrage of motions, depositions and discovery requests.

The goal was to convince lawyers and potential plaintiffs that suing the to-

awarded the plaintiff \$400,000 in 1988, the tobacco companies never had to pay. The plaintiff lost the appeal, then won in the U.S. Supreme Court. But the cigarette companies simply out-spent and out-lasted their opponent, and the retrial ordered by the Supreme Court never took place.

Wilner's one-a-month court order eliminated that financial advantage.

The price tag for the plaintiff's firm in *Cipollone* was more than \$5 million. Compare that to the \$530,000 Wilner says it took to litigate *Carter*. And that included only \$30,000 in trial costs. The remaining half million is the estimated fees for the three lawyers in Wilner's firm who worked on the case full-time for a year.

"It will cost a lot less for the remaining cases because we've already done a lot of the work," says Wilner.

So while small armies of lawyers continue to pursue massive class actions and Medicaid cases, Wilner has already steered his lean-mean-litigation-machine to victory.

"Today we're talking about the impact of *Carter*, while the lawyers in class action cases are still talking about maybe being certified, and then maybe getting a trial date and then maybe, three years later, having their case go before a jury.

"Our clients have an urgent need to get these issues resolved, and society has an urgent need to deal with this public-health threat," Wilner continues. "We've already won a case and they're still trying to get off the ground."

Not bad for a 48-year-old lawyer who describes himself as "an ordinary, absent-minded sort of guy."

An Ordinary Guy

Much has been made of Wilner's pink bicycle, a single-gear beauty he bought at a garage sale for \$75. Like Wilner himself, the explanation for this unusual mode of transportation is disarmingly straightforward.

"It was faster than walking or driving through traffic," he says.

But why pink?

"Oh, I bought that one because it had this huge metal basket on the front that would fit all my files. Nothing else I saw would have done the job."

Besides, the alternative was Wilner's



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enjoyed listening to you, but we have a suggestion: try to be more organized," juror David Marsh told the local newspaper. "And when you sit down, don't play with your hair." We were going to take up a collection to buy him a comb."

Courtroom Style

Wilner inherited his sense of adventure from his mother, a stunt-pilot in the 1930s who still flies a plane at age 86. Maybe this explains Wilner's willingness to take on the seemingly invincible tobacco giants.

But while momma Wilner is a barn-stormer by temperament, her son Woody prefers the technical challenges of instrument flying. This speaks volumes about the way Wilner confronts improbable odds.

Wilner is no flamboyant courtroom orator. There is no hint of the country preacher in him.

Instead, he prefers to build his case on painstaking computer research, a thorough understanding of science and a straightforward rendition of overwhelming facts.

In keeping with his strategy to try

doctor reviewed the other on smoking and comments that showed he knew and when.

"There was no case in a series of pieces," says Wilner. "There was a seamless web of separate expert opinions on cancer at the company knew cuss statistics. What was the big picture?"

Besides, it would confuse a case quite simple.

"All we have to is that cigarettes are [the plaintiff] wrong," says Wilner. "We win. So how do

The tobacco company left to make the same that has helped the years: (1) That the proof that smoking causes their illness because smoking is bad for

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