

Business

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Legal trend of leveling suits against fellow litigators likened to cannibalism

Lawyers go after their own kind

By MARY FLOOD
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A decision this week requiring Houston trial lawyer John O'Quinn to pay at least \$35.7 million to former clients may be a harbinger of a legal trend — lawyer cannibalism.

"When I started suing other lawyers in 1981, no one else wanted to do it. But today, oh my God, everybody is competing for this business. They think it's a gold mine to sue other lawyers. The cannibalism metaphor really works here," said Randy Johnston, a Dallas legal malpractice lawyer.

An arbitration panel Thursday ordered O'Quinn to pay at least \$35.7 million to more than 3,000 former breast implant litigation clients for collecting improper fees. The award includes \$10.7 million in improper fees and a \$25 million penalty, the panel said.

The 3,000-plus women joined in a 1999 lawsuit claiming O'Quinn took funds from their settlements for group charges they had not agreed to pay. One of their lawyers estimated that with interest and lawyer fees, O'Quinn could pay up to \$60 million out of his estimated \$263.4 million in fees from the implant litigation.

O'Quinn said he will appeal the ruling. He noted that even the arbitrators agreed he did a good job for his clients and, he said, clients knew all litigation costs would be deducted.

Johnston said, though, that lawyers can expect to be targeted more often by their own kind. "When a lot of money changes hands there's a group of lawyers chasing it. Whoever makes the money will get sued, whether it's a doctor, car manufacturer or lawyer," Johnston said.

Dale Jefferson, a Houston attorney who often represents plaintiffs' lawyers in malpractice cases, agrees.

"The meaning this litigation has for lawyers is that no matter how good a job you do for your clients, you are always going to be subjected to second-guessing and a second generation lawsuit," said Jefferson, whose clients have included O'Quinn.

Jefferson also is defending one of three lawyers sued after settling for clients injured in the 2005 explosion at BP's Texas City refinery, which killed 15 workers.

"Those lawyers are being sued basically because they did a good job, but maybe not good enough. They are accused of not holding out long enough," Jefferson said.

He said recent Texas law placing limits on personal injury litigation means lawyers are looking for business, and suing other lawyers is becoming more popular.

"No longer can a lawyer breathe easy when he or she has attained good results for the client," Jefferson said.

Joe Jamail, the Houston lawyer who led the team suing O'Quinn, said since the arbitrators' order was announced Thursday, he's heard from people thinking of suing their lawyers.

He got involved in this lawsuit against O'Quinn more than five years after it was filed. But Jamail was involved in an earlier suit against O'Quinn in which a lawyer claimed O'Quinn shorted him on legal fees. The case was settled in midtrial.

Another lesson from the O'Quinn decision is that lawyers need to hold client expenses sacrosanct and make sure everything is spelled out, legal ethics experts said.

Johnston said Texas attorneys are now on notice that they can't be sloppy about expenses.

"This decision makes it clear that dealing with expenses is important stuff. Even if the error is small, the sin is big," he said.

Lillian Hardwick, a Houston lawyer and ethics consultant who co-authored a book on Texas legal ethics, said it would be unworkable for lawyers to stop and tell all clients about all expenses. But she said they can do a better job of explaining expenses at the outset.

"When contingent fee clients sign on a lawyer to handle their case — essentially for free unless the lawyer wins for the clients — the clients are clueless as to what the general and specific case expenses might be."

And they usually don't care, she said, since the lawyer is paying the expenses.

"When the clients later see those expenses deducted from their recovery, they are often horrified, since they tend to hang their future on the gross amount of the settlement the lawyer

got for them."

Linda Eads, a professor of law who teaches ethics at Southern Methodist University's Dedman School of Law, said lawyers in complex multipoint cases can lose sight of the fact that they owe a clear duty to each individual client.

She mentioned the public relations and scientific study costs O'Quinn charged to his clients and said: "A good rule might be if you don't think you can tell your client what you are doing, you need to rethink what you are doing."

Johnston said when lawyers sue lawyers, something beyond the dollars comes into play, especially when two nationally hailed lawyers enter the ring.

"The practice of trial law involves a lot of ego," Johnston said. "When John O'Quinn goes up against Joe Jamail, I promise you, it isn't all about the money."

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Rossi wrote:

It's about time they start turning on each other...

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lily1 wrote:

NOTE: from the article in the Chronicle on 9/12 (day after 9/11) discusses the settlement of differences between these gentlemen. Hmmmm

7/21/2007 9:43:35 AM

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lily1 wrote:

The Jamail-O'Quinn battle rages on. I doubt that Jamail is pursuing O'Quinn for any noble cause. If I remember correctly these two "legal titans" were involved in litigation and scheduled to mediate their grievance when 9/11 occurred and they graciously admitted that their beefs were nothing in the light of the tragedy that occurred in the US on that day. Well, now we see the end run. But swimfan, I totally agree with your description. And don't forget that these cases usually involve malpractice insurance, so the rat is defended by an insurance co defense team, and the settlement in part is paid from a policy. I love this system! Self perpetuating, on and on. Other than a slap to his giant ego, this is no sweat for O'Quinn.

7/21/2007 9:38:49 AM

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GCates wrote:

swimfan nailed it - let the vultures eat each other.
Stan

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swimfan wrote:

"The cannibalism metaphor really works here."

This is exactly my opinion of what should happen to lawyers.

7/21/2007 8:05:38 AM

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