



2009 PUBLISHER'S AWARD

RISING UP TO STOP A RAID

Prominent attorneys came together to protect the Client Security Fund

By DOUGLAS S. MALAN

The news came out late at night in March. Desperate for money and looking for anything to bridge historic budget deficits, the state needed funds and needed them quickly.

What they found was a \$2 million surplus in the Client Security Fund, a creation of the bar with the purpose of recompensing clients wronged by their attorneys. Gov. M. Jodi Rell made a move to sweep it into the general fund.

Meanwhile, Stamford-based personal injury attorney Ernest Teitell's spring was going along in typical fashion. And then he received a telephone call from Justice Joette Katz, who alerted him to the governor's plan. Teitell was left stunned.

The transfer of funds – which was approved by the legislature as part of a massive deficit reduction plan — would leave no monetary cushion against a spike in lawyer thefts during a down economy.

"We were shocked and confused about how [the proposed fund transfer] could happen," Teitell said. "People have lost their life's savings to these lawyers. We decided we had to stop this. But the question was, what could we do about it?"

In response, the bar reared up and expressed outrage. Many called it a "raid" on the fund. Teitell recruited another esteemed trial attorney, Steven Ecker, and the two took the bold step of filing suit against the governor and other state officials to keep the money safe.

They recruited 12 attorneys and the Connecticut Bar Association to serve as plaintiffs in the class action, arguing a separation of powers violation that the fund created by the judicial branch should be off limits to the executive branch. Meanwhile, lawyers reached out to legislators for a statutory solution.

In the end, Rell backed off and legislation was enacted to protect the fund in the future. For their efforts in filing the lawsuit, Teitell, Ecker and the group of plaintiffs have been awarded the 2009 *Law Tribune* Publisher's Award.

The plaintiffs included Jacob B. Zeldes, William R. Davis, Charles A. DeLuca, William F. Dow III, Kathryn Emmett, William F. Gallagher, Hugh F. Keefe, Kathleen L. Nastro, Hubert J. Santos, Hope C. Seeley, Matthew Shafner and Frederic S. Ury. For the CBA, current vice president Ralph J. Monaco drafted the association's section of the complaint.

"This is a time everyone came together and said this is going too far," Ecker said.

Last week, the lawsuit *Jacob D. Zeldes et al v. M. Jodi Rell et al* was officially withdrawn from Hartford Superior Court where Judge James T. Graham was hearing the case. The



Jesse Neider

Stamford attorney Ernie Teitell said the plaintiffs had to act quickly, before the state actually moved the Client Security Fund money to the general fund. "Under the law, the money had to be transferred by the end of the fiscal year [in June]," Teitell said.

trial was to start on May 25.

"I want to believe that this was just a misunderstanding of what the fund is for," Teitell said.

Convincing Words

Teitell said word about Rell's plan started spreading after Justice Katz, who is chair of the Client Security Fund committee, and Peter Costas, a former Connecticut Bar Association president, both penned op-ed pieces for the *Law Tribune* and other newspapers.

"The main step was lining up lawyers whose names would have an effect so people understood this was serious," said Ecker, who practices at Cowdery, Ecker & Murphy in Hartford. State officials "were desperate to find money. They found any fund with a surplus and they took it."

At the end of 2008, the Client Security Fund had a surplus of about \$2 million.

But the reaction to Rell's plan was not immediate. Some lawyers hesitated to take legal action against the governor, state Treasurer Denise L. Nappier and Comptroller Nancy Wyman, who ultimately were named defendants in the suit.

"There was this paranoia about doing anything against the governor," said Costas, a partner of Pepe & Hazard. "I was telling lawyers that this is one of the few times you're going to have the public siding with you. This is a public relations bonus."

Meanwhile, Justice Katz was hard at work alerting the bar of what was about to take place. She got in touch with Teitell who knew time was of the essence if the lawyers wanted to keep the Client Security Fund reserves intact.

"Under the law, the money had to be transferred by the end of the fiscal year [in June]," Teitell said. "We were concerned that the money might be transferred before we could react."

Teitell immediately thought of Ecker as a *pro bono* partner. Ecker has been in the middle of state-level separation of powers disputes before. In 2006, he represented the Judicial Branch when it intervened during the legislature's Judiciary Committee's attempt to subpoena former Chief Justice William J. Sullivan after Sullivan delayed the release of a controversial court decision.

Teitell, too, is no stranger to high profile *pro bono* work. In 2004, he earned the *Law Tribune's* Pro Bono Award for volunteering his legal services to the Connecticut families of 9/11 victims. With Teitell and Ecker leading the charge, the duo sought a group of attorneys with name recognition to add heft to the lawsuit.

"Once we put this in motion, things happened quickly," Teitell said.

Falling Into Place

At that point, they encountered little resistance as more people understood that Rell's plan meant endangering the fund created by the bar and fueled by mandatory \$110 annual contributions from the state's lawyers.

"I had no hesitation," said William R. Davis, of RisCassi & Davis. "I was very pleased



Gary Lewis

Hartford attorney Steven Ecker said it was important to line up big-name lawyers as plaintiffs 'so people understood this was serious.'

that they asked me. This lawsuit was important to maintaining the integrity of the profession. I felt it had to be done."

Matthew Shafner, of Suisman Shapiro in New London, has been a member of the bar for 50 years and said the idea of taking money meant for victims of lawyers and transferring it to the general fund was "so offensive to me."

"If the budget's a real problem, let's all chip in and pay for it with a sales tax increase," Shafner said. "Don't take it from the victims' fund. Every lawyer I've spoken to said, 'Way to go. Go get 'em.'"

As the plaintiff class started to form, the CBA's House of Delegates held an emergency meeting to vote on throwing their weight behind the lawsuit. Monaco, who practices with Conway & Londregan in New London, said there was overwhelming support for getting the CBA involved.

"I think it was very important because the money would've been gone and spent, and we would've allowed a clear violation of law to occur," Monaco said.

Ecker and Teitell drafted the complaints with assistance from Ecker's law firm colleagues — Peter M. Haberlandt and George C. Jepsen, a former state Senate majority leader. Costas and former state Supreme Court Justice David M. Borden, who is now a judge trial referee, submitted legal opinions outlining the history of the Client Security Fund and the importance of keeping

it under the judicial branch's control.

"Those were extremely helpful" to the cause, Ecker said.

Meanwhile, Ecker and Teitell had contacted Attorney General Richard Blumenthal and requested a stay on transferring the funds. Blumenthal's office agreed and Judge Graham was notified, which allowed the plaintiffs additional time to prepare their case.

Legislative Front

But the crusade didn't end with the March 30 filing of the lawsuit. There was work to be done on the legislative front.

The Judiciary Committee also recognized the Client Security Fund's importance, and Rep. Arthur O'Neill called the attempt to take the \$2 million "a mistake." He and other committee members all voted to support legislation that would protect the Client Security Fund from any attempts by the executive branch to use it.

"I think we need to do this as part of restoring some measure of confidence in the public about dealing with attorneys and protecting the public..." said O'Neill, who also is an attorney, during a committee meeting on April 3.

Ultimately, an act was passed stating "the moneys in the Client Security Fund are not tax revenues and may not be transferred or credited to the General Fund or any other fund or account" without expressed permission from the Client Security Fund committee.

Teitell said the hallmark of the entire effort was the cooperation among the CBA and the three branches of government. "I'm personally impressed that once we got the story out there, the legislature and the governor reacted quickly," he noted.

The *Law Tribune's* Publisher's Award is not the only public recognition of the lawyers' work. On May 29 in Chicago, the CBA will receive the Isaac Hecht Law Client Protection Award from the American Bar Association in recognition of the bar's efforts on behalf of the Client Security Fund. The Hecht award is considered the nation's highest award recognizing protection of clients' rights.

Teitell called the work "rewarding" and said the lawsuit teaches a lesson about the importance of the legal profession. "It took a lawsuit to prevent the government from overreaching," he said.

Ecker said the resolution was a fitting end to a fight that he felt compelled to join: "If you're not going to stand up for this, what are you going to stand up for?" ■