

Attorneys of the Year



Bill Harper: ex-prizefighter battles for plaintiffs

By Alice Sherren Brommer

Woodbury attorney William Harper had quite a year in 1999. He led the Minnesota Trial Lawyers Association, ran his sole practice, settled a soft-tissue case in Louisiana for more than \$1 million and won the appeal of a \$845,000 jury verdict.

Harper — a former golden gloves boxer — credits his courtroom success to his boxing experience.

When a fighter crawls through the ropes, he knows he's all alone and that he will either make it or he won't, Harper explains. "And when you walk into the courtroom, you're all alone in a lot of ways — you're either going to make it or you're not," he notes. "A lot of the same survival fight or flight instincts that kick in in the ring also kick in in the courtroom. I think that psychologically there is a parallel universe there."

Harper began boxing in his hometown of Duluth in the late '60s. In Duluth, he won his Golden Gloves division — which earned him the opportunity to come to Minneapolis to fight. But Harper, then a college student, decided that taking his finals was more important and decided to forgo the bout. As a result, the boxer Harper beat took the trip to Minneapolis instead.

After that Harper hung up his gloves for a while, although he did make "a little money" fighting professional boxers at a community center in the Twin Cities.

Even though he no longer boxes, Harper applies the skills he learned to the practice of law.

"Visualization works," he says. "You can do great things by molding your mind and your expectations. If you get knocked down get right back up again. Don't let them know you're hurt."

A good year

Harper says that he strove in his MTLA leadership to foster a renewed spirit of community within the group — "a sense that we are all in the same boat going the same direction."

Harper describes the MTLA's goal as protecting citizens' rights and ensuring that citizens receive what they deserve in terms of the damages that they sustained.

Under Harper's leadership, the MTLA successfully fought legislative efforts for tort reform and got enacted into law a modification of the seat belt gag rule. Harper does not take credit for the MTLA's good legislative year in 1999. Instead, he called it a "a serendipitous sort of happenstance."

While other areas of the country were trying to limit citizens' rights and cap damage awards, the MTLA was protecting the rights of Minnesota's citizens against tort reform, according to Harper.

"The unfortunate result of [limiting citizens' rights and capping damage awards] is that you and I and the rest of the taxpaying citizens end up supporting those who are hurt," Harper says.

The MTLA also helped convince the Legislature to override Gov. Jesse Ventura's veto of a bill concerning the use of evidence about seat belt usage.

The general rule is that evidence of seat belt usage is inadmissible in liability cases. But the new legislation, also known as Jodi's law, allows plaintiffs in



WILLIAM HARPER

Born: July 23, 1948, Duluth

Education: Hamline University School of Law, J.D., 1977; University of Minnesota, B.A., 1972

Admitted: 1977 Minnesota, U.S. District Court, Minnesota, 1978; Court of Appeals, 8th Circuit, 1981

Professional Experience: Harper Law Offices 1991-present; Harper & Harper, 1980-93; Harper and Anderson, 1983-89; Harper and Wirth, 1980-83; Streefland, Daly and Harper, 1979-80; Daly and Harper, 1977-79; Ramsey County Attorney Office, 1975-79.

Professional Groups: Minnesota State Bar Association; Minnesota Trial Lawyers Association (president 1998-99); American Arbitration Association; American Creativity Association; Washington County Bar Association (Board of Governors 1986, Executive Committee 1989); Association of Trial Lawyers of America; Academy of Certified Trial Lawyers of Minnesota, inducted to Minnesota Million Dollar Round Table 1993

Community Involvement: Newport Masonic Lodge #118; Scottish Rite, St. Paul Valley; Osman Shrine

product liability suits to introduce evidence that they were wearing their seat belt. Thus, it is now possible to sue a car manufacturer for negligently designing a seat belt.

Harper postulates that Ventura may not have understood that the legislation would only affect product liability cases.

"What the Legislature recognized — and what Ventura did not — is that a manufacturer of a defective product should be held responsible for the harmful effects of that product," Harper says. "Taxpaying citizens should not have to support someone who is dramatically injured because of a manufacturer's defective product."

Even though his term as president is over, Harper plans to remain active in the MTLA.

"It's really not just an annual commitment," Harper stresses.

Beer truck

The incident that gave rise to the Louisiana case handled by Harper occurred on St. Patrick's Day on Bourbon Street in New Orleans. During a parade, a beer truck careened off the road, running over 23 people and killing one. Harper's eventual client, a Minnesota woman, "was part of the melee — the carnage — that followed" in the truck's wake. The truck's side view mirror hit the woman in the side of her head and ran over her foot. Although she was severely injured, she didn't break any bones.

Harper notes that while many practitioners wouldn't take the case because it would be "essentially a soft tissue, closed head injury kind of argument," he believed that the woman's claim had merit.

"The truck driver had "an exceedingly high blood alcohol content," and the driver's manager was in the front seat giving him beer from their own beer truck, observes Harper. Harper says that he recognized immediately that those facts would be very damaging to the beer company if the suit became public, making the case a good candidate for a settlement.

Harper compares litigation to a game of cards. In the Louisiana case, the "liability cards" were so strong that Harper considered them trump cards.

In preparing for the trial, it became evident that the only roadblock to recovering punitive damages from the beer company was that under the wording of Louisiana's punitive damages statute, punitive damages could only be assessed against a "person" who carelessly disregards the rights or safety of another. (The plaintiffs had been awarded punitive damages from the driver, but showing the corporation qualified as a "person" would be trickier.)

At first Harper was discouraged. The judge in the jurisdiction where the case was filed had earlier held that the word "person" in the punitive damage statute doesn't include corporations. But Harper discovered that a judge in an adjoining jurisdiction was presented with

nearly identical facts and held that a corporation can be a "person" for purposes of punitive damages.

Harper brought the issue to the local appellate court, which ruled that a corporation can indeed be a "person" for purposes of the punitive damages statute. Once the defendant corporation realized that it was facing the potential of punitive damages, Harper's case took a turn for the better. With the strong facts proving liability, and the possibility of punitive damages, Harper knew he could maximize the damages. "And that's what we did," he says with a smile.

Harper acknowledges he had some help in the Louisiana case. In fact, he never tries cases outside the state of Minnesota without consulting with competent local counsel.

"You need someone local who knows the rules and customs, who knows the system, and most importantly who knows the judges," explains Harper. "You have to take into consideration the quirks and the strengths and weaknesses of each judge. Walking [into court in another state] without that kind of information is just walking into trouble."

Harper observes that in selecting local counsel, he normally relies on the local American Trial Lawyers Association and the local trial lawyers' bar to find out who is doing good work.

'Hit or miss'

Harper, who describes the practice of law as "hit or miss," has admittedly had quite a few "hits" in the past year.

In addition to the Louisiana case, he won a \$845,000 jury verdict in a case last September involving an employee injured by a third-party tortfeasor. In that case, *Schlichte, et al v. Kielan, et al*, Minnesota Lawyer No. CA-1034-99, the Minnesota Court of Appeals recently decided that the jury verdict did not have to be offset by the amount of future workers' compensation benefits potentially payable to the injured worker by his employer. Workers' compensation benefits cannot be found to be "payable" if the trial court judge concludes that recovery of those benefits is merely speculative, the court reasoned.

"The [Schlichte] decision will certainly have an effect on how defense counsel deals with settlement of workers' compensation subrogation interests," observes Harper.

Harper speculates that he was able to achieve a very favorable result for his client in the *Schlichte* case by carefully explaining the distinction between benefits paid and payable, and between workers' compensation damages and damages related solely to personal injury.

Satisfaction

Harper said that his most satisfying case of 1999 was a tort claim brought against Camp Snoopy in the Mall of America over the allegedly dangerous design of an exit from a children's ride. Most of the walkways within the amusement park were bordered by three- or four-foot fencing, but the area where Harper's client tripped and fell was bordered by fencing that was only 10 inches high.

Harper's client was standing with her 8-month-old child on her hip, watching Harper > page S-15



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her other two children as they enjoyed the "Truckin'" ride. When the woman took a step backward to let another parent with a stroller pass in front of her, she tripped on the 10-inch brick curbing, and fell backwards. The child was not injured because the mother protected the child as she fell. However, Harper's client broke her arm. Although the physical injury healed rather well, the mother struggled with depression as a result of chronic pain in her arm.

In trying the case, Harper focused on the difficulties the injured mother — with three children under the age of 5 — experienced as a result of the fall.

"As I talked to the jury during closing, I told them that [my client was] not unlike a mother robin with a broken wing — how can she care for those kids [with a broken arm]?" Harper recalls. "She couldn't even change the diapers of the youngest child because she

couldn't use her arm to keep the baby from rolling. She couldn't get him in and out of the car seat."

The Mall of America took the position that Harper's client should have seen what she was doing, that it was her fault and that it couldn't have foreseen this happening. Harper told the jury that his client was doing "exactly what she was supposed to do in caring for her kids" when the accident occurred.

"By the time that trial was over, I think everyone in the courtroom knew that it was a clearly foreseeable event that, in the exercise of reasonable care, should have been remedied and was not," Harper says.

Solo roots

Before he started his law practice in 1977, Harper ran an independent insurance agency in northern Minnesota. He became "sufficiently discouraged" by

the way insurance companies treated people and decided to go to law school so that he could represent people *against* insurance companies.

"There was a romantic appeal to doing trial work," Harper says, adding that as a former prizefighter he liked the idea of litigation.

Harper has worked as a sole practitioner for about 20 years.

"The fundamental reason [why I went into solo practice] is that I'm not very smart," Harper jokes. "I'm more creative than I am academic."

However, Harper may not be on his own for much longer. He plans to partner with Paul D. Peterson, an attorney who began working with Harper of counsel a few years ago.

"Paul is much more academically inclined than I am," says Harper. "He brings all kinds of positive things into my world."

In addition to Peterson, Harper employs a receptionist and two paralegals, as well as an accountant who works outside the office. Harper's staff has been with him for many years, and he has an "abiding faith" in their abilities.

"I've always believed in the team concept — and that I don't always have the right answers," Harper states.

For example, a paralegal recently brought some facts to Harper's attention that caused him to re-evaluate whether a case should go to trial. As a result of listening to her analysis of the case, Harper realized that it wouldn't be strong at trial and was able to settle the case very comfortably. "A lawyer needs to incorporate the players into a team so that everyone is working together," he observes.