



Edward Blackmon Jr.



Lisa A. Blue



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WINNING

Ten of the nation's top litigators talk about what it takes to win



Christian D. Searcy



Ron E. Shulman



Stephen L. Snyder



Lawrence A. Sutter



Harold M. Walter

STEPHEN L. SNYDER

Scoring with the jury, Rolex and all

ATTORNEY: Stephen L. Snyder

FIRM: Snyder, Slutkin & Lodowski, Baltimore

CASE: Steele Software Systems Corp. v. First Union National Bank, No. 24-C-00-004496 (Baltimore City, Md., Cir. Ct.)

UNLIKE MOST trial lawyers, Baltimore's Stephen L. Snyder eschews conservative dress and style. He wears only expensive suits, sports a diamond-studded Rolex watch and carries an alligator briefcase. And he doesn't worry that the jurors will be turned off by his flamboyant appearance.

"I want the jury to know when I walk into the courtroom that I'm successful," he says. While the standard advice to litigators is to dress down, "I do the opposite from most lawyers," he says. "I have to make sure I'm so well prepared that the jury knows it's not all flash."

Snyder has made that flashy style work in a series of high-stakes trials. Over the past two decades, Snyder has set records in Maryland for the largest verdicts for medical malpractice, legal malpractice and breach of contract, and has won the largest punitive jury award.

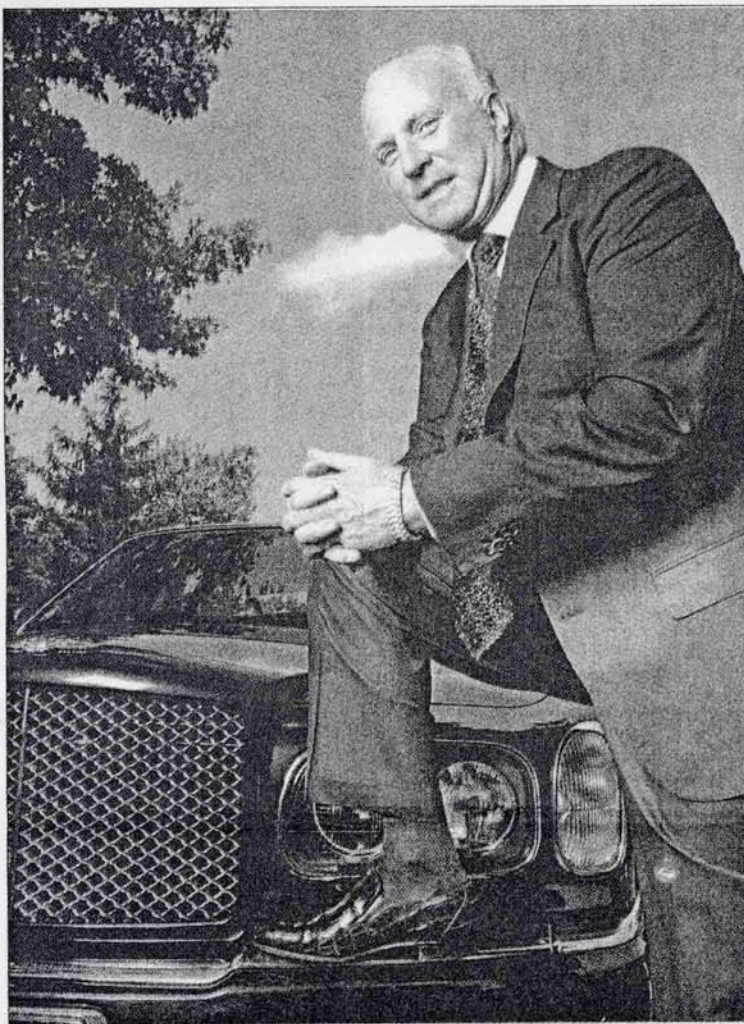
Overall, he has had scores of verdicts and settlements of \$1 million or more, including a \$276 million verdict in March in a breach of contract and fraud action against First Union National Bank.

In the First Union case, Snyder was representing Steele Software Systems Corp., a Baltimore real estate settlement services business founded by Scott Steele. Steele Software had entered into an agreement with First Union National Bank in which Steele agreed to help the bank automate and centralize its settlement services and the bank would send thousands of transactions to Steele Software for processing.

Steele had been working without a contract, while negotiations for a long-term deal were conducted, Snyder says. Then the companies signed a contract in November 1997. The deal called for a ramp-up period of six months, followed by two years, with automatic renewal for additional one-year periods, says Snyder.

In June 1998, however, the U.S. Office of the Comptroller of the Currency approved a request by Mellon Bank to set up a settlement services company.

First Union determined to do the same thing and put out bids for a settlement services business to be provided for First



STEPHEN L. SNYDER: He wears expensive suits, sports a diamond-studded Rolex and an alligator briefcase. "I want the jury to know...that I'm successful," he says.

Union and two other affiliated lenders, Snyder reports. Steele bid for the contract, but didn't get it.

Then, in April 1999, First Union announced it was terminating the original Steele contract. First Union entered into a venture with the winning bidder, then bought out that company and established its own settlement services company.

Steele Software Systems sued First Union Bank, charging breach of contract and fraudulent inducement. The plaintiff contended that First Union had terminated the contract too soon and that the bank had failed to send thousands of transactions to Steele for processing. Steele Software also charged that First Union never intended to live up to the provisions of the contract and had induced Steele into the deal with promises of a joint venture and long-term relationship.

The defense contended that there was no fraud and no breach of contract.

The bank also responded that the company executive who had agreed to the deal was not authorized to do so, and that the deal was for two years, not three.

To counter this defense and provide a more compelling, dramatic presentation of his client's case, Snyder says, "We presented our case almost entirely by calling adverse witnesses and using their documents." Of the 11 witnesses he called to

testify in his portion of the trial, nine were current or former executives of the defendant. The strategy was risky, he concedes.

But, he adds, in any case where the plaintiff is charging fraud, "it requires a clear and convincing burden of proof." To show this at trial, "you want to create conflicts between witnesses. You want the jury to not like or believe the presentation of the defense."

In the depositions, he adds, there were numerous instances where he believed he could exploit the defense responses. "One major high-ranking official gave me no less than 60 'I don't know' or 'I don't remember' in his five-hour deposition."

The case would rise or fall, however, on the examinations of the First Union executives. The first of these witnesses, William Clewis, a senior vice president in consumer lending at the bank, set the tone. Clewis had handled the negotiations of the contract with Steele, from the beginning of 1997; others at the company had negotiated with Steele previously.

With these witnesses, Snyder says he is tenacious. "When you're accusing a

company of fraud, you have to be aggressive and go after the witness." With Clewis, he adds, he was relentless from the start. "I wanted to make this guy look bad within the first five minutes."

Snyder immediately got the witness to agree that he was authorized to sign the contract. Then, says Snyder, "I showed him the document that the defense submitted." This document, First Union's formal response to the lawsuit, said that "plaintiff's claims were barred or limited in whole or in part because of the absence of authority in the signatories to the contract."

But under questioning, Clewis again affirmed that he was authorized to sign the contract. Snyder peppered Clewis with questions about the contract. The witness disputed the plaintiff's interpretation of the agreement, but was soon on shaky ground as he testified he had scanned, but not read, the contract before signing it and that the legal department had also not reviewed the final version of the contract before it was signed.

Clewis said he had not contacted First Union executives who handled negotiations before him to discuss the deal before signing or read previous drafts of the agreement. These claims further harmed the witness's credibility.

Snyder questioned Clewis about the renewal provision in the contract.

Clewis and First Union contended that the contract was for two years and there was no automatic provision for renewal, so it ended on May 1, 2000. Clewis testified that he could not remember the automatic renewal clause in the contract and that, at any rate, Steele could not rely on that provision.

Snyder pursued. "Does this contract say that you cannot deliver a notice of termination before May 1st, 2000?"

"It does say that."

"And does it also say that he could get a one-year notice of cancellation?"

"It does say that," the witness agreed.

Snyder then stated, "This contract says that at a very minimum it's going to run until May 1st, 2001."

The witness conceded, "That is what the contract says."

Another critical examination came when Snyder called Jennifer Buzzi to the stand. Buzzi was a vice president of the

bank who had sent the letter to Steele announcing the contract was terminated. Prior to trial, Snyder says, he had not deposed this witness—intentionally.

"I didn't want this witness to see me. I thought I could damage her on the stand. But I didn't want them to rehearse her," he adds. Snyder used her to bring out a prime point, that First Union was stringing Steele along until it could establish its own settlement services entity. At trial, Buzzi said the bank never intended

to renew because it was dissatisfied with Steele's prices and the contract's requirement of specific numbers of transactions to be sent to the other company.

Through Buzzi, says Snyder, "We were able to show that the company had an agenda and that she was brought in to terminate the contract so the joint venture could go forward."

On March 26, the Baltimore jury awarded compensatory damages of \$37 million for breach of contract and \$39 million on the fraud claim, then added \$200 million in punitives, on the fraudulent-inducement charge. Post-trial motions are pending. ■

TRIAL TIPS

■ Be aggressive, and go after the adverse witness.

■ If you've got a flashy style, back it up with preparation.

■ Call defense witnesses in plaintiff case.