

RECYCLED RECOLLECTIONS

In a prior paper I alluded to the fact that for some 45 years I had served as general counsel to a national trade association known as the Institute of Scrap Iron & Steel, or ISIS. Located in Washington, D.C., it merged in 1988 with a sister trade association, the National Association of Recycling Industries and became known as the Institute of Scrap Recycling Industries (ISRI). Our own literarian, Tom Murphy, is a long standing member of ISRI.

The trade association and its member companies occupied probably two-thirds to seventy-five per cent of my professional time. During the four or more decades of my practice, you can well imagine that many incidents occurred which were humorous, out of the ordinary, or both. I would like to share some of those episodes with you.

Ex Parte Freight Rate Cases.

In 1981, Congress passed the Staggers Act which deregulated railroad freight rates. For decades, in order for the railroads to increase rates on a given commodity, they had to first obtain the approval of the Interstate Commerce Commission in a procedure known as an Ex Parte freight rate increase case.

Similarly, an increase on intra state rates, in other words the rate on a commodity being hauled within a particular state, required the approval of the state public utilities commission.

Sometime during the late 1970s, I was contacted by several West Virginia scrap processors. They requested that I come to Charleston to object to the proposed intra state freight rate increase on scrap iron being sought by the West Virginia rail carriers.

The most prominent processor in West Virginia was Raleigh Junk. Owned by Charles Levine, a man in his late 60s or 70s, "Poor Charlie", as he was known, was a real character. Although he tried to act like a country bumpkin, he was a Harvard graduate who wore a bowler hat and intimately knew all the West Virginia rail executives and members of the utilities commission.

When I met Charlie at the state capital outside of the hearing room, he was dressed in a dark suit, had on his signature bowler hat and was chewing an unlit Cuban cigar. It was still in his mouth when we entered the hearing room and he took the witness stand to begin testifying. Seeing the stogy in his mouth, one of the commissioners said, “Mr. Levine, I am sorry but you are not permitted to smoke in the hearing room.” Charlie responded, “Your honor it is not lit.” “Nevertheless,” said the commissioner, “We must ask you to remove it.” Mr. Levine then proceeded to extract from his mouth the lengthy unlit stogy, all chewed up, mangled and dripping with saliva. The commissioner took one look at the slimy weed and said, “Mr. Levine, put that stogy back in your mouth, and quickly.”

Incidentally, we were successful in partially blocking the fully requested rate increase.

Wisconsin Sales and Use Tax Case (H. Samuels Co. v. Dept. of Revenue, 1975)

In the early 1970s, I was retained by the Wisconsin scrap processors to litigate whether or not metal scrap processors were manufacturers and thus exempt from the sales and use tax.

As was customary, I retained a member of the Wisconsin bar to introduce me to the court and handle local procedures. The attorney retained was Shirley S. Abrahamson of the Madison firm of La Follett, Sinykin, Anderson & Abrahamson. While it is not central to this story, we won in the Circuit Court, were reversed by the Tax Appeals Commission and won before the Wisconsin Supreme Court.

It is now necessary to fast forward 30 years to a trip my wife and I took in 2001 to Costa Rica. On the second night out we were having dinner with a woman by the name of Rosalind Sarlin. She was a travel agent from New York, and a cancer survivor. I told her that I too was a cancer survivor having had two lobes of my lung removed in 1997.

Cancer survivors tend to bond together because they have similar problems. Thus, we quickly shared our life dreams and desires. Roz said that because her cancer was still active, she intended to do as much travelling with what time remained. I asked her what

was the best trip she had ever taken. She replied that it was her cruise to the Antarctic. She said that when she woke up on Christmas morning and looked out on the crystal-clear bright blue sky and saw the penguins and ice bergs in the ocean, it was the most dazzling unforgettable day of her life.

I have no idea what then prompted me to ask her with whom she had travelled on the trip? She replied, "It was with my sister." I then said "What does your sister do?" She answered, "She is sort of a celebrity." When she said that I had to inquire as to what kind of celebrity? She answered, "She is chief justice of the Wisconsin Supreme Court." I replied, "Your sister is Shirley Abrahamson?"

Roz's face turned white. "You know my sister," she exclaimed. "I hired your sister 30 years ago in a case I was trying which eventually went to the Wisconsin Supreme Court. I know she was subsequently appointed to the Wisconsin Supreme Court, was then elected chief justice, that her husband is a math professor at the University of Wisconsin, and was badly injured in an automobile accident. And that she was on President Clinton's short list for a Jewish woman to serve on the United States Supreme Court when instead he picked Ruth Bader Ginsberg.

Roz couldn't believe it.

When I returned to Cincinnati I dug out the old brief and sent a copy to Roz. She answered that she had spoken with her sister and Shirley remembered me and the case.

What an extraordinary coincidence. It is indeed a small world.

Harris Foundry & Machine Co.—Williams McWilliams Deal.

Harris Foundry & Machine Co. is one of the largest manufacturers of metal scrap processing equipment. Located in Cordele, Ga. it manufactures gigantic baling presses and shears capable of cutting large metal objects into pieces small enough to fit into steel making furnaces.

Its owners were Russell Harris and Harold Weinstein, two of the most dissimilar individuals one could imagine.

Russell, a native of Cordele, was a member of the local Board of Elections. A

handsome man with gray, curly hair he was probably in his 60s. But while Russell was the consummate southern gentleman, he had a tendency to be addicted to the lure of gambling in Los Vegas where the trade association frequently met. More about that later.

Harold Weinstein was the owner of a major scrap processing company, Calumet Iron & Steel, located outside of Chicago. Harold was a tall handsome strapping charming individual. His wardrobe consisted of tailor made dark blue suits of every hue, embellished with solid blue ties. He reminded me of Broderick Crawford who played Harry Brock, the junkyard millionaire tycoon who starred with Judy Holiday in the 1950 movie, Born Yesterday.

In the early 70s, Harris and Weinstein agreed to sell Harris Foundry to Williams McWilliams, a contracting company located in New Orleans. Williams McWilliams was represented by the prestigious New Orleans law firm of Deutsch, Kerrigan and Styles. Its leading attorney was Eberhard Deutsch, who had ambitions to be appointed to the World Court. The story about the Harris Foundry – Williams McWilliams deal involved two separate episodes.

First was the closing. On the day before the closing I flew to New Orleans where I checked in to the Roosevelt Hotel. Early on the morning of the closing I dressed and went over to Harold Weinstein's suite to review the closing documents he had brought with him from Chicago. Harold was in the shower. When I told him why I was in his suite, he said that the documents were in his valise on his bed. Upon checking the documents I found that Russell's Harris Foundry stock was not there. I yelled to Harold in the shower that his stock was there, but Russell's was not. He promptly came out soaking wet, wrapped in a big shower towel, stating the stock had to be there.

When he checked his valise he agreed. Harold explained that Russell's stock probably was in the Calumet Iron safe in Chicago to prevent Russell from pledging or selling it to pay his gambling debts. Harold promptly picked up the phone and made a long distance call to his brother in law, Manny Sugar, in Chicago. "Manny," said Harold. "Go to the safe and see if Russell's stock is in there." After a brief pause, Manny was

back on the phone, "We've got it," he said.

Now remember, in the 70's there was no Federal Express or other priority mail systems other than possibly over night postal mail which was not guaranteed. Harold then said to Manny, "Get the stock, put it in an envelope with my name on it, take it to the airport, find the next stewardess going to New Orleans, give her \$50.00, and tell her I'll meet her plane and pick up the envelope." Meanwhile, we called Deutch Kerrigan and postponed the closing until the next morning. That evening we had the stock and the deal closed the next day. But, there is more to the story.

After several months following the closing, trouble broke out between Harris Foundry and Williams-McWilliams. The problems remained unresolved. Then, one year following the closing, on the day after Labor day, war broke out. Williams McWilliams filed suit for \$3,000,000 simultaneously in state and federal courts in Atlanta, Cordele, Georgia, New Orleans, Chicago, and Delaware. Named as defendants were Harris Foundry, Russell Harris and Harold Weinstein. In those days, \$3,000,000 was a lot of money.

It became necessary to hire attorneys in Georgia, New Orleans, Chicago and Wilmington, Delaware. Williams McWilliams was, of course, represented by Deutsch, Kerrigan and Styles. We selected Ed Levy in New Orleans to represent the defendants.

I travelled back to New Orleans to meet with all of the other lawyers to have a defense council. It was agreed with Deutsch that the case would be consolidated for trial in New Orleans.

Several months into the trial we received a telephone call from Ed Levy. The case was too big and too complicated for him and he wanted to withdraw as counsel. We asked him who he recommended in New Orleans to represent the defendants. He answered that the best attorney was a man by the name of Cicero C. Sessions. He was senior partner of the firm of Sessions, Fishman, Rosenson and Snellings. Levy advised that Sessions was a bitter enemy of Eberhard Deutsch and was personally blocking his bid to the World Court. He said that Sessions was a brilliant trial lawyer. He was lead

counsel on the national committee that revised the Federal Rules of Civil Procedure. Sessions was a large hulking man. He looked like he could have been an offensive tackle for the Cincinnati Bengals.

Sessions immediately took command of the case. A barrage of correspondence with Deutsch ensued. To make a long story short, after some six months of bitter negotiations, the case was settled. Williams McWilliams, the plaintiff which initially brought the case, settled by paying the defendants \$65,000.

Sessions indeed was a brilliant lawyer. My wife, Marilyn, and I both went to New Orleans to join Sessions to receive the settlement check. Sessions then took us to a sumptuous dinner at Brennan's, his client, where he had his own serving cart with all ingredients, tools and printed recipe to prepare café brulot.

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