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## Crossing Enemy Lines for the Best Counsel

BY DAVID RUBENSTEIN

THOMAS A. DEMETRIO, partner at Cor-boy & Demetrio in Chicago and victims' advocate who has won tens of millions of dollars for plaintiffs in airplane crash, automobile and work accident cases, is talking like one of "them."

"I think corporate America is terrific," he says. "Think of all the wonderful things society enjoys because of corporate America."

And, like a growing number of traditional personal injury attorneys, Demetrio says he has no problem representing a corporation "on the right case." Currently, he is in the midst of one: *Chevron Chemical Co. v. General Electric Co.*, filed in federal district court in Chicago late last year.

Demetrio was retained by Chevron Chemical's assistant general counsel, J. Thomas Deal, who oversees litigation for the company. After the case had been brewing for some time, it became clear to Deal that if it went to trial it would involve a lot of documents and witnesses.

"So I started thinking plaintiffs' lawyer," he says, "because although I fight with plaintiffs' lawyers 99 percent of the time, I don't have anything against them, of course. They are just doing their job."

Chevron Chemical Co. is based in San Ramon, Calif., but the case involves Plexvent, a product made by the company's Plexco pipe division, which is headquartered in Bensenville, Ill., near Chicago. If the case does go to trial, company witnesses will be important, and for

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that reason, according to Deal, the decision was made to file in Chicago. Deal began looking for a Chicago-based PI attorney, and Demetrio's name kept coming up.

"So I called him, introduced myself, said that there were a number of people out there who recommended him highly, and

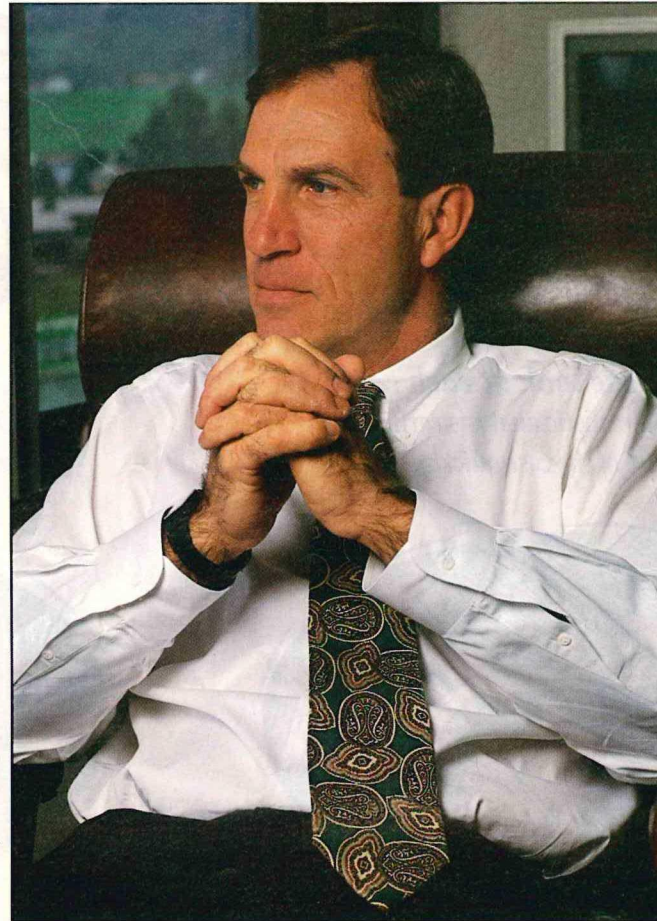


PHOTO BY STEVE CASTILLO

asked him if was interested in representing a major corporation rather than the usual underdog that he represents."

"It was a phone call out of the blue," says Demetrio, who at first responded as any good PI lawyer would, by asking for

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## Inside

**\$500 BILLION AT STAKE.** The government is a vast market for contractors, if only they had any incentive to try their hands at the hoop-jumping it takes to acquire the business. But if the myriad rules of contracting were scrapped, what a heyday they would have.

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### **FIGHT FIRE WITH GOOD NEWS.**

Columnist Bruce Collins writes that the way to change the public's low opinion of lawyers as a whole is to show them the good some lawyers are doing. And he gives a Job Clearinghouse update.

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### **LACK OF CONSIDERATION.**

Contractually Speaking columnist Robert Feldman finds another exception to his proposition that a lawyer can practice for an entire career without addressing a consideration problem.

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**PATENT PIRATES.** Brazilian pharmaceutical copycats are in no hurry to comply with GATT and NAFTA patent rules. And they have nine more years to drag their feet.

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**YOUR QUEST MAY BE OVER.** Have you been searching for a comprehensive, easy-to-use information management program? Technology editor Cary Griffith may have found it for you: Bridgeway Software's *LawQuest*.

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## Chevron Chemical

more information so he could determine if the case was worth taking. After reviewing the material, he decided he was interested, and he and Deal worked out the details. At Demetrio's suggestion, Peter C. John, an experienced corporate litigator with Chicago-based Hedlund Hanley & John, was brought in as co-counsel.

### A CORROSIVE ENVIRONMENT

Chevron Chemical is seeking damages in excess of \$20 million in a case alleging fraud, deceptive business practices and breach of warranty. The matter could get a lot of attention because it touches on a burgeoning consumer issue: the potential for modern, high-efficiency furnaces to leak carbon monoxide. Currently, fear of carbon monoxide in some northern climes is approaching hysteria, with \$50 detectors stacked by drug store cash registers and consumer-minded local television stations suggesting winter fisherman install them in their ice houses.

It is true that high-efficiency furnaces may engender problems that old clunker furnaces did not. Corrosive residues that formerly would burn and go up the stack tend to remain intact and attack the vent pipes in the newer designs. According to the Chevron Chemical complaint, the environment in the exhaust of a modern high-efficiency furnace is so corrosive that it will eat through stainless steel. Damaged

pipes can leak exhaust into buildings, with potentially fatal consequences.

In the mid-1980s, GE developed a plastic it called "ULTEM" that was thought to be impermeable to this kind of corrosion. Chevron Chemical used the plastic to fabricate its Plexco vent pipe.

According to the Chevron Chemical complaint, GE commissioned a test with the Batelle Memorial Institute in 1991 and discovered the product could fail, but did not inform Chevron Chemical until March 1994. The company then alerted distributors, provided a toll-free information number to distributors and consumers, and filed a report with the U.S. Consumer Products Safety Commission.

Plexvent was banned in Canada, and in Ontario the government directed owners of heating systems with Plexvent exhaust systems to remove them. Chevron Chemical alleges its markets in Canada and the United States were destroyed, its reputation sullied and its warehouses choked with unsold product. Appliance manufacturers have withdrawn their approvals of Plexvent piping for their products, according to the complaint. Demetrio says Chevron Chemical may have to replace

Plexco installations in Canada at a cost that could run as high as \$85 million. The \$20 million in damages specified in the complaint are "a floor," he says.

General Electric, represented by Chicago heavyweight Dan K. Webb, a partner at Winston & Strawn, argues that

the sales agreements made no warranty about the product other than it was ULTEM and that Chevron Chemical "assumed full responsibility for the testing and determination of ULTEM's suitability for Chevron's intended use."

The question of what was written and what was said at various points in the

GE-Chevron Chemical business relationship will be critical. The stage is set for a classic protracted products liability battle.

### FREE DISCOVERY

The engagement is being handled on contingency, with Chevron Chemical paying expenses periodically, as they are incurred. That does not include discovery, however.

"Discovery is lawyer time," Demetrio says, "and lawyer time is not an expense." Neither party would reveal the contingency percentage, but Deal says it involves a sliding scale.

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"I'm not a rocket scientist, but I think I understand litigation fairly well," Deal says. "I understand the drivers in it, and I understand how defense firms treat plaintiffs' work. I know that it would have cost me a hell of a lot of money to hire a big defense firm to prosecute this."

In this case, he says, "we wanted to be aligned with a lawyer whose compensation is linked to the result."

"People around here look at me sort of skeptically," Deal says. "If I was not the guy sitting in this chair, this case would have gone to a defense firm in Chicago." Probably, it would have been Mayer, Brown & Platt. Deal denies that retaining Demetrio bespeaks loss of faith or dissatisfaction with the firm, and he indicates the firm will continue as Chevron Chemical's law firm in Chicago, but probably not for plaintiffs' work.

This is not the first time that Deal has retained a plaintiffs' lawyer. A few years ago, Deal hired an attorney who specialized in individual consumer actions against insurance companies to handle the company's bad-faith claim against one of its carriers. "They handled it, we got what we wanted, they got their 40 percent commission, and everybody went home," Deal says.

But Deal now says his thinking has changed fundamentally, and that for any plaintiffs' work, he would look first to a plaintiffs' law firm. "A plaintiffs' lawyer," he says, "hones in on what he needs to prove and how he is going to go about it, because that is how he makes his living."