LEGAL AFFAIRS

Spoils of Law

They struck gold—then fought. Call them the Lawyers of the Sierra Madre.

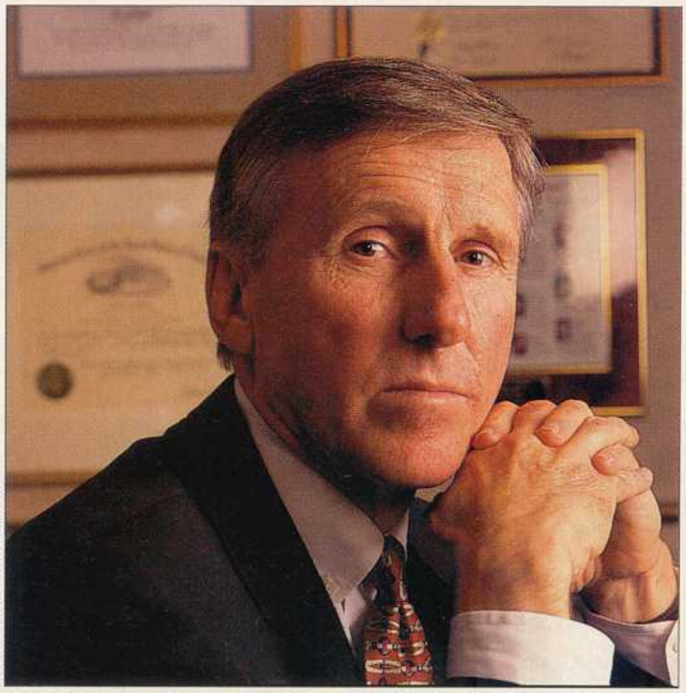
PHOTO BY EVERETT COLLECTION. HAND COLORING BY ANTHONY VERDE

Gold rush with a modern tinge: *Huston's prospectors fell out after finding the loot. The attorneys didn't wait that long.*

BY PETER KATEL

IT SOUNDED LIKE A LAWYER JOKE AT first. How do you ruin a lawyers' dinner? Start talking about cutting their fees. No one was laughing, though. The evening had begun pleasantly enough, on an August night in the ballroom of a Palm Beach mansion. Florida Gov. Lawton Chiles was dining with his "dream team" of trial lawyers working on the state's megalawsuit against the tobacco industry. Chiles had a surprise for the lawyers, but he waited to spring it until after the remains of the catered salmon and chicken dinner had been cleared from the table. Big Tobacco was ready to settle, and so was he—the very next day, in fact. It would be the industry's biggest capitulation and the largest out-of-court settlement in American legal history—$11.3 billion over 25 years, plus commitments including an industry-funded antismoking campaign aimed at children and removal of cigarette billboards near schools. Most of the lawyers were in shock when they and the governor toasted the deal; they had had no idea that a settlement was in the works. Then Chiles mentioned some changes in the way the legal fees would be calculated. As he rose from the table and left the room, Chiles urged the lawyers to keep talking. What they did was to start yelling.

It was the sort of problem a lot of people might wish for. At worst, none of the 11 lead lawyers stands to make less than $15 million, plus costs. Yet the free-for-all that erupted the night of Aug. 24 is still going on among the dozen law firms that represented Florida in the case. Accusations of betrayal and of grabbing for tobacco victims' money are flying—along with lawyer-filed liens on the settlement money and a lawyer-vs.-lawyer lawsuit. There's even a police investigation. The spectacle is attracting attention in Washington, where some congressmen are proposing to cap legal fees in tobacco cases. It would all seem awfully familiar to the late John Huston, whose 1948 film classic, "The Treasure of the Sierra Madre," showed the corrosive effects of a gold strike on everyone involved. "The dream team has become a nightmare team," says Fred Levin, the Pensacola lawyer who handpicked its members. "Everybody hates them; they hate each other."



JEFFREY CAMP—SILVER IMAGE

For: *Maher was in on the settlement. Now he's being sued.*

ANDREW ITKOFF—SILVER IMAGE

Against: *Montgomery was horrified by the fee agreement*

Unlike the drifter heroes of "Sierra Madre," these Florida lawyers are men at the top of their profession. But they signed up to fight Big Tobacco under essentially the same terms as the film's prospectors who set off searching for gold—shouldering every bit of the risk. For the lawyers, that risk was daunting. Mounting major litigation costs millions. And when the attorneys joined the fight two years ago, Tobacco had been sued hundreds of times without paying any plaintiff anything. The strategy, as one Tobacco lawyer put it in an internal memo quoted in The Wall Street Journal in 1994, was an adaptation of Gen. George Patton's battlefield doctrine: "... the way we won these cases was not by spending all of [R.J. Reynolds's] money, but by making the other son of a bitch spend all of his." The only way to hire lawyers capable of taking on such a foe, the state figured, was to offer a contingency-fee deal. If they won anything for the state, their reward would be commensurate with their risk—25 percent of any recovery.

In at least one respect, the Florida lawyers have turned out to be even more fractious than Huston's gold-hunters. The prospectors don't start fighting until the gold appears; everyone gets along while the search is still on. The lawyers began falling out even while they were still preparing their case, splitting into pro- and anti-settlement factions. One side argued that it was better to settle with the tobacco companies than bankrupt them. The other wanted to go all the way. "I said, 'I've bankrupted corporations who've injured my clients before. That's what I'm in here for'," says Robert Montgomery, the 67-year-old trial lawyer now at the center of the post-settlement fight.

The dispute over whether to settle might have remained little more than a routine difference over legal strategy—except for one thing. Two of the lawyers had secretly been let in on the settlement talks between the State of Florida and the tobacco companies—and were under orders not to tell the rest of the team that their client had come to terms with the enemy. Florida officials and the tobacco companies were afraid that news of the talks would kill the deal. And the two Tobacco team members in the talks didn't trust their own colleagues not to try torpedoing the deal. "I can understand that completely because we were a leaky sieve," says one lawyer, W. C. Gentry of Jacksonville, who didn't know about the settlement but supports it.

Even more infuriating to some of the lawyers was their suspicion that the secret settlement was aimed at punishing Tobacco's enemies by cutting their fees. Instead of the 25 percent contingency fee, the lawyers would receive "reasonable" payment to be determined by a panel of arbitrators. The panel would be part of the national, so-called global settlement now before Congress that would shield Tobacco from all future liabilities. Montgomery, who sank a half-million dollars of his own money into the case, is horrified by the fee mechanics the governor accepted, because the tobacco side helped design them.

Montgomery has filed a lawsuit against Michael Maher, a 56-year-old Orlando attorney who was one of the two lawyers in on the secret. The suit accuses Maher of teaming up with Big Tobacco to sell out the Florida lawsuit and the lawyers who wanted to take Tobacco before a jury. Maher calls the accusation ridiculous. His allies say Montgomery's real problem is that he first agreed to the settlement and then changed his mind. "Where I come from, when you give your word you stick to it, even if it's a bad deal," Gentry says, sounding not unlike a grizzled prospector.

Plenty of others are unhappy with the deal. Tim Howard, a 36-year-old former state-government lawyer, was the team's liaison with Chiles's office. A veteran of political campaigning and legislative work, Howard didn't have the track record of the other lawyers or their investment in the case. As far as a number of the other members were concerned, he was a $102,000-a-year employee of the legal team. Nevertheless, Howard had signed the 25 percent contract along with everyone else. After the settlement was announced, he and some of the other lawyers held a series of increasingly contentious discussions about his fee.

Howard staked his claim by filing a lien on the payout. The team members, seeking to prove Howard was a mere hired hand, hunted for a witness who could report what he had told his staff about his status with the team. They found a former employee of Howard's, who told them something even more useful: over the past two years, Howard had lent money to a member of Governor Chiles's staff named Harold Lewis. The state's inspector general, Lewis had worked closely with Howard on tobacco matters. And Lewis got Howard appointed to the litigation team. The police are investigating whether the $30,400 in loans was a quid pro quo for that. Meanwhile, Lewis has resigned. Both Lewis, through his lawyer, and Howard deny that there was anything improper in Howard's appointment.

> “The dream team has become a nightmare team,” says the lawyer who picked the tobacco litigators. “Everybody hates them; they hate each other.”

The settlement has not only set lawyer against lawyer, but lawyers against their client, too. Florida has yet to collect Tobacco's first $750 million installment. That's partly because of liens filed by Howard, as well as by Montgomery and his allies. The lawyers insist that the liens block only some part of the payment. Even so, they still look like they're holding up what Governor Chiles refers to as "the children's money." Courtly and soft-spoken, Chiles quietly suggests that the lawyers would be better off not harping on their original 25 percent contract. That deal, he says, covered only the portion of the lawsuit that sought to recover the state's Medicaid costs for treating smokers, not counts added later. And the Medicaid damages are worth only $1.3 billion. Arbitrators would base the legal fees on the entire $11.3 billion settlement. His message is clear: quit complaining and take your money. The judge in the case said the lawyers' demand amounts to $2.8 billion, which "shocks the conscience"; he rejected the liens filed by Montgomery and others.

Florida's tobacco loot has also attracted the attention of the Feds. Washington has extended its hand for a share of the settlement, arguing that it funds 55 percent of Medicaid. The lawyers have their own problems in Washington. One House member is floating a proposal to limit plaintiffs' lawyer fees in tobacco cases to $150 an hour—a rate that lawyers of this ilk haven't charged since they were junior associates.

Meanwhile, the Florida tobacco money shimmers in the distance. Except for reimbursement of some costs, no one's been paid. It's not healthy to dwell on it, but even some lawyers outside Florida can't help it if the money flits through their minds from time to time. Richard Daynard, director of the Tobacco Products Liability Project at Northeastern University, did some work on the Florida case and plans to bill for his time. "I'm not counting the money yet," he says. Spoken like someone who has spent time around the prospectors' campfire. ■