

Profile: Madelyn Chaber

After "smoking out" the tobacco industry, litigation pioneer strives to improve work-life balance – for everyone

By Stephen Ellison

The phrase "smoked 'em" can be used in a variety of contexts, all of which have their own distinctive meaning. When the words are applied to Madelyn T. Chaber, for instance, they take an unmistakable ironic turn: It is precisely what she did to Big Tobacco.

Against near-impossible odds, Chaber in 1999 won the nation's first multimillion-dollar verdict for a smoker against a tobacco company. It was a landmark decision indeed, and it made Chaber a household name in the legal community and beyond.

"It was an exciting time. I was there with Madelyn every day. I was the book carrier, the designated reader," said Ray Goldstein, Chaber's former legal assistant. "It was wonderful to be a part of that. She did something that no one had ever done."

But as exciting as it was to beat the unbeatable, the demands of trial law would take their toll on Chaber. After 25 trials in a little more than two decades, she stopped taking plaintiff cases in 2007. "Things changed over time," she explained. "I'm much older now, a single mother. What I found hardest was the physical and emotional toll it takes on me, the intensity of the trial."

Chaber, however, remains as busy as ever. Today, she works as a certified professional coach and teaches trial advocacy at Stanford University School of Law. And she's back in the asbestos litigation arena – her original specialty – as a consultant, taking depositions, assisting with jury selection and mentoring young trial lawyers.


Chaber

I'm much happier not doing the same thing all the time," Chaber said. "I like to keep my hands in the legal aspect. I love teaching. I like that I can take what I've learned and pass it on to the next generation of lawyers – not have all that I've learned go to waste."

Go West, young woman

Chaber was born and raised in New York, the youngest of three children. She earned a degree in elementary education from the State University of New York at Stonybrook and began teaching at a state institution for mentally disabled children. Chaber had made plans to attend graduate school, but before she began her studies, her mother underwent open-heart surgery and died during the operation. Chaber was 23 at the time.

Although she managed to land a teaching job close to home at a South Bronx school, fate had different designs for Chaber. She was soon laid off as a result of severe budget cuts in the New York public school system, and that's when she decided to pack up and move to California. She had done well on the LSAT, so she began applying to law schools throughout the state, among them Hastings College in San Francisco and Boalt Hall School of Law in Berkeley. She ended up at UCLA. "I was living (in the Bay Area) at the time, and if I had gotten into Berkeley, I would have stayed here," Chaber recalled. "I liked UCLA. I had met some people who lived down there, and they actually introduced me to my (future) husband. And he lived up here."

So, after law school, Chaber moved back to the Bay Area and immediately began working for a personal injury firm on asbestos cases. "I wanted to do trial work," she said of her decision to enter into plaintiff's practice. "During law school, I'd been interested in the juvenile justice system. But once I was introduced to it, I thought, 'not a chance.' It was a mess. So, I had a friend who was doing personal injury work, and it sounded interesting. I really wanted to do trial work, so that's the direction I moved."

It was the early 1980s, and a lot of asbestos cases were just getting started, Chaber said. She dedicated the next 11 years of her career to representing former shipyard workers and other industrial laborers who had contracted terminal diseases caused by asbestos exposure.

Goldstein came into the picture in 1987. "On my first day, they literally told me 'you have four trials – go find Madelyn.' So, I did," he recalled. "Madelyn interviewed me, and I was slightly green at the time. But come to find out we had a lot of cultural similarities."

The two were seen as a good fit and teamed up on nothing but asbestos cases – to the point where it seemed to Goldstein they were typecast. But things changed in 1994 when they were approached by a man named Milton Horowitz.

Taking on Big Tobacco

Horowitz was a psychologist who worked out of his home in Beverly Hills. He had been diagnosed with mesothelioma, a rare form of cancer. Typically,

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the disease is caused by years of continuous exposure to asbestos, and although Horowitz had spent a few short stints working in construction, it wasn't near enough to establish a cause-and-effect relationship to the disease. Then, a medical expert discovered the Kent cigarettes Horowitz had smoked from 1952 to 1956 used what was known as a Micronite filter, which contained asbestos. Chaber sued the maker of Kents, Lorillard Inc., on behalf of Horowitz.

"The Micronite filter case in 1994 was kind of my introduction to Big Tobacco," Chaber recalled. "I started reading tobacco documents, and it absolutely intrigued me. I couldn't believe how bad these people were.

"At the time, tobacco companies were immune to lawsuits in California, so that stopped us from doing anything," she continued. "But the Micronite filter case was different. We weren't suing the company for its harmful tobacco – we were suing for its harmful filter."

After much legal wrangling, the suit was allowed, Chaber won a modest verdict of $1.3 million for Horowitz – which was eventually upheld – and tobacco litigation changed forever. "It was the first time a cigarette company wrote a check in a legal matter," Goldstein said.

By the time California's moratorium on tobacco lawsuits was lifted in 1998, Chaber was ready and waiting on the courthouse steps to take down Big Tobacco. She filed a number of retroactive suits that didn't make it to trial. About the same time, Patricia Henley came knocking. Henley had been diagnosed with lung cancer after smoking Marlboro cigarettes for 35 years. She wanted to sue Philip Morris, Inc.

Chaber agreed to take the Henley case – albeit hesitantly – and immediately began preparation. The first order of business, Goldstein recalled, was getting her hands on as many court documents as possible. Chaber and Goldstein flew to Florida to visit Woody Wilner, who had already won two verdicts against tobacco companies. He proceeded to hand over thousands of documents, Goldstein said.

Still, as prepared as she was for the trial, Chaber had her doubts about defeating an opponent with unlimited resources and influence. "They wanted to win, of course, and they made it very difficult," she said. "At times, I was being triple-teamed. Anytime you take on tobacco companies – or any big corporation, for that matter – there's a huge inequity in the strength of the sides. They ran us ragged with depositions. Every day, there were new motions, new issues."

David v. Goliath and his big brother!

Goldstein agreed. "We had been fighting these asbestos companies, like Owens Corning, which was similar to David versus Goliath," he said. "With the tobacco companies, it was like battling Goliath plus his big brother plus maybe a little brother. They were unbelievably formidable."

In February 1999, Chaber made history when the jury awarded a plaintiff's verdict of $51.5 million, including $50 million in punitive damages. After five years of appeals, affirmations and reduced damages, Philip Morris finally paid Henley $9 million plus interest in 2004. "She was terrific," Henley said of Chaber in a 2002 San Francisco Chronicle article. "I gave her the information, and she ran with it."

Meantime, Chaber's third tobacco trial – and what would be her last – had reached a verdict in March 2000, awarding plaintiff Leslie Whiteley $21.7 million. Whiteley, another longtime smoker, died of cancer four months later.

The decision, against both Philip Morris and RJ Reynolds, was reversed by an appellate court in 2004, and the case was remanded to trial court. In the 2007 retrial, representing Whiteley's widower, Chaber won yet again.

Soon thereafter, she walked away from trying cases.

Semi-retired?

"Madelyn works too hard and too long," Goldstein said, with conviction, when asked what impressed him most about Chaber. "Frankly, I found it hard to keep up with her."

Chaber admitted she was a classic victim of burnout, an all too common condition among her trial lawyer peers. "I think frankly, trials are a young person's thing," she said. "As I talk to other lawyers who have been doing this for a long time, I find there's an unhealthiness to trial law, with all its demands and all the stress involved. That's particularly true for women lawyers with children."

Rather than complain and dwell on that negative aspect of her life, Chaber made changes. She now helps others do the same. "I largely work with women lawyers that want to re-examine their lives, make changes," she said of her professional coaching duties. "I try to give them a better work-life balance."

Having achieved such a balance herself – she now has time to enjoy her passions for traveling, painting and photography – does it mean Chaber won't ever try another case? Let's just say she's left the door slightly ajar. "You never know," she said with a chuckle, "when you might be lured back in."

In her trial advocacy classroom, Chaber's underlying message to students is that they should be true to themselves. "Talk like a human being, not like a lawyer," she advises. "If (lawyers) are not being themselves, a jury will know. Ultimately, you have to be who you are – if you can be authentic, you can communicate better with just about anyone, and you will succeed."


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