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DaimlerChrysler's Steven Hantler: Doesn't brake for plaintiffs attorneys

Overdrive

Steven Hantler has taken the wheel of DaimlerChrysler's fight for tort reform. In a West Virginia courtoom, however, he found that crusades don't come cheap.

STEVEN HANTLER ISN'T HAPPY WITH THE BILL that a state court judge in Charleston, West Virginia, has handed his company, DaimlerChrysler AG. In June the judge ordered the automaker to pay $152,000 to resolve a customer's suit over a faulty Dodge Intrepid. What caught Hantler's eye—it would catch anybody's—was the bill's outsize charge for lawyer labor: While the company must pay $8,750 in damages and interest to the car's owners, it must pay $143,027 in fees and costs to their attorneys at Charleston's Grubb Law Group.

That comes out to lawyers recovering 16 times more than their clients. Hantler, an assistant general counsel at the company, is angry over the lawyers' payday—and quick to seize the publicity opportunity that it presents.

"The fees are outrageous," Hantler was saying one Wednesday a few weeks after the decision, leaning toward the speakerphone in his office at the automaker's U.S. headquarters in Auburn Hills, Michigan. On the other end of the line was a reporter for *The State Journal*, a business newspaper based in Charleston. "This case, although the damages were not in the millions, is the poster case for why West Virginia is considered a judicial hellhole by the American Tort Reform Association," he said. The company certainly would appeal, he declared. "Your law in West Virginia lets plaintiffs lawyers . . . overwork a lawsuit, to overclaim in the case. This law is hurting the citizens of your state. Jobs are not coming there."

For several years Hantler has led an unusual campaign by DaimlerChrysler to turn the tables on plaintiffs lawyers. In case after case, he has formally challenged his opponents' conduct, urging judges to send a message that will deter abuse of the legal system. Hantler's refusal to settle the West Virginia suit, a routine one, exemplifies the approach. Although the world's fifth-largest carmaker paid out the jury's four-digit damages award, it fought the fee request for months, filing a 64-page brief alleging that opposing lawyer David Grubb had run up his fees by filing charges he knew would be dismissed. After the trial judge ruled against him, Hantler appealed that decision, a move that will keep Grubb from seeing a penny for months more. Elsewhere, Hantler has sued plaintiffs lawyers on fraud and other grounds. His company also regularly defends class action suits rather than quietly settling, as most companies do after a judge approves the class. "We want to make plaintiffs lawyers think twice before bringing a meritless case against us," says Hantler.

These tactics have helped cut the number of class actions against the company, saving it money, Hantler says. The number of class actions filed against the carmaker during 2003 and 2004 dropped more than 50 percent from the number filed during the two years before that. Hantler declined to release specific figures, citing company policy.

Executives at other companies are paying attention to Chrysler's aggressive approach. In 2004 former General Electric Company boss Jack Welch arranged for Hantler to speak about "the changing litigation environment" to an invitation-only club of chief executives known as G100. In a subsequent *Wall Street Journal* essay, Hantler urged other companies to follow DaimlerChrysler's strategy as a way to attack the costs of the legal system. "I think more and more CEOs are beginning to listen to him and are joining in with him," says Bernard Marcus, the former CEO of The Home Depot, Inc.

Part of Hantler's message is that corporations can't win in courtrooms without change outside them. In 2004 he launched the American Justice Partnership (AJP), which the National Association of Manufacturers (NAM) subsequently agreed to fund. Put narrowly, the group's aim is to aid chambers of commerce and others working to curb suits against businesses

By Matt Fleischer-Black
Photograph by Maestro

in state court. More broadly, Handler wants to duplicate the organizational success of the Association of Trial Lawyers of America in coordinating their efforts across state lines. Fortune 500 companies, for all their might, have let plaintiffs lawyers outhustle them in the states, says NAM president John Engler: "We had this ragtag army of people working in different places on different issues." Engler, the former governor of Michigan, saw Hantler and the AJP as a means to unite the ranks. "Steve's a visionary in that he has understood for a long time the size of the stakes in this game. A lot of people tend to look at what's the immediate issue right in front of me, what do I need to know to get through this week. Steve understands, look, you have a problem this week, but boy, you have a bigger problem long- term," says Engler.

Among the biggest problems, according to Hantler: judges who perpetuate "lawsuit abuse," like the one presiding over the West Virginia case. The Grubb firm attempted "extortion" with its suit, and the judge went along with it, he tells the reporter from West Virginia through the speakerphone. Broadening his message, Hantler says that the state law should be changed to specify that any award of attorneys' fees must be in predictable proportion to the plaintiffs' recovery. Then he brightens his tone. "We do see some encouraging news in your state: Your governor says he wants fair courts. And voters last year removed one of your supreme court judges," referring to Democratic justice Warren McGraw, defeated by a Republican. "Now," he says more gravely, "we need to see legislation from the state senate to change this law." Hantler adds that he will be addressing the annual meeting of the state chamber of commerce a few weeks later.

Hantler, at 52, is approachable, a short man with the trim mustache and broad smile of the older Jackie Gleason. He's the rare in-house lawyer seemingly eager to share his thoughts freely with outsiders. Perhaps this openness is a remnant of his brief time, at the start of his career, as a plaintiffs lawyer. (He joined Chrysler in 1981, in part because he did not want to depend on collecting fee awards from courts.) That stint might also explain his gift for hyperbole. Away from the West Virginia newspaper interview, he says about his trip, "I will invite the state to rejoin the wonderful court system we have established here in the U.S., rather than sticking with the South American dictatorship they operate under there now." Says AJP director Dan Pero: "He's never at a loss to communicate the need for reform."

TAKING THE FIGHT AGAINST "LAWSUIT ABUSE" TO WEST VIRGINIA: HANTLER WITH THE STATE'S GOVERNOR, JOE MANCHIN III

Hantler's West Virginia horror story is definitely an attention-grabber. But his account omits DaimlerChrysler's own contribution to the startling fee award, says opposing lawyer David Grubb. Hantler's company forced the case to trial—and Grubb's fees higher and higher—by declining to make or accept what Grubb describes as realistic settlement offers. In the two years before this showdown, Grubb told the court, he had settled 48 other car warranty cases (many with DaimlerChrysler). He negotiated payments for clients ranging from $4,000 to $45,000, while his fees averaged $4,500. Of all the bad-car cases Grubb has handled, he says, only this dispute with Hantler went to trial.

Hantler's business decision to fight aggressively and risk a big loss in a low-stakes case puzzled Grubb. "They try cases all over the country and know what the fees are," he says. "Maybe there's a benefit to the manufacturers who think they're setting a tone." What's certain is that Hantler had found a case that he could use to get his message out, win or lose.

THE FIGHT AGAINST PLAINTIFFS lawyers started with Hantler's old boss, Lewis Goldfarb, former associate general counsel at what was then Chrysler Corporation. In 1995, while Hantler was managing the company's consumer fraud litigation, Goldfarb oversaw class actions. He grew angry as Chrysler faced class actions that failed to point to an existing problem with, say, a model's brakes or shock absorbers. Instead, the suits claimed damages for something that *might* go wrong. "We wanted to see if we could create a downside risk to bringing frivolous class actions," recalls Goldfarb, who left the company in 2001 and now runs his own New York firm.

Goldfarb made sloppy class action lawyers his first target. In 1995 the automaker sued the aggressive Seattle firm now known as Hagens Berman Sobel Shapiro, which had filed a class action for a lead plaintiff who, it turned out, knew nothing of the suit. The firm escaped with a rebuke from a federal court judge in Seattle. Four years later, Goldfarb took on lawyers at Philadelphia's Greitzer & Locks. They had sued Chrysler, among other car industry defendants, yet had no client who owned a Chrysler vehicle. The firm dismissed the company from the case after learning of its mistake, but Goldfarb sued them for costs under a Pennsylvania fraud law. Greitzer & Locks settled by agreeing to fund an ethics event at Temple University Law School in the car company's name.

Goldfarb also had vowed to force flimsy class actions to trial, even when it would be less costly to settle. In 1996, an Illinois state court judge dismissed, midtrial, a product defect class action that alleged that engines in some of the company's early-to-mid-1990s Jeep vehicles made a knocking noise. The company had addressed many such complaints through the warranty process already. "Millions of dollars in legal fees had to be spent to prove the obvious: It's okay for engines to make noise," Goldfarb told the Associated Press at the time.

While Goldfarb was scrutinizing class

actions, Hantler was fighting lawsuit abuse on other fronts. Early in the 1990s, Hantler's main responsibility was managing warranty litigation (a department he now oversees). Chrysler was suffering a losing streak on bad-car cases in Alabama. After a jury slapped the company with a six-figure verdict over a lemon of a $20,000 car, Hantler asked his outside lawyers whether Chrysler should appeal. The consensus: No, the appellate courts were too plaintiffs-friendly. Thwarted in the courtroom, Hantler quietly became involved in the Business Council of Alabama's campaign (which was masterminded by current White House deputy chief of staff Karl Rove) to elect a Republican to the state supreme court for the first time in more than a century. In the end, the race led to an epic recount battle in the federal courts. After a full year of litigation, Republican candidate for chief justice Perry Hooper, Sr., won, and served until 2001.

Hantler was hardly seeking a high profile then, recalls Chrysler outside counsel James Walsh of Adams & Reese's Birmingham office. "Steve came into town. I'd say, 'You in town? Come on over.' He'd say, 'No, you can't be seen with me today.' " Hantler's fear was that the sitting judges would retaliate against Chrysler in the courtroom if they knew the company was working to unseat their buddies. Nonetheless, he repeated his efforts in the state in the next two judicial elections. He also started organizing business coalitions for judicial and legislative elections in other states.

A big loss led Hantler to start yet another initiative. In 1997 a South Carolina jury socked the carmaker with an award of $250 million in punitive damages. The jurors had deemed the rear door latch on a Dodge minivan flawed and responsible for the death of a 6-year-old boy. An appeals court would overturn the verdict in 2001, but that was long after media accounts had roasted the company. Hantler had tried to get the company's perspective featured in those accounts, but he started too late. "You have to begin well before the verdict," he recalls. He used that observation to win funding from company bosses to create a permanent "litigation communications" team, with PR staff and lawyers.

TO FIGHT BACK AGAINST WHAT IT VIEWS AS FRIVOLOUS LITIGATION, DAIMLERCHRYSLER HAS SUED PLAINTIFFS LAWYERS FOR FRAUD.

As Hantler started speaking to the press about courtroom matters, he was fired up by an indisputable travesty of justice. In 2000, while the company was fighting a Texas state court claim that it had sold a Dodge with a faulty steering mechanism, an anonymous tipster mailed documents to the carmaker showing that the plaintiffs team had tampered with the key piece of evidence. The judge concluded that someone on the plaintiffs team had purposely broken the steering column. The judge punished the plaintiffs lawyers with a sanction of $865,000 and referred his findings to the state bar. One lawyer, Robert Kugle, fled to Mexico and was disbarred in absentia. At the direction of Hantler and Kenneth Gluckman, who oversees the company's product liability defense, the company sued the trio in 2003 for fraud, a suit that remains pending, as does a bar association grievance change that DaimlerChrysler simultaneously filed against Kugle's two colleagues. "We will be greatly disappointed if the bar association doesn't suspend these lawyers from the practice of law," says Hantler.

Hantler began overseeing the company's class action defense after Goldfarb left in 2001, three years after DaimlerChrysler formed from a merger of Chrysler with Mercedes's German manufacturer. Hantler has kept up the pressure on plaintiffs lawyers. In 2002 he authorized a suit against a pair of North Carolina lawyers who had withdrawn a class action suit that they had filed against the company. DaimlerChrysler pursued them in court until they agreed to pay for ads alerting consumers that the class action had ended. Hantler says he will likely steer an air bag class action to trial in Oklahoma soon. The plaintiffs seek replacement costs for air bags in 1996 and 1997 minivans, saying those supplied deploy too readily and with too much force. "They're saying that because there's a new air bag designed ten years later, that the vehicle ten years earlier is defective," Hantler says. "If that were to hold as the law, that would stifle innovation. And that's the theory of these cases that we spend millions to defend."

Hantler's crusade has been bolstered by the message from the top: Chief executive Dieter Zetsche has become increasingly outspoken on meritless lawsuits, echoing Hantler's call for other companies to become involved. "Tort reform is one of my company's top five issues, although legal costs are not one of our company's top five direct costs," says Hantler. "There are other costs from an out-of-control legal system. Innovation is stifled. The damage to company and product reputation can be a staggering cost."

Hantler urges corporations to view themselves as engaged in a cultural struggle against plaintiffs lawyers—who, he stresses, are equally organized and resourceful as corporations. To undercut the David-vs.-Goliath image of populist plaintiffs lawyers against corporate behemoths, he frequently cites data on his opponents' "product lines" and revenue that industry-friendly think tank Manhattan Institute published as part of a report, *Trial Lawyers, Inc.* With no sign of joking, he says, "If you do quote me, if you could take out 'plaintiffs lawyer' everywhere it appears and make it 'Trial Lawyers Inc.,' I'd appreciate it. I'm trying to be consistent."

RIGHT NOW, HANTLER SEEMS TO be trying to reach the public through every cultural channel available. He has authored "The Seven Myths of Highly Effective Plaintiffs' Lawyers," a widely distributed pamphlet based on a speech

he gave to the Republican Attorneys General Association. This past winter he coauthored with three Shook, Hardy & Bacon attorneys an article in *The Georgetown Journal of Law and Public Policy* that asserts that many state court evidence laws are obsolete (including those that often prevent carmakers from telling a jury that a plaintiff was not wearing a seat belt at the time of a crash); he made sure that the journal sent copies to practicing defense lawyers as well as subscribers, and is preparing sample motions that attorneys can file to challenge laws in states like Ohio and Texas. He even has a DVD out, in which he and plaintiffs paladin Richard Scruggs debate the state of the courts. Some state chambers of commerce have posted it for download on their Web site.

All this is in addition to fighting in the courtroom. Hantler says that the company is willing to settle suits if the settlement benefits the company or allows it to help the public. "We're in the business of making cars and trucks," not litigating, he says. Along these lines, his Seven Myths pamphlet opens with an epigram from Abraham Lincoln: "Never stir up litigation. A worse man can scarcely be found than one who does this."

DAVID GRUBB: PUZZLED BY DAIMLERCHRYSLER'S DECISION TO RISK A BIG LOSS IN A LOW-STAKES CASE

Hantler decided that the case that David Grubb brought in 2003, seeking a new Dodge Intrepid for Carolyn and Larry George, was extraordinarily weak. As the company sees it, the Georges brought their 2000 Intrepid to the dealer for a radio problem, for a leaky door, and then, at mile 35,000 of a 36,000-mile warranty, for a transmission that tended to stick in second gear. Neither the dealer nor a DaimlerChrysler regional technician could duplicate the Georges' gearshift problem, yet the company authorized repairs as a goodwill gesture, says senior staff counsel David Busacca. "[The Georges] didn't lose use of the car for periods of time," he says. DaimlerChrysler offered the Georges $4,000 to settle—"a little bit for the inconvenience," says Busacca, who supervised the company's local lawyers, Charleston's Bell & Bands.

HANTLER ENCOURAGES COMPANIES TO VIEW THEMSELVES AS ENGAGED IN A CULTURAL STRUGGLE AGAINST "TRIAL LAWYERS, INC."

The Georges thought the car was a total lemon, and presented different facts at trial. Carolyn George testified that the car suffered electrical problems on the very first day, the radio needed to be replaced three times in the first two months, and the interior lights shone irregularly. Her air conditioner wouldn't hold refrigerant; the door seal let in water, causing mold and mildew that bothered her son, who had allergies; the ball joints made the car shake. "I was really afraid one of the wheels would come off," she says in an interview. With the transmission sticking in second gear, the car stalled on bridges and inclines. "We're in West Virginia, and there's a lot of hills," she says. She testified that she took the car to the dealer roughly 20 times, even though the dealer's records showed far less. She also said that the technicians told her they had duplicated her problem. Grubb demanded that the company replace the car. With $8,000 in fees included, the bill came to $50,000.

With factual accounts this disparate, negotiations stalled. The Georges' problems were too minor for Grubb to make such outlandish initial demands, says Busacca. Nor did he expect offers to improve: "Our experience dealing with Grubb in the past was 'I will not negotiate a prelitigation settlement with the manufacturer. I only will discuss settlement in context of discovery, substantial attorneys' fees, and well after the case has been going on.' " Grubb's fee agreement obliged the Georges to pay him either 35 percent of their recovery or the prevailing hourly rate, whichever was greater. The company concluded that he was churning a weak case for fees, so it decided to fight. Grubb, however, told the judge that he made three successively lower settlement offers, yet the company made no counteroffers.

Grubb contends that DaimlerChrysler is targeting him because, since 2000, he has brought a set of fraud cases charging that the company misled customers about the history of used cars it sells. The company has mostly settled these more serious cases, but suffered some damage along the way. In one case, a state court judge sanctioned the company $24,000 for violating discovery procedure. In another, a federal magistrate judge concluded that "Chrysler exhibited a pattern and practice of repeated stonewalling and noncompliance with appropriate discovery requests," which led to a $35,000 payment to Grubb. (Grubb also deposed Busacca in that case.) Then, in a third fraud case, the presiding judge in the George case, James Stucky, ordered DaimlerChrysler to pay Grubb $160,000 for his time. (Hantler denies that the company has tried to retaliate against Grubb for these earlier cases.)

Early in the Georges case, Stucky encouraged mediation. In a May 2004 session, the automaker offered to settle for $5,000, including fees, despite Grubb's firm already having done $25,000 worth of hourly work. A few months later, the

company offered $10,500 when his firm had racked up $50,000 in hours.

At trial in November 2004, the jurors reached a split verdict. They rejected the Georges' claim that their Intrepid was so impaired that it triggered the state's lemon law provision. That would have obliged DaimlerChrysler to replace it. The jurors did find that the automaker had breached an implied warranty (although the company says that its written warranty rejected all implied warranties). They awarded $6,950 plus interest, a sum not much different from the company's earlier offers. Grubb immediately proposed DaimlerChrysler settle by paying him fees of $58,000. That, he said, was a 25 percent discount on his actual hourly total.

Refusing that offer, Bell & Bands urged the judge to give no fees to Grubb. They slammed him in a motion: "This is one of the clearest examples of lawyer-driven litigation. Indeed, it is almost indisputable that the plaintiffs' attorneys put their own interests ahead of their clients' and forced this litigation to go forward by seriously overreaching in settlement and rejecting all reasonable settlement offers—solely on the basis of plaintiffs' attorneys' desire to be paid exorbitant attorneys' fees." They argued that Grubb's hours were unreasonable, although they had logged a nearly identical amount of hours. The company addressed this conflict by arguing that Bell & Bands's number of hours were unreasonable, as the firm had trained a younger lawyer on the case.

In the end, Judge Stucky, a Republican, gave Grubb the full fee he sought—$143,027, which includes costs from the fee battle itself. He noted that Grubb had succeeded for the client by bringing in a greater sum than the company had earlier offered (if one includes fees). He said it was important to award fees that correspond to actual hours invested to provide adequate incentive for lawyers to take on cases that offer only low damage awards.

DaimlerChrysler's attitude "makes me want to find more cases against them," says plaintiffs attorney David Grubb.

Hantler contends that the fees violate the company's right to due process. "There was nothing fair about this case, or predictable," says Hantler. After the *State Journal* published its story on the award, DaimlerChrysler issued a press release, headlined "Trial Lawyer Jackpot Spotlights Lawsuit Abuse."

Yet didn't the award of $200,000 to Grubb in an earlier case make the result predictable? Busacca, who made the decision to proceed to trial, says the George case was a far more routine case than the earlier one. "I was thinking, like most people would think, whatever happens, if it settled or there's going to be an award, there's going to be some proportionality here," he says. The state law doesn't address the proportionality of fees to the result.

Grubb's fees, though, are proportional to DaimlerChrysler's. The company spent "six figures," says Busacca. Spending more than a quarter-million dollars to resolve a dispute involving a $30,000 car clearly is a steep price for the company to pay. Such is the risk of making a stand. Another risk is that DaimlerChrysler's effort to send a message in the courtroom does not necessarily deter lawyers from filing other cases. Quite the contrary. "This corporate attitude of theirs makes me want to work harder, makes me want to find more cases against them," says Grubb.

DaimlerChrysler's outlay has provided it some benefit already. *The Chicago Tribune* wrote a story echoing the company's press release. The story in the *State Journal* has spurred businesspeople in West Virginia to look for similar cases, says the president of the state chamber of commerce, Stephen Roberts. "Now we're putting out feelers about other instances of fees that seemed disproportionate," he says. Their efforts could make attorneys' fees an issue in future legislative campaigns.

Carolyn George, on the other hand, is trying to forget about the whole situation. With the problems her car had, she couldn't sell it to anyone. Nor could she trade it in even for a few hundred dollars, she says. In the end, while the lawyers were arguing over who was adding to the cost of the case, she couldn't keep up with the payments, and a repo man drove it away. ■

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