

# Murky World Of Mass Torts Left Clients At Girardi's Mercy

By **Brandon Lowrey and Ryan Boysen**

Law360 (March 30, 2021, 4:45 PM EDT) -- Months after the 2000 film "Erin Brockovich" dramatized a legal battle between the small California town of Hinkley and a corporation that poisoned its water, Thomas Girardi and the rest of the movie's attorney-heroes geared up for a case that seemed fit for a sequel.



[Girardi Keese](#) founder Thomas Girardi, pictured in 2014, made his fortune in the world of mass torts before his career imploded with his admission in December that he misappropriated millions of dollars of his clients' settlement funds. His clients' complaints over the decades have highlighted systemic problems with mass torts. (Robyn Beck/AFP via [Getty Images](#))

This time, Girardi, Walter Lack, James Vititoe and Ed Masry represented about 600 residents of Willits, a city of 5,000 near Northern California's redwood forests, in a mass tort over pollution from a local hydraulics factory.

But something went wrong after the famous attorneys announced a \$13.5 million settlement with the chemical company defendants in 2006. The working-class residents wrote a letter on lined notebook paper begging the federal judge on the case to investigate their lawyers.

"We confess our frustration and confusion about the course of our case and the conduct of the lawyers who purport to represent our interests," said the letter signed by 31 Willits residents. "We were asked to sign a settlement ratification without ever being given a copy of the actual settlement to read."

Girardi's career imploded in December, when he admitted to stealing at least \$2 million from widows and orphans of plane crash victims who were his clients in a mass tort against [Boeing](#). He has since been diagnosed with Alzheimer's disease and both he and his firm, Girardi Keese, are now in bankruptcy.

The acclaimed trial attorney made his fortune in the world of mass torts, an area of law rife with perverse incentives and vague rules that experts say can allow lawyers to profit at their clients'

expense. For decades, Girardi's clients in mass torts have accused him of using procedural complexities to blindfold them and confidentiality agreements to gag them as he took their money.

Legal scholars have been sounding the alarm for years. A 1995 law review article titled "Feasting While the Widow Weeps," for instance, showed how lawyers exploited destitute clients in asbestos cases for their own gain.

However, most attorneys and judges have resisted making changes to address those problems, leaving clients in hundreds of thousands of mass-tort cases nationwide at the mercy of their lawyers.

"That's what keeps me up at night," said Nora Engstrom, a Stanford Law School professor of tort law and ethics. "Many of these folks are legitimately hurt by defendants and they really need help from the legal system. And yet, if they fall into the grip of an unscrupulous lawyer, they're actually subject to a double victimization."

### **How Is the Client Supposed to Know?**

Mass torts are often confused with class actions because both provide ways for large groups of people to sue companies alleged to have harmed them.

But that's about where the similarities end.

Class actions are tough to get off the ground, requiring a group of victims who can prove near-identical circumstances and injuries. Once a judge approves a class, the plaintiffs' attorneys take on an ethical obligation to the entire class rather than any single client.

Mass torts, on the other hand, loosely bind together a more diverse group of plaintiffs. Instead of joining a class, plaintiffs remain individuals in their own cases. This means attorneys can have direct relationships with potentially thousands of clients.

There's another major difference: Courts oversee class action settlements. Judges must evaluate any proposed deal to determine whether it is fair to the class and whether the attorney fees are reasonable.

There is no such oversight required in mass torts.

This leaves individual clients, who are often struggling with injuries and financial hardship, responsible for figuring out whether their lawyers are telling the whole truth about the complex litigation.

Plaintiffs' lawyers in these cases can strike confidential and self-serving deals with corporate defendants, sometimes hidden even from the judge. Unethical attorneys can also skirt rules to conceal important details from their own clients and then swear those same clients to secrecy to obscure what they've done.

Problems like these are pervasive, said [University of Georgia School](#) of Law professor Elizabeth Burch, one of the top academics studying mass torts.

"One of the themes that we're coming away with right now is just the real lack of communication and the lack of transparency between attorneys and their clients," she said. "It seems like a lot of the big players take a kind of inventory warehousing model to their business" by simply stockpiling as many clients as possible.

Even if clients manage to discover they've been misled or ripped off, they may not be able to do much about it.

In California, where most of Girardi's cases played out, case law makes it more difficult for mass tort clients to sue their lawyers for alleged fraud that only comes to light years after the fact.

In 2015, an appellate court barred a group of survivors of the 1994 Northridge Earthquake from pursuing a lawsuit alleging their former attorneys stole tens of millions of dollars from a \$100 million settlement with an insurance company. Judges ruled the survivors filed their lawsuit too late, even though the plaintiffs said they only realized the money was missing 18 years later because their attorneys had withheld information about the deal.

The quake survivors should have known "to investigate why they were being asked to accept a check about a settlement where they knew they had next to no information," the panel wrote.

The attorneys accused of theft were Girardi and Lack.

Peter Dion-Kindem, the Los Angeles attorney who represented the quake victims, said in a recent interview that the appellate court's decision struck him as fundamentally unfair.

"I mean, how is the client supposed to know that his attorney screwed them when the attorney hides his fraud from the client?" Dion-Kindem said. "How is the client supposed to know that? He can't know it. ... He's entitled to trust that his attorney's doing the right thing."

### **"If You Sent It, I'll Sue You"**

In the Willits pollution case, fears that Girardi and his colleagues were using the opaque mass tort process to take advantage of their clients surfaced in a fee dispute with two other attorneys.

Bay Area attorneys Bill Simpich and Tesfaye Tsadik represented the Willits residents before bringing in the "Erin Brockovich" attorneys to do the heavy lifting in the costly litigation. When Girardi, Lack and Vititoe settled the cases, they tried to slash Simpich and Tsadik's share of the fees. So the local counsel hired legal ethics expert Richard Zitrin to evaluate the case.

With Zitrin's help, they wrote a letter to their clients accusing Girardi, Lack and Vititoe of withholding crucial information about the settlement and their rights.

"The letter is reckless, contrary to the facts, and betrays the fact that [Simpich and Tsadik]

haven't read any of the previous newsletters," Lack, co-founder of [Engstrom Lipscomb & Lack LLP](#), wrote in an email to Zitrin. "If you sent it, I'll sue you."

Zitrin provided Law360 with previously unreleased documents from the case, providing a rare glimpse at how Girardi seemingly weaponized the complexity of the mass tort process against his clients. Multiple experts said his conduct appeared to violate ethical rules.

For example, the documents suggest Girardi used his clients' lack of understanding about their rights to pressure them into accepting a settlement. The Willits residents signed a retainer agreement that purported to give the attorneys the power to settle all of their cases on a "global" basis. When his clients objected, Girardi accused them of violating the agreement and told them to sign on the dotted line or find a new lawyer.

But attorneys cannot legally take away their clients' right to approve or reject a settlement, Engstrom said. She and other experts also found it problematic that the lawyers allegedly hid the settlement's terms from their clients, failed to make sure they had key information and documents, and neglected to get clients' informed and advance approval for an aggregate deal.

Some of the Willits plaintiffs eventually did sign onto the settlement negotiated by Girardi, Lack and Vititoe. Others went on to negotiate their own confidential settlements with different attorneys.

Willits residents contacted recently by Law360 refused to discuss the episode, saying they feared breaking a confidentiality agreement. Lack and Vititoe did not respond to multiple requests for comment left over several weeks. Masry died in 2005.

In a recent interview, Zitrin declined to discuss the lawyers he opposed, citing a nondisparagement agreement. However, he listed some key ethical rules that govern mass tort settlements, like the bedrock principle that attorneys can't strike a deal without the informed consent of their clients.

"I'm just telling you what the rules of ethics say," he added. "I make no comment about those guys."

## **Unaccountable**

Complaints about a lack of transparency — and mishandling of settlement funds — have dogged Girardi for decades.

In the late 1990s, former clients in the "Erin Brockovich" case complained about the \$333 million settlement that Girardi, Lack and Vititoe struck on their behalf with [Pacific Gas & Electric](#). Many claimed they received far less than they expected and were never given a detailed accounting of the deal.

Suspicion intensified after an outside solo attorney polled the 650 Hinkley plaintiffs and told media outlets at the time the average payout seemed to be around \$150,000. If he was right, it

would mean the plaintiffs received less than \$100 million from the \$333 million deal. Girardi and other lawyers sued the attorney twice for alleged defamation, only to quickly drop the claims each time.

The settlement's terms forbade Hinkley residents from discussing the deal, even with fellow plaintiffs, leaving them uncertain to this day how much the lawyers really paid out.

Girardi also represented hundreds of Lockheed workers who reached settlements worth hundreds of millions of dollars in mass tort cases over chemical exposure in the 1990s and 2000s. Dozens of them later sued Girardi, alleging he never gave them an accounting of the deals and may have taken more than his share from them.

Girardi settled with some of those workers, but several other lawsuits were dismissed for being filed too late.

Then, in 2015, nearly 30 elderly women accused Girardi Keese of pocketing \$12.5 million of their \$17 million settlement from a mass tort against a pharmaceutical company. They sued, laying out evidence that Girardi Keese never gave them an accounting and misappropriated funds from their client trust account.

Faced with a detailed contempt motion, replete with bank records showing questionable transactions and testimony from a retired judge accusing the firm of dishonesty, Girardi settled for an undisclosed sum before a federal judge could rule.

A similar episode is still playing out in the Los Angeles suburb of Carson, where residents claim Girardi mishandled a \$120 million settlement he won for them over toxic pollution beneath the Carousel neighborhood.

When residents complained about delayed or lower-than-expected payments — or no payout at all — Girardi sent them letters that alternated between apologetic excuses and angry threats. A lawsuit seeking an accounting of the settlement is frozen in state court because Girardi and his firm are in bankruptcy.

Evelyn Salinas, a former Carousel resident who helped get the case off the ground, said she's still confused and upset by the way Girardi Keese handled the money.

"To be honest, I can't even remember what our total payout was," Salinas said. "We got it piecemeal. Ten thousand here. Twelve thousand there. They were just feeding us little amounts to keep us quiet."

### **A Frustrating Prospect**

For years, academics have been calling for judicial oversight of aggregate settlements in mass torts to bring them more in line with class action deals. The additional scrutiny, they say, could reduce the possibility that lawyers would try to take advantage of their clients.

But most attorneys on both sides of the bar have resisted those proposals, as have most judges.

Late last year, prominent mass tort plaintiffs attorney Shanin Specter of [Kline & Specter PC](#) became an exception. He called for greater judicial involvement in mass tort settlements in a letter to a federal rules committee, saying he saw attorneys secretly settle the cases of over 5,000 clients who were seriously injured by defective pelvic mesh. Specter estimated the clients received an average of about \$50,000, while similar cases often resulted in trial verdicts closer to \$20 million.

Everyone benefited except for the clients, he contended. The plaintiffs' attorneys walked away with a fortune in fees, the defendants disposed of the claims for a relative bargain, and the judge unloaded thousands of cases from the docket.

Federal rule-makers are studying the possibility of bringing aggregate mass-tort settlements more in line with class actions, but that effort is still in its early stages. Even if judges do eventually have to approve the deals, the idea's most optimistic advocates aren't certain how effective it will be in practice.

Burch, the University of Georgia professor who has studied problems with mass torts for nearly two decades, said she has little hope of seeing aggressive action on the subject.

"I think people are starting to recognize that they're a problem, but there's not a huge incentive to change because the status quo benefits all of the key stakeholders," she said, adding that those stakeholders don't seem to include individual plaintiffs.

"It's a really frustrating prospect," she said.

In December, when it became clear that Girardi had taken \$2 million from widows and orphans of Indonesian plane crash victims in a mass tort against Boeing, U.S. District Judge Thomas Durkin was stunned. The money had gone missing months earlier but it only came to the Chicago federal judge's attention because Girardi's co-counsel at [Edelson PC](#) complained they weren't getting answers in a fee dispute.

When Judge Durkin turned his attention to Girardi's handling of the mass tort settlement for the first time, he found Girardi Keese had violated fundamental rules.

"Why wouldn't everything be paid to the plaintiffs upon receipt of the money from Boeing?" Judge Durkin said during a contempt hearing held by telephone. He asked if anyone on the line, including Girardi and his former colleagues, could explain.

"I'd love to know."

No one answered.

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