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## Not quite like taking **candy** from a baby

**Terry O'Reilly can spend years on a case, but when he wins he can save lives**

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If Terry O'Reilly is not a household name to you, perhaps his work is.

He's an attorney specializing in product-liability cases who has sued on behalf of victims of airline crashes such as EgyptAir Flight 990, which crashed into the Atlantic in October 1999, killing all aboard the Boeing 767. Or for the estate of 7-year-old airplane pilot Jessica Dubroff, killed in 1996 along with her father and a flight instructor as they were trying to have her become the youngest person ever to fly a light plane across the country.

And most recently, on behalf of the families of

### Profile

children who choked to death while eating a jelly-like candy made in Taiwan.

While the candy comes from a factory halfway around the world, two of the deaths have been of Bay Area children — a 3-year-old in Morgan Hill and a 12-year-old from San Jose.

Called by various names, the candies have been



DENNIS G. HENDRICKS

**ZEALOT:** It takes zeal to sustain an attorney through a long product-liability case, says attorney Terry O'Reilly. He's been zealous on several big cases.

### Five Questions

#### What was the inspiration for your business?

I was working for a very good firm, but it was becoming obvious the firm was becoming unstable and would break apart, which it did. So I decided I would look for a place where there was opportunity. The nature of my work in aviation is such that nobody cares where you are.

#### What has been the company's greatest success?

I've been involved with a number of major product liability issues where we have made industries behave themselves. Tire placement — we've had a lot of cases involving tire mismatching. But the [candy] gel cases is the area I'm proudest of, where we've really made a difference. Not as much as I'd

like to, but we've really made a difference.

#### What has been the company's biggest mistake or failure?

The ugly truth is that trial lawyers do lose cases. Ninety percent of cases that are tried are lost. Yes, I've lost cases and I've lost cases I was very sorry to lose.

#### Where does the company see its greatest growth potential?

Practices like this don't really equate with a company. If I weren't taking cases like this, I'd probably stop. This isn't like an industry. There's an element of crusading to it, and if you're not prepared to take on the establishment nose-to-nose

you're probably not in the right practice.

#### How would you sell your company to a potential customer?

People come to me because something tragic has happened and it's the result of somebody else's negligence or worse. They have no other recourse; they have to get a trial lawyer. And what you want in a trial lawyer is somebody who has had a major record of success, because insurance companies pay attention to somebody who can try cases. They don't pay attention to people who don't have a record. There's no doubt in my mind that we consistently get better results for our clients than pretty much anybody else in Northern California.

banned in Japan, location of eight choking deaths attributed to the treats, but continue to be sold in some stores in the United States, including California, Mr. O'Reilly says.

"The toughest cases are those involving children," he says. "It's the kind of case you get very angry about."

The attorney keeps a small framed photo of one of the victims on his desk.

While the U.S. Food and Drug Administration has banned sale of the candies, they still can be found on store shelves throughout the country, Mr. O'Reilly says.

"Particularly with a clientele that doesn't speak English, these things stay on the shelves," he says. "Distributors who bought a whole bunch of them sell them anyway because they don't want to take the loss — and kids are still dying."

But the candies may finally disappear if product liability suits hit the manufacturer hard enough in the bottom line, he says.

Mr. O'Reilly says that's one of his unspoken social goals: to offer redress for people when the government is too slow to act. He says he and other product-liability attorneys might be likened to modern-day knights errant — "that sounds so pompous," he quickly adds — because of the cases they take on challenging corporations and governments.

"When you're in this kind of work, if you don't really think you're doing something worthwhile for the public, you've got to have zeal," he says.

"Government is big and slow and only responds after lots and lots of people have been injured. Juries and the legal system can be much faster and the penalties much more immediate," says Jeff Kallis, an attorney in private practice and a professor of business and marketing law at San Jose State University. He says lawsuits brought by product-liability attorneys have had a beneficial impact.

"Child-proof caps stemmed from product liability suits," Mr. Kallis says. "Congress got involved because it affected lots of people."

He did not comment specifically about Mr. O'Reilly but says product-liability attorneys in general could be considered champions of the underdog. "But are they [also] villains to the small- to medium-size corporation? Yes," he adds.

Product-liability lawsuits often gain big headlines in newspapers and feature spots on the nightly TV news. But according to the nonprofit organization Public Citizen, citing figures from the National Center for State Courts, product-liability suits make up only about 40,000 out of approximately 19.7 million civil cases filed annually in state trial courts.

It also contends product-liability awards "are consistent and conservative, not out of control."

Defense attorneys might not agree.

"When someone is injured severely in the U.S. in this day and age, the chances are better than not that a suit will be brought against some manufacturer on some basis of alleged liability," says Cary Hiltgen, a partner with the Oklahoma

City law firm of Hiltgen and Brewer PC. Mr. Hiltgen is chairman of the product-liability committee of the Defense Research Institute, a Chicago-based organization of lawyers and others concerned with the defense of civil actions.

Mr. Hiltgen, who defends companies in product-liability cases, says such lawsuits can have a huge impact on a company's bottom line even if the company prevails, because costs often are not recoverable.

He explains these could include not just the cost of hiring attorneys but also the cost of consultants and expert witnesses, higher insurance

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premiums as well as the time and effort a company's employees have to devote to the legal action instead of doing their regular jobs.

There's also the question of settling suits out of court.

Insurance companies recognize who they're up against and that "having our firm involved made a big difference in the size of the [settlement] offer," Mr. O'Reilly says.

"We know how to try cases, we have the money to try cases, we have the experts. We can put on the best effort possible for a client, much better than I think anybody in Northern California can do," he says.

Born in Ireland in 1945, Mr. O'Reilly emigrated with his family from England to the United States when he was 16. He graduated from Loyola University of Los Angeles and received his law degree in 1969 from Boalt Hall at the University of California at Berkeley. He practiced for 17 years with the late Bruce Walkup, then one of the nation's leading trial lawyers. Mr. O'Reilly started his own firm in 1987.

In 1999, Mr. O'Reilly was elected to the Inner Circle of Advocates, an invitation-only group whose membership is limited to 100 plaintiff attorneys throughout the United States who have completed at least 50 personal injury jury trials and have received at least one \$1 million jury verdict in a personal injury case.

"I'm very proud of that," he says. Mr. O'Reilly says he is one of just four attorneys in the Bay Area elected to the Inner Circle.

Another cause Mr. O'Reilly is taking on is called "economy class syndrome," known medically as deep vein thrombosis. According to the Web site of the nonprofit British United Provident Association, which offers medical care to nearly 4 million members in 190 countries, DVT "refers to the formation of a thrombus

(blood clot) within a deep vein, commonly in the thigh or calf. The blood clot can either partially or completely block the flow of blood in the vein."

BUPA says while there are many causes, "DVT may develop during a long flight and has been dubbed 'economy class syndrome' because the cheaper seats in a plane have less leg room, encouraging minimal movement."

"Clearly there's something wrong. There's no reason why the seats have to be built that way," he says. Mr. O'Reilly says deep vein thrombosis is a long-known problem for military aviators, solved in military aircraft by better seats. But he says airlines won't pay the extra price for the better seats.

"They can't put good seats because they'd have to give you more room," he says. "It's their worst nightmare: You've got to spend more and you make less."

Mr. O'Reilly says despite the humorous appellation — economy class syndrome — the problem is no laughing matter. He says people have been killed by DVT.

Attorneys like Mr. O'Reilly often work on a contingency basis. That is, they get a portion of the settlement in exchange for putting up most or all of the money needed to bring the case to trial.

San Jose State's Mr. Kallis defends the practice.

"These suits are very expensive. The cost of bringing them has gone way up," he says. "The other side of the coin is that the lawyers who take these cases look for a big payday."

On the costs of a lawsuit: "It's pretty hard not to put two, three hundred thousand into a serious case," Mr. O'Reilly says. "It's the experts who kill you." He says some experts will charge tens of thousands of dollars to prepare for a trial and testify.

"It's a real industry," he says.

With 30 years in courtrooms taking on companies over bad products and services which have maimed or killed, Mr. O'Reilly says he's still puzzled why there are so many instances. But he says he may have an answer. "It's the difference between treating people one-on-one and screwing a mass of people you don't know," he says. "Most white-collar criminals are not so much sociopathic as their victims are just not visible. And since they can't see them, they don't think about them."

He says it's not anything new.

"It's the underside of capitalism that created Marx and Engels and Lenin."

The former college rugby player, who is still an avid fan of the rough and tumble sport (he's a trustee of the United States Rugby Football Foundation), operates from a small office crammed with memorabilia.

"He's a very hard worker, dedicated to his clients and consumers. The cases he takes on help keep our families safe," says Mary Alexander, a San Francisco attorney and longtime friend.

"I would call him a crusader, someone who truly cares about what he does and makes a difference."