

The Horwitz Brothers

They're Far Smarter
Than the Average
Bear — and Lawyer

by Jack Silverstein



You have to know how to weed them out. Sometimes the guy who calls because he was injured when his car struck a roaming cow that got loose on a rural highway after it evaded defective farm fencing — sometimes that guy's telling the truth.

And sometimes the guy who says he broke his knee on the job actually just stepped in a hole in his backyard. It was right there in the emergency room record. If you don't read it, you won't know.

The Horwitz brothers — Cliff in personal injury and Mitch in workers' compensation — have heard from both and from everyone in between.

"People can fool you — they'll tell you anything," Mitch says at **Horwitz, Horwitz & Associates Ltd.**, the brothers' firm on Washington Avenue just east of State Street. "We don't charge any money to take their case, so they'll come in and tell you any story in the world."

That injured-knee case hurt Mitch about as much as the man with the injured knee.

He was a young attorney at the time, only 26. He didn't learn the truth until the ambulance driver testified.

He was, he says, humiliated. And you know what? It was worth it. Without those losses, Cliff might have never helped secure an Illinois-record \$64 million verdict for an injured ironworker. Mitch might never have uncovered a comprehensive complex scheme to place injured workers into jobs that don't exist in the United States labor market. The company that did this is Pittsburgh-based.

And of course they might never have flustered an opponent of Italian heritage by offering a "big spread of beautiful food" during a negotiation meeting.

"The best things I learned [came from] somebody beating my brains in at an early part of my career," Mitch says. Now, the potential clients' running game — "they just don't get far," he says. "We figure it out very quickly."

A Smirk and a Smile

Mitch and Cliff earned their game at their childhood dinner table.

"My father was always someone you could never beat on an argument," Cliff says. "So over the years you would try to defeat him. You'd get slowly better and better and better — that's how I became interested in the law."

Their father, Andrew Horwitz, demanded more than sound reasoning in arguments. The language — the specific building blocks that his boys would one day use to sway juries — was just as important.

For instance, the Horwitz boys were taught not to say "went" in place of "said." Like when telling a story: "So I went, 'Cliff, where do you want to go to eat?' And he went, 'I already ate.'"

"That was very bothersome to me," Cliff says.

The other lesson handed down was about reading material.

"Read books rather than the sports section," Mr. Horwitz would tell his boys.

By the time the boys were approaching law school, they were on their way to becoming the family's third generation of trial attorneys.

"My father's father was in the law, and my father was in the law," Mitch says. "I grew up thinking to just become part of it."

A few factors distinguish Mitch and Cliff initially: practice area, height (Mitch is taller) and age (Mitch is five years older). For those who know Mitch and Cliff, personality is another.

"I've always joked with Mitch about it: He's very persistent and his emotions are always the same," says Wayne Newman, a workers' comp attorney with the firm since 1989.

"He kind of walks into every case with a bit of a smirk on his face, and it never goes away. He feels confident and feels 'We've got the stronger argument.' I always figured that it either intimidated or annoyed his opponent."

Newman's right — the smirk is there. So is a subtle sense of humor, both of which make the elder Horwitz brother hard to read.

During the interview for this story, for instance, when Cliff was talking about the cows getting loose, Mitch started giving a side commentary to Cliff's story, mostly to himself, all with a straight face and deadpan delivery.

"Was it a wild, roaming cow?" he said, a slight smile forming. "Wilding? Roaming the Midwest?"

"I don't know if it was wild," Cliff responded, taking his brother seriously.

"That's a joke," Mitch said, laughing lightly. And then, repeating it to himself, "A wild cow."

With respect to practice areas, the firm is split into two halves: Mitch leads the workers' comp team, Cliff the personal injury group.

Perhaps it's Cliff's experience as a P.I. attorney that gave him a lighter touch when Michael Carter joined the firm. Carter was due to have a tumor removed from his spinal cord. Doctors did not know if he would walk again.

He met Cliff and explained to him his passion for trial work, along with his medical difficulties.

"He welcomed me on board knowing that I might have tough battles ahead," Carter says. "I know that personally, in times of absolute conflict between us, Cliff has often taken the high road and ensured that our professional relationship continued when it would have been much easier to choose another path. I know that in some of my personal lowest moments, when I was truly struggling, Cliff was there for me."

Learning by Losing

In 1979, Mitch earned his J.D. with

honors from The John Marshall Law School. Cliff's came five years later at Loyola University Chicago School of Law.

"In the early years, I considered whether I wanted to stay here or be in other firms," Cliff says. "Obviously the best opportunities came here. There is trust among family members. Loyalty. And we were just a small firm. So there was great opportunity to take risks and succeed."

Success starts with failure, like Mitch's aforementioned broken-knee case, or Cliff's first loss at 24, a slip-and-fall case where the defendant repaired a hole in a driveway where the plaintiff said he'd been injured.

"I did not know what I was doing," Cliff says. "But that's probably why my dad had me try that case — because you don't put a new lawyer with a winning case. You put that lawyer with a losing case."

The loss depressed him. It's been a while since he's felt that sting again — 20 years to be exact. That's how long Cliff has gone without losing a case he brought to trial.

"Cliff's strengths are that he is very good at overseeing cases, with attention to detail, and making sure that everyone is prepared and ready," Carter says.

"Cliff" has historically managed trial attorneys well. It has to be difficult to manage the strong personalities and ensure their skill sets are being utilized to a client's advantage. Cliff trusted me, an unknown lawyer, to ask a jury for over \$80,000,000 in a case because he believed I could do it. How many established lawyers would do this?"

After their father's retirement, Cliff and Mitch officially took over the firm, which today has 16 attorneys.

Both men have had success. In 2012, Cliff, Carter and fellow personal injury team member Jay Luchsinger represented Ronald Bayer, an ironworker who became a quadriplegic after falling 15 to 20 feet to the ground from a steel structure.

A Cook County jury awarded Bayer an \$80 million verdict, which ended up at \$64 million because Bayer was deemed 20 percent liable.

No matter — the \$64 million verdict is the largest personal injury verdict in Illinois history for an individual.

"Cliff is an outstanding trial lawyer," says Marc Perper, who joined the firm in 1984 as a workers' compensation attorney with a civil-rights background.

"Juries love him. You know how some people are good in front of a crowd? Some people are good in front of small groups. He is really at home arguing a case in front of a jury. He just comes alive. One-on-one he's a good guy. But the 12-person jury is

really his forum."

Carter describes Cliff as a big-picture guy. "Cliff is exceptional at working with liability expert witnesses, both ours and adverse, and analyzing the methodology for errors or omissions," Carter says. "He has looked at the big picture and provided invaluable strategic advice."

Mitch, meanwhile, "will go down in history as one of the very best workers' compensation lawyers in Illinois," Carter says.

"Perry Mason doesn't exist — you don't get someone to flip on the witness stand and confess to everything," Perper says. "But Mitch is very good at scoring enough points to enable us to minimize the effect of these insurance company doctors."

Perper's favorite Mitch story came in a workers' comp case that made Illinois law in 2010. The firm represented Jeff Urban, a carpenter who sustained injuries to his neck, head and back in 2003 while working.

While he underwent tests, his employer, Interstate Scaffolding, Inc., put him on light duty and office work — an alternative to the carpentry he could no longer do. Urban received his workers' comp benefits pay during this time, which fluctuated depending on his workload.

About two years after his injury, while working light duty for Interstate Scaffolding, Urban noticed an error in his paycheck. He was paid too much, something that had happened a few weeks earlier as well.

Around this same time Urban had been caught writing "religious graffiti" in black permanent marker on shelves in a storage room — "Jesus is the way and the life."

When he told his supervisor about the paycheck error, she told her supervisor, who summoned Urban to her office and admonished him for being a "hypocrite." His religious beliefs opposed, she said, his acceptance of the overpayment a few weeks prior.

After a shouting match, police involvement and discussion further up the Interstate food chain, the company fired Urban for defacing property. It then terminated his workers' compensation benefits.

Urban filed a claim with the Workers' Compensation Commission. Mitch took the case with the goal of proving that a company's responsibility to pay workers' comp benefits does not end if the employee in question is fired for reasons unrelated to the injury if the employee is still under medical care.

He lost at trial but eventually won when the Illinois Supreme Court overturned an appellate decision.

"He's very good on the medical side,"

Perper says. “In workers’ comp cases, it’s very typical that the employer gets our client examined by what you might call a ‘hired gun’ — an insurance doctor. Mitch is very skilled at cross-examining the insurance company doctors.”

Such was the Urban case. “Even though he lost at trial, he made a good record,” Perper says. “He introduced the necessary evidence that enabled us to win the case.”

But that’s not the case that Mitch calls “my best one ever.”

That came recently in *Perkins v. Turner Industries Group*. He represented a disabled former carpenter named Dan Perkins, who was pressured into working for AllFacilities by CatalystRTW, which positioned itself as a return-to-work company for injured workers.

The company purported to give injured workers stay-at-home customer-service jobs on behalf of another company, AllFacilities. Catalyst would pay disabled workers, such as Perkins, to administer phone surveys from their kitchen table or dining room.

The workers were referred by insurance companies as part of efforts to find them employment so the insurance company could reduce or terminate workers’ comp weekly disability benefits.

In reality, Catalyst was collecting fees from the insurance companies and then firing the employees — Perkins was fired for unsatisfactory “work product.”

“We found out that the whole operation ultimately reduced the disability benefits of totally disabled workers through a complex scheme,” Mitch says. “The Workers’ Compensation Commission concluded it was not a real job. I discovered a lot of evidence that had never been uncovered.”

In June, the Workers’ Compensation Commission ordered Catalyst to pay Perkins \$500,915 for a range of back-pay and medical expenses, along with \$1,243 a week for the rest of his life. The employer was also ordered to pay penalties and attorney’s fees to Perkins.

“The Workers’ Compensation Commission concluded stay-at-home work of this type was not a real job, not part of any known sector of the United States labor market. There was less than one chance in 200 of getting hired into a real job,” Mitch says.

“We were all fooled by who they claimed they were. It was a complex system scheme designed to reduce the value of Workers’ Compensation cases. It was not designed or intended to help injured workers,” he adds.

“We uncovered this complex scheme and hopefully eliminated the possibility of them



Mitch Horwitz (top) focuses on Workers’ Compensation, while Cliff handles PI law.

succeeding in the State of Illinois. We don’t get to do that often.”

‘Smarter Than the Average Bear’

Joseph Garofalo can pinpoint the moment the Horwitz brothers made him feel anger, awe and envy all at once.

The workers’ compensation defense attorney was representing Alumax Mill Products, an aluminum rolling mill in Morris, Illinois. This was the late 1980s, and the plant was closing and relocating in Mexico, displacing 500 to 600 workers, Garofalo recalls.

It was a union plant, and the Horwitzes

had a relationship with the union members. “They gave the plant a very interesting final kiss goodbye,” Garofalo says.

The firm rented a hotel room nearby and hired an audiometric specialist to give hearing tests in a specially designed truck. This hearing test was given to every union member of the plant who wanted one.

They issued requests to the Occupational Safety and Health Administration — OSHA — for the personnel files of every worker who took the test. They then compared the results of the test to test results documented in their personnel files to check for hearing loss.

This was a unique tactic — at least as far as Garofalo had seen — because there is no discovery under workers’ compensation law. They used OSHA as a “*de facto* discovery device,” Garofalo says.

After evaluating the tests, the brothers filed about 100 workers’ compensation cases on behalf of the union workers they thought suffered compensable hearing loss under the Illinois law.

“My client got hit with about 100 workers’ compensation cases immediately after the plant closed, all alleging hearing

loss,” he says. “The plant was absolutely shocked. They never anticipated that they were going to have any liability for hearing loss. They never saw it coming.”

Garofalo did — at least once he saw the OSHA request.

“It wasn’t a class action. It was 100 cases that were filed against the plant,” he says. “I had never seen anything like this. I was really amazed at the creativity they had used in doing this. It was very creative legal maneuvering.”

The next move was to create a settlement offer — a couple million dollars. After receiving the offer, some representatives from Alumax wanted to have a meeting with the Horwitzes. So they went to their office.

“The Horwitzes were wonderful hosts,” Garofalo says. “They had a big spread of food.”

Garofalo, a few associates and a few Alumax representatives attended. The meeting, he recalls, “did not go well.” The two sides argued about cause and liability. The plant reps stressed that they provided employees with ear plugs and hence argued that any hearing loss experienced by the employees certainly could not have happened at work.

“My little group made a decision that as

a psychological matter we weren’t going to eat any of their food,” Garofalo says, still stunned after all these years. “And from my Italian background, I couldn’t believe that even with all of the argumentation, we were going to walk away from all this beautiful food. You don’t waste food.”

The debate lasted the entire meeting. And just like that, with no agreement reached, the meeting was over. Garofalo stared at the spread in disbelief as his team walked out.

“I remember looking at the table going, ‘You gotta be kidding me! We’re going to leave all this food?’”

Many of the cases were settled, he says. Some were tried. No matter the case, the two sides went through them one at a time for several years.

“There was no easy way to do it,” he says.

“I think they scored huge points with the union members. They got a lot of these guys — who were going to be without these good plant jobs — a bonus for hearing loss. I don’t think any other lawyers would have thought of that as an avenue for recovery for these people.

“That’s what made me think the Horwitz guys were smarter than the average bear.” ■