

LAWYER OF THE YEAR: DAVID MAZIE

A Lone Wolf Who Gets Results

By Lisa Brennan

When David Mazie won the largest liquor liability verdict in U.S. history last January, he didn't just make national headlines. His representation of the girl paralyzed in a crash with a driver drunk on beer served at a Giants football game changed the way stadiums operate.

It is but one, albeit perhaps the most notable, example of his willingness to take big risks, say lawyers and former state and federal judges who know him.

"Besides being a darn good lawyer, there's a public benefit to what David has done," says Albert Burstein, the paralyzed girl's guardian ad litem, who hired Mazie. "Few lawyers are as creative, and find new usages of existing rules to vindicate clients' rights. He carves out new ground."

In light of that victory and others in 2005, David Mazie is the *Law Journal's* Lawyer of the Year.

The designation goes each year to the New Jersey lawyer whose work, in our judgment, had the greatest influence on the legal system or the practice of law. It is based on documentable results, not on a lawyer's stature in public or private life, esteem among peers, bar association involvement or propensity for pro bono.

On that yardstick, Mazie, 44, stood tall in 2005. Including the \$105 million Verni verdict, he won more than \$160 million in verdicts, settlements and appellate affirmances, among them:

- A trial judge's ruling in February, now on appeal, that allowed

more than a dozen patients who sued Dr. Joseph Dello Russo's eye surgery clinic to collect \$15.3 million in arbitration awards;



MASTERING THE ART OF ADVOCACY: David Mazie, left, has exhibited a willingness to take risks and keep pushing as he did in the case of Antonia Verni, which ended in a \$105 million verdict against Aramark.

- An extension to arbitration, of *Griggs v. Bertram*, 88 N.J. 347 (1982), which says defendants whose carriers deny coverage can reach a reasonable settlement with the plaintiffs and bind the carriers if coverage is later found to exist;

- A \$7.25 million actuarial malpractice settlement in March with Seattle's Milliman & Robertson in an Enron-type scandal, which led to the failure of Home State Insurance Co.;

- A \$7.8 million confidential settlement in March in a products liability case involving two deaths;

- Certification in April as lead

class counsel in a \$500 million class-action arbitration on behalf of New Jersey doctors against Oxford Health Plans over failure to make prompt payments;

- An Appellate Division ruling in June upholding a \$1 million trial verdict to an employee cut out of a lottery

pool at work;

- A \$3 million medical malpractice verdict in July, now on appeal;

- A \$2 million confidential products liability settlement in September; and

- A \$3.5 million midtrial medical malpractice settlement in October.

Unlike a lot of plaintiffs' lawyers, Mazie doesn't fraternize much with his peers in the Association of Trial Lawyers of America and its New Jersey affiliate. He says he doesn't have the time, or interest. He's more of a maverick, his colleagues say, a little rough around the edges, but smart.

Mazie — fast-talking, aggressive and raring to go — is the first to admit he is not out to make friends on the job, even with fellow plaintiffs' lawyers, and that he's always playing to win.

"I'm very selective about the cases I take," says Mazie, who lives in Montville with his wife, 5-year-old daughter and 7-year-old son. "I turn down 99 out of 100 cases. I'll take anything but matrimonial and criminal cases. Sometimes I take a case where liability is more difficult, where there's lots of stigma from a percentage standpoint."

Mazie grew up in Wayne and knew by second grade that he wanted to be a lawyer. After graduating in 1986 from George Washington University Law School, and working for a time at Stern Steiger, now Shapiro & Croland, he moved in 1988 to Roseland's Nagel Rice & Dreifuss — now Nagel Rice & Mazie — bringing with him a big client, Integrity Insurance Co.

At his first trial, Mazie sat second chair to partner Bruce Nagel. But he was first chair at his second major jury trial and at every trial since. "I've always wanted to be someone who writes well and is good on my feet," says Mazie.

Nagel, who founded the firm in 1983 with Jay Rice and David Dreifuss, says, "David deserves every ounce of recognition. But it's also a firm accomplishment. You don't just become a great lawyer in a vacuum; it has taken the collective hard work of many. This firm prides itself on very creative lawyering of complex cases."

The Verni case, however, was by all estimates a work of art. The litigation had droned on amid fractious infighting among the parties and their prior counsel for more than three years when Mazie became attorney of record in early 2004. Between his retention in March and the start of trial in December, he took 50 depositions covering thousands of pages and lined up nine witnesses.

It was Mazie who made a full-court press on the dram shop liability case against Aramark Corp., the

nation's leading arena concessionaire. Mazie's evidence showed that the driver who struck the Verni family's vehicle in October 1999 — rendering their 6-year-old daughter, Antonia, a quadriplegic — had consumed the equivalent of 16 12-ounce beers, mostly at Giants Stadium in the Hackensack Meadowlands.

"Nothing had happened to move the case forward until David got involved," says a lawyer familiar with the case. "David came up with a theory of the case that would appeal to jurors. They were very sympathetic. [Antonia] was coming home from a pumpkin-picking trip."

Mazie says the wheelchair-bound Antonia, who cannot breathe on her own, is the neediest client he has represented. He decided to wheel her into the courtroom for his closing argument. "She testified during my closing, and I broke down," he says. "I've never done that before."

Mazie took other steps that worked to his benefit. At trial, he used an eight-foot screen to show the facial expressions of courtroom witnesses so the jury could judge their credibility.

One of his most creative moves at trial was picking off the fringe, so-called "football defendants" — including the New Jersey Sports and Exposition Authority, the Giants, the National Football League and its commissioner, Paul Tagliabue — so the jury could focus on the drunken driver and the alcohol providers. He got the football defendants to agree to a \$700,000 friendly settlement, and then successfully moved to let them out of the case on summary judgment.

Finally, Mazie pushed his "culture of intoxication" theory. "On punitives, we got an admission that they served him after he appeared drunk," he says.

On Jan. 20, 2005, a Bergen County jury assessed \$30 million in compensatory damages and \$75 million in punitives against Aramark. (The jury also assessed drunken driver Daniel Lanzaro \$30 million in damages, but he later settled for the limits of his \$100,000 policy.)

The verdict had a ripple effect. Just weeks afterward, limits were

placed on the number of drinks that could be bought at the Pittsburgh Steelers-New England Patriots playoff game. The most recent impact is tonight's ban on the sale of alcohol at the game between the Jets and the Patriots at Giants Stadium.

Moreover, the punitive damages award has made Fortune 500 defendants more wary of allowing such claims to go to trial in New Jersey.

The Verni verdict is on appeal, with briefs already filed and oral argument in the Appellate Division expected by September. To help him on appeal, Mazie brought in three retired Appellate Division judges, John Keefe Sr., Sylvia Pressler and Geoffrey Gaulkin.

Keefe says he was impressed with Mazie's reply brief. "He has tremendous analytical capacity," says Keefe. "He had a very creative way of approaching the case. His real stroke of genius was when he settled with the football defendants and moved for summary judgment."

Had Mazie not won the summary judgment motion letting out the football defendants, they might have wound up on the verdict sheet for partial liability.

As Keefe sees it, Mazie was trying to "smoke out" whether Aramark had any evidence to keep the football defendants in the case, and the concessionaire never advanced any. Mazie wanted to avoid having the jury apportion more fault to a settling defendant than he had, says Keefe.

Aramark's appellate lawyers, Michael Rodburg and David Field of Roseland's Lowenstein Sandler, would not comment for this article, nor would the company's trial counsel, Keith Harris of Livingston's Braff, Harris & Sukoneck.

An adversary from past cases, Jeffrey Kadish, of Livingston's Morgan Melhuish Monaghan Arvidson Abrutyn & Lisowski, says of Mazie: "He helps keep preserving the art of advocacy. I have great professional respect for him and I like him as a person, though lots of people, I think, find him rough around the edges." ■