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OPEN FORUM *On Richmond Residents' Lawsuits*

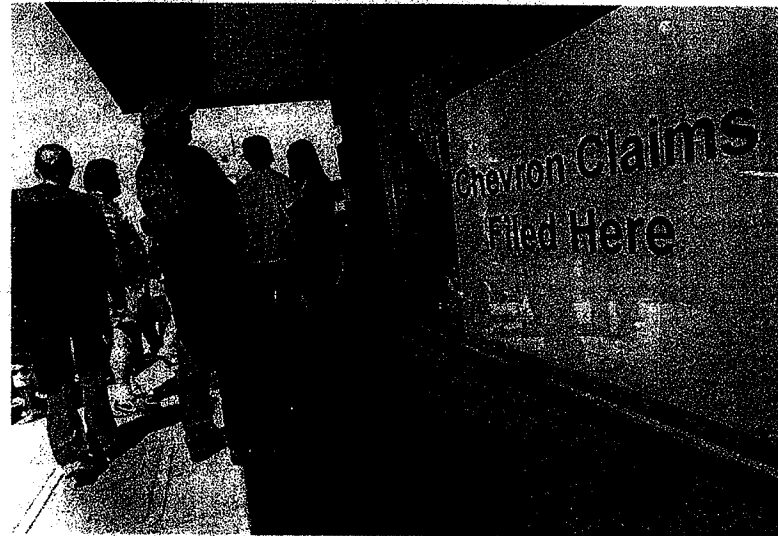
Poor showing by legal industry in Chevron fire

By Richard Zitrin

Within two days of the Aug. 6 Chevron refinery fire that inundated Richmond with clouds of black smoke, a swarm of lawyers and their representatives descended on the city streets. Flyers appeared with the names and photographs of lawyers who stood ready to take on cases against the oil company. "File a claim with me and get the compensation you deserve!!!," read one.

It is unfortunately the rule rather than the exception that when big accidents happen, the legal system rarely is at its best. Plaintiffs' lawyers troll for clients, while company lawyers help set up claims centers to settle as cheaply as possible. And the State Bar's enforcement division sometimes makes things worse, as it apparently did during the aftermath of the Chevron Richmond refinery fire.

It's unethical for attorneys to solicit potential clients at the scene of a disaster or accident, or at nearby hospitals. But that doesn't stop lawyers looking for big bucks from hiring cappers and runners to hand out flyers or to provide other encouragement to hire their bosses. Yet, for those claiming serious



Barrit Ward / The Chronicle

The line of claimants was out the door at the law offices of Nick Haney.

injury, a quick settlement without filing a lawsuit is rarely the way to maximize recovery.

The day after the fire, Richmond attorney Nick Haney arrived at his storefront office to find dozens of prospective clients lined up to request his services. Later that day he posted a sign that read, "Chevron Claims Filed Here."

Chevron quickly opened its own nearby storefront office, which sported a similar sign: "Claims Help Center." Chevron promised checks within 30 days — a policy that is both good PR and a good way to

settle on the cheap.

On Aug. 9, State Bar investigators, most likely reacting to The Chronicle front-page picture of the crowd outside Haney's office, headed to his storefront. Even though there was no evidence Haney had solicited anyone — his prospective clients had come to him, and his assistants had moved out to the sidewalk to gather information from them — the State Bar investigators handed out an intimidating flyer to those waiting in line.

The investigators then entered Haney's

office. It must have seemed to those who viewed the event on a KTVU-TV evening news report that the State Bar had raided Haney's offices, possibly because investigators refused to explain their presence or purpose to the media.

That may have driven some people to participate in Chevron's claims process rather than hiring their own lawyer.

By Aug. 10, according to reports in The Chronicle, Chevron had a modest lead in the claims race: 3,800 for Chevron versus about 3,000 individuals Haney expected to represent. According

to one report, Haney said he would try to settle cases before having to file lawsuits; meanwhile, lawsuits for multiple plaintiffs were being filed by other attorneys.

Even those lawyers who do file suit may face conflicts of interest among their clients, whose injuries may range from mild bronchitis to severe asthma or worse, and whose damages may range from hundreds of dollars to hundreds of thousands of dollars. When harm is so individualized, cases can't be lumped into one class action.

That means lawyers must file cases on behalf of many, even hundreds of, clients. They are duty-bound to serve each of those individuals as fully as a single accident victim. How they balance those duties among hundreds remains a mystery.

The State Bar, which is charged with disciplining lawyers, does not (and perhaps cannot) do much about lawyers who represent too many clients at once. When it comes to unlawful solicitation, the State Bar sometimes does better, but not this time.

Putting a sign in a storefront window that

says "Chevron Claims Filed Here" is a general advertisement. It is neither unlawful nor unethical. Those in line at Haney's storefront office appeared to be soliciting his help, not the other way around.

But the investigators' actions, coupled with the State Bar's habitual silence and opacity, made it look like he had done something wrong. When Haney called to ask if he were being investigated, the investigators, in keeping with their no-comment policy, refused to say or explain the policy.

In the aftermath of the refinery fire, no one involved with the legal system came out looking good. Not the Chevron lawyers, who helped create its shortcut claims process. Not the plaintiffs' lawyers whose runners handed out flyers on the street, nor those who gathered thousands of clients or filed quickie lawsuits. And not the State Bar, which itself crossed the line between prosecution and persecution.

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Richard Zitrin is a trial lawyer and professor of legal ethics at UC Hastings College of the Law. Similar commentary first appeared in the San Francisco Recorder.