

ATTORNEYS OF THE YEAR 2011

Sascha Henry

Sheppard Mullin Richter & Hampton

Premiums, piggybackings and experience modification factors seem like fine topics for lawyers and accountants to hash out, but not necessarily jurors.

And yet Sascha Henry, a partner in Sheppard Mullin Richter & Hampton's Los Angeles office, was able to translate the unique language of California's workers' compensation system so well that a San Francisco jury last summer returned a record verdict in favor of her client, the State Compensation Insurance Fund.

"In all honesty ... it was just a lot of work," Henry said of the keys to her success in the case. "It was really spending the time and the energy to get into the details." At its core, *State Compensation Insurance Fund v. Onvoi Business Solutions* boiled down to an allegation of fraud. The insurance fund, better known as SCIF, sells workers' compensation coverage. Premiums are calculated, in part, using a company's so-called experience modification factor, or X-Mod, a number determined by its loss history.

Select Personnel Services had a high X-Mod factor and, consequently, a potentially high premium. To avoid the high cost, Select Personnel improperly classified some of its workers as employed by another staffing agency with a better X-Mod factor: Onvoi Business Solutions Inc. — or so SCIF charged in a lawsuit that dates back to 2007. The practice is sometimes referred to as piggybacking.

"One of the things that made this case so challenging and interesting was that the trial court granted Onvoi's [initial] motion for summary judgment," said Henry, who worked with partner Gregory Long on the lawsuit.

But later, in a ruling the state Supreme

Court would order published, the First District Court of Appeal sent the SCIF case back to the trial court, holding the case raised issues that should be decided by the jury.

After a two-month trial, the jury agreed that Onvoi and Select Staffing had conspired to secure the cheaper workers' compensation rates. Jurors found in favor of SCIF on every count, including intentional fraud, concealment, breach of contract and violation of the state Insurance Code. The jury awarded SCIF \$30 million in tort damages, \$18 million in interest and \$4 million in punitives.

The jury also gave SCIF \$30 million in contract damages and an eye-popping \$301 million in statutory damages — a figure derived from the state Insurance Code, which holds a company liable for the difference between what it paid for a premium and what it should have paid, multiplied by a factor of 10. The figure is believed to be the largest ever awarded under Insurance Code §756.

"That was a big point in the trial for me, when [the jury] came back and said there was a violation under the Insurance Code," Henry said.

The court, however, ruled that SCIF



could not receive both common law damages and statutory penalties under the Insurance Code. So SCIF elected the tort damages, putting the final award at \$52 million.

Select Personnel Services is appealing the case. SCIF has filed a cross appeal, arguing that it should have been awarded both the tort and statutory damages.

Henry, who co-chairs Sheppard Mullin's consumer class action defense team, has been with the firm since she was a summer associate.

"In this market where lawyers move so frequently now, I'm sort of an aberration," she said. "I've been really lucky to have good mentors here, and I've had a good relationship with the client."

— Cheryl Miller