


**VERDICT  
SPOTLIGHT**

# Two-Lawyer Firm Lands \$1.7 M Verdict Against UPS

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## Fraud

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KENTUCKY: Jefferson County Circuit Court, Louisville  
Sweeney, et al. v. United Parcel Service Company, et al.  
Case No. 92CI00251

**VERDICT:** \$1,746,000

**Plaintiffs' attorneys:** John R. Shelton and Manley N. Feinberg, Manley N. Feinberg & Associates, Louisville, Ky.; Hollis Searcy and Claudia Grenough, Hollis Searcy Attorneys, Louisville, Ky.

**Defendants' attorneys:** Tony Coleman, David Sandler and Carol Disposito, Westfall, Talbott & Woods, Louisville, Ky.

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John Robert Shelton, a Louisville, Ky., attorney who is representing 380 airplane pilots in separate cases against the United Parcel Service, has some advice for small-firm lawyers.

"Don't let size prevent you from taking a case," says Shelton, whose clients allege that UPS officials promised them jobs but reneged. "Unless you step up to the bat with the mind of hitting a grand slam, you're never going to hit a grand slam."

Although a trial judge threw Shelton a curve ball by refusing to certify the claims as a class action, finding that the fact patterns among the pilots were not substantially similar, Shelton established that UPS made a blanket promise to hire all the pilots without intending to do so.

In the first of the cases to go to trial, the jury awarded \$1,746,000 to plaintiff John Rickert on claims of fraud and promissory estoppel. It was Shelton's largest verdict to date, but with 379

similar cases pending he may quickly break his record.

"Now that UPS forced us to go to trial the settlement amounts are staggering," said Shelton, who practices in a two-lawyer firm. "I hope they settle it or I'll be trying UPS cases the rest of my life."

In the 1980s, Rickert and the other plaintiffs were pilots for Orion Air, one of four contract carriers flying cargo for UPS. Then UPS executives decided to form their own airline. The changeover from contract carriers to the UPS airline was to be made between August 1987 and the end of 1988, and 800 pilots were to be hired as UPS employees.

Shelton says UPS feared that, while the change was taking place, the contract carrier pilots would believe their jobs were in jeopardy and search for other employment. Company officials held group meetings with the contract pilots and implied that jobs with the parcel service would be awaiting them after the transition.

UPS asserts the pilots were only promised the chance to be interviewed. Some did interview at UPS, where they filled out medical history, insurance, tax and employment forms. But by 1989, only about half of them had been brought over to the new airline.

"[UPS] made many decisions in many places that they weren't going to hire a person, and they never told them," Shelton says.

When they weren't hired, four pilots formed a committee to research attorneys to take on their claims and chose the Louisville firm of Manley N. Feinberg & Associates. When class certification was denied, the pilot committee collected the names and addresses of the pilots and sent them a letter recommending they sue.

Hundreds of pilots responded and filed claims against UPS alleging they were fraudulently induced into a oral contract.

Under Kentucky's "common scheme or plan" rule, Shelton was able to bring in other pilots to testify about their own experiences with UPS and to back up Rickert's claims. "Without them, it would have been tough to sell a fraud claim to the jury based on the testimony of one man," Shelton said.

UPS had done him a favor by taking depositions from 180 of the plaintiffs. Since several pilots lived too far away to participate in the trial, Shelton read the depositions to the jury, removing UPS's chance to cross-examine them.

Keeping things favorable to UPS out of evidence, such as letters and documents sent to other contract car-

riers, played another role in winning the case. The judge restricted proof to promises made to Orion, avoiding an extensive trial.

Shelton says it was easy to prove actual damages; he called an expert to testify that the money Rickert could have made at UPS was significantly more than the amount he earned after leaving Orion. Rickert was further injured by losing out on 16 months of "seniority numbers," Shelton says.

"Seniority to airline pilots is everything," Shelton said. "It dictates your flight schedule, it dictates upgrading to a captain's position, it dictates who gets laid off first, it dictates when you can take a vacation."

The jury awarded Rickert \$746,000 in compensatory damages and \$1 million in punitive damages, although Shelton had argued for \$10 million in punitives. But Shelton doesn't see the verdict as a setback.

"If it had just been this one case, UPS would have said 'That's fine, it's worth it,'" he said. "Due to the fact that there's 379 other cases right now, that's enough to get their attention."

Shelton is confident the verdict will be affirmed. As for the pending cases, Shelton plans to claim collateral estoppel with regard to various facts that jurors found in the plaintiff's favor in the Rickert case. Shelton will use the jurors' responses to special interrogatories in *Rickert* as the basis for summary judgment in the other Orion cases.

—Andromeda L. Weissman