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Daewoo's U.S. Affiliate Leaves Piano Man Singing the Blues

By Michael Jonathan Grinfeld

Daily Journal Staff Writer

SANTA ANA — Vernon Schafer arrived in California in 1950, a 20-year-old with a wife and a new baby. He spent the next 40 years building Colton Piano Co. and making Schafer & Sons pianos a household name.

Now 70, rather than celebrating the retired good life, Schafer is struggling to build his business from scratch again. Instead of cashing in on the riches of the global marketplace, he ended up one of its victims.

"I just got mixed up with the wrong people," Schafer said. "I did everything I could to avoid lawsuits, but when it got down to losing my house and my family ending up in the streets, I had to fight."

A bruising 7-year legal battle against Schafer's nemesis, Daewoo International (America) Corp., the U.S. affiliate of Korean powerhouse Daewoo Corp., brought the piano man little justice. The case came to a screeching halt after

Daewoo America filed for Chapter 11 bankruptcy in the Southern District of New York, *In re Daewoo International (America) Corp.*, 00-11050 (BRL) (filed March 17, 2000), just a week after an Orange County Superior Court ordered the company to pay Schafer more than \$1.25 million in attorneys fees and costs. *Daewoo International (America) Corp. v. Schafer*, 694619 (O.C. Super. Ct., filed Aug. 14, 1992).

The case is a lesson in hard knocks, not only for Schafer, but also for nearly every attorney who touched the case.

In 1989, Schafer thought he was making the right decision when he switched manufacturers, entering into an exclusive distribution agreement to sell the pianos made by Daewoo subsidiaries. By the early 1990s, however, claims of shoddy merchandise and an economic recession turned the deal sour, and the economic pressures set off the chain of events that would trig-

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HUGH WILLIAMS/Daily Journal

BROKEN PROMISES — "In the modern global marketplace, you need to take a different approach to business," attorney Randall Smith, left, explained about his client, Vernon Schafer Jr. "The days when a self-made entrepreneur could do business on a handshake are definitely over."

Daewoo Hits Wrong Note With a Piano Man

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ger years of litigation.

Under scrutiny by his bank and in debt to Daewoo for about \$4 million for pianos Colton purchased, Schafer agreed to guarantee personally the obligation of his company. In exchange, he claims Daewoo agreed to surrender a \$500,000 letter of credit and domesticate nearly \$1 million in rebates the Korean parent owed him. What amounted to a \$1.5 million cash infusion, however, never materialized, which, according to Schafer, destroyed his efforts to restructure his financing. By March 1992, the Chapter 11 petition Colton filed converted to a Chapter 7, and the company was liquidated.

Then the lawsuits flew. Daewoo sued Schafer in an attempt to recover its losses by enforcing the personal guaranty.

Meanwhile, Schafer accused the company of fraud, claiming he never would have signed the guaranty had he known the company would renege on the accommodations it promised. He counterclaimed, too. In a 52-page complaint, he alleged nearly every existing business tort, including fraud, negligent misrepresentation, breach of the covenant of good faith, interference with economic relationships, and a host of others.

Colton never would have collapsed, he charged, if only Daewoo hadn't lied about nearly every aspect of their business relationship.

When the smoke cleared, it looked like a rout in Schafer's favor. A jury decided Schafer was defrauded when he signed the guaranty, and it then hit Daewoo on the cross-complaint for \$13.25 million, \$10 million of it in punitives.

"After 15 years of practice, it was the highlight of my legal career seeing Mr. Schafer's reaction when the jury's verdict was read," Randall A. Smith, a partner at Irvine's Rus, Miliband & Smith who helped try case, recalled. "Justice seemed to have truly been done, and the system seemed to have done its job."

Only to be undone. In an unpublished opinion handed down in May 1998 (*Daewoo International (America) Corp. v. Schafer*, G019227 (Cal. App. 4th District 1998)), a unanimous court of appeal set aside the verdict, saying this was a "rare case" in which "we overturn a judgment for insufficient evidence."

According to the justices, Schafer had failed to prove, despite the jury verdict and the trial judge's decision not to set it aside, a causal connection between Colton's demise and any failed promises of Daewoo.

"I continue to believe to this day that Schafer was seriously wronged by Daewoo," Smith said. His client was more direct in his criticism of the ruling. "The jury found in my favor on every item, and the appeals court blew it out. I think it stinks," Schafer said.

Ellis Horvitz of Encino-based Horvitz & Levy, who handled the appeal for Daewoo, said that, even though the 4th District Court of Appeal was one of the toughest for disturbing jury verdicts, he wasn't surprised by its decision.

"One of the basic premises of the law is that someone is only liable for the injuries they cause, and you can have the worst intentions in the world, but if you don't cause injury, you're not liable," Horvitz said.

Concerning huge, corporate defendants in a sympathetic case, he said, "juries will blink and not worry about causation, and they'll substitute proximity for proximate cause: You just have to be in the neighborhood, and they can find you liable."

"I'd give the jury system and an experienced trial judge considerably more credit," Ronald Rus, lead trial counsel for Schafer, said, "Daewoo's intentions couldn't be hidden from those that watched the demeanor of the witnesses."

Although the defense lost the damages portion of the case, the appellate decision didn't affect the defense verdict on the personal guaranty because of the lack of an appeal. As the prevailing party, Smith said, Schafer was entitled to attorney fees and costs. The remand of that issue set off another scorched-earth tussle, this time in front of a court-appointed referee, retired judge Richard W. Luesebrink.

But before he could hear the case, a squabble between Daewoo and its attorneys at Los Angeles' Graham & James over legal fees had them fighting over whether the law firm could withdraw.

"Daewoo and its related companies have a history of refusing to pay Graham & James for services rendered, not only in this case, but in other cases in which Graham and James represented them," Henry S. David, one of its partners, claimed in court papers. "Graham & James wishes to avoid a similar result here."

"Daewoo thought we should have been more

accommodating in discounting our fees in light of the result, and we thought we had been accommodating enough," David said in an interview.

Dealing with foreign clients involves an expectation of long-term relationship different from that expected by domestic corporations which see each engagement as an individual transaction.

"That means in good times we share and in bad times we share," David said. The dispute between Daewoo and the firm, ultimately, was how much of the "bad times" to share.

Nevertheless, David said that the disagreement over fees hasn't soured the firm on representing foreign corporations. "You can't generalize from one company to another," David said. "The vast majority of our foreign clients are wonderful to work for and honor their obligations to us and to everyone they do business with."

Meanwhile, the Daewoo America bankruptcy threatens to leave Schafer's law firm out in the cold after years of work on the case. Smith said he has no regrets. "I'm glad to have seen this case to its end," he said.

Although Smith sees some irony in Daewoo America's bankruptcy after they fought so long and hard in court, it wasn't unexpected.

"This case was about my client's claims that Daewoo broke one promise after another, and there is a corporate arrogance in seemingly saying 'we lied, but so what?'" Smith said. "I'd like to think this deal was an aberration, but in the modern global marketplace, you need to take a different approach to business. The days when a self-made entrepreneur could do business on a handshake are definitely over."

For Daewoo, the bankruptcy has clouded its plans, according to Bruce A. Friedman, a partner at Alschuler, Grossman, Stein & Kahan, who stepped into the case after Graham & James withdrew. Friedman said that Daewoo has paid his firm's bills, and the company now is contemplating an appeal of the \$1.2 million attorney-fee award.

As for Schafer, he hasn't given up on international business. He's turned his sights on China, making a deal recently to begin importing one of its manufacturer's pianos, to be sold in the United States under the name Schafer & Sons.