

## Chapter 47

# The settlement's aftermath

By early April 1998, national media had converged on Columbia Falls to report on the Columbia Falls Aluminum Co. profit-sharing case, including the Washington Post, New York Times, Wall Street Journal, Seattle Times and ABC television. National reporters were sent to talk to Columbia Falls Mayor Gary Hall and former CFAC accountant Roberta Gilmore. "Bobbie has been inundated by requests by the national media," her attorney Roger Sullivan said, and she wanted to correct a growing misperception that this was a "windfall" for CFAC workers. "I think Bobbie is concerned about that," Sullivan said. "This is money that was hard-earned and due years ago. This isn't a windfall. It's their money."<sup>1</sup> The profit-sharing settlement made the front page of the Wall Street Journal on March 30. The New York Times planned to run a story sometime in mid-April, and the Associated Press sent a reporter from Seattle to cover the story. The Wall Street Journal story suggested that the workers would be put under the microscope by "economists far and wide" to study their spending habits and see how a windfall affected local economies.<sup>2</sup>

The national media frenzy soon frustrated and angered many CFAC employees, especially since they had not yet received their money and they expected to lose half of their settlement to taxes, legal fees and other costs. "They're saying, wow, this small town is getting all of this money," Mike Baker told the Daily Inter Lake. "Well, no, that's only one-third of the story. The story is that these people were ripped off, that they won this lawsuit and they still haven't been paid." Baker was upset that national media stories didn't explain the hard work and concessions the workers had given to earn the money. Instead, the national media perpetuated the notion that the workers had won a lottery ticket. "They don't put down that we lost 33 percent of our wages and benefits for this," Baker said. "We had to spend our own money to get our money back, and Brack Duker used our own money to fight us." He recalled meeting a woman at the fairness hearing in Missoula who believed all CFAC employees were millionaires. Aluminum Workers Trades Council President Terry Smith said he was surprised by all the national media attention, but that he was disappointed by the coverage so far. "To them, it was nothing more than an individual winning the lottery," Smith said.<sup>3</sup>

## Reporters and salesmen

Roger Sullivan said he was "endlessly amazed" by the national media attention – his office had received inquiries for interviews from two dozen radio, television and print

news agencies, but he also was disappointed in the coverage. “We believe the integrity of the story is really in the whole case, and the courage of the workers... and their efforts to obtain some degree of justice,” Sullivan said. One of the low blows, he said, came from the Wall Street Journal article which quoted an employee at the Golden Wheels RV dealership and compared the CFAC employees to characters on the TV show “Beverly Hillbillies.” After receiving numerous angry phone calls, Scott LeDuc, whose family owned Golden Wheels RV, took out advertisements and wrote letters to the editor ardently denying that an employee had made the statement. Kevin Dunnigan, a financial planner based in Kalispell, described how many of the CFAC employees were angered by the attention, especially since they had not yet received any money. “And people have to remember that this is just a payday that they’ve had coming to them for a long time,” Dunnigan said. Most of the CFAC employees he had seen were investment oriented, he pointed out, and he didn’t anticipate spending sprees. He found that most of the employees were trying to eliminate credit card debt or paying off a home.<sup>4</sup>

The Daily Inter Lake criticized the national media coverage in an April 16 editorial. The legal case was “extraordinary, pitting a small-town law firm against big-time corporate attorneys,” and the impact of the large settlement on the local economy was also interesting. “But what has really stirred the anger of CFAC workers is the portrayal of their profit-sharing money as manna from heaven, a marvelous piece of good fortune,” the newspaper said. “Luck had nothing to do with it; this is money they earned and were denied for years. Now they are finally getting it, and it’s theirs to spend or save as they see fit. For those of us in the news business, the national coverage of the CFAC settlement has given us fresh – and humbling – insight into why people are critical of the media.”<sup>5</sup> The April 30 “Snapshots” section in the Hungry Horse News provided opinions from five Columbia Falls residents about the national media coverage. “They should have dug into the story more. They made it sound like they hit the lottery when it was owed to them,” Bryan Goldizen said. “I think it’s going to make Columbia Falls remembered. It will leave an impression,” April Hanchey said. “I don’t really think it has an impact. I don’t think it makes a difference anyway,” Dan Loop said. “Much to do about not much,” Russell Rocks said. “It seems like it’s been good and bad. There’s been a lot of people (friends) who’ve been affected. I just feel for the people who have been affected,” Karen Williams said.<sup>6</sup>

Sales pitches were as noisome to the employees and their families as the media attention, and some advertising was narrowly targeted. On Jan. 8, Investment Centers of America Inc. ran an ad in the Daily Inter Lake headlined in all caps “ATTENTION: CFAC EMPLOYEES” and warning CFAC employees not to invest their profit-sharing money alone.<sup>7</sup> Craig Payne, an RV salesman at Golden Wheels RV in Kalispell, told the Wall Street Journal he had sold three travel trailers to CFAC workers before they received

their checks. "It's kind of like the Beverly Hillbillies," he said. "A lot of people feel like they struck it rich." He didn't expect them to invest their settlement money. "They want a new pickup truck, a bowling ball or fishing rod," he said. For others, the plant workers and their money was likened to a laboratory experiment. Larry J. Wipf, a regional economist for Norwest Corporation, a bank-holding company based in Minnesota, was curious to see what would happen. "Will they pay off their mortgages and credit cards, or will they take off and travel?" he asked. "This is a very interesting experiment." Local banks sponsored a financial fair at the Columbia Falls High School featuring speakers from Merrill Lynch and Piper Jaffray. Fewer than 10% of the aluminum workers showed up. Local merchants and automobile dealers reported seeing quite a few CFAC workers shopping. "This is just fascinating – a once-in-a-lifetime event," University of Montana economist Paul Polzin said.<sup>8</sup>

On April 1, 1998, April Fool's Day, CFAC employees heard rumors about receiving their settlement money soon, but Terry Smith told local media he had "no idea" when the money would be paid out. The money could arrive any day, he said. One salaried employee told the Hungry Horse News that much of the settlement money would never reach employees. He said he was owed about \$202,000, but after lawyers took 21.8% and a large portion went to taxes, he expected to receive only \$66,000. "That's a dirty shame," he said. He said he knew of one CFAC retiree who died in 1997 without ever receiving his settlement money. "That's how much of a bum Duker is," the man said. CFAC employees were growing increasingly testy about all the attention they were receiving, especially from businesses that wanted them to buy something. Scott LeDuc said his Golden Wheels RV dealership had taken steps not to target CFAC workers with advertising and promotional flyers so as not to appear as "vultures perched on a wire."<sup>9</sup>

"Realtors, car dealers, finance outfits, jewelry stores, you name it – I've been getting so much stuff in the mail I don't even open it anymore," said Dave Toavs, a CFAC mechanic for 19 years. "If you go to a car lot and they find out you work at CFAC, oh boy, you get hammered. They think, 'You guys are rich,' and they want their hand in the cookie jar, too." Toavs said he planned to pay off his mortgage and then go shopping for an expensive target pistol. He expected state and federal taxes would take about \$45,000 of his \$100,000 payout. Workers also found themselves defending themselves against criticism that it was undeserved wealth. "I see it as past-due wages," Roberta Gilmore said. "It was something I fought long and hard for."<sup>10</sup>

Local businesses were looking forward to a potential 10% bump in the local economy. "I think it will be a real boon for the area," Greg Johnson, a salesman at Eisinger Motors in Kalispell, told the Seattle Times. "It's a lot of money. We'll probably run out of inventory, but that's OK. We'll get more." Some workers were talking about new trucks,

down payments on houses, motorboats and vacation cruises. Plant worker Brian Doyle said the merchants “know the impact of this money coming in. It’s pretty good business sense. But it’s like when a fellow wins the lottery – he has more friends than he knows how to deal with.” Some businesses sensed that workers were getting tired of the sales pitches. Shane Topp, a salesman at Jesco Boat Center, said merchants backed off so they did not appear to be “bloodsuckers.” As the settlement drew near, “I was like, ‘Let’s have a show down here.’ But I see their point,” he said. Allan McGarvey, an attorney for Gilmore and the salaried employees at CFAC, came to the employees’ defense on numerous occasions in the local media. “The impression is around that these employees are getting a windfall, and it’s a bunch of blue-collar hillbillies that are rolling in the money,” he said. “This is not a windfall. It’s a delayed paycheck is what it is.” Workers over the years had put up with dangerous conditions and taken a 21% pay cut in 1985 in exchange for a 50/50 share of the profits, he said. For a time, they got their share. Then Duker and Broussard began withholding the workers’ share of the company’s profits. “These guys were making obscene amounts of money,” McGarvey said about the plant’s owners. “It should have been the greatest success story. Everyone goes away happy. Instead, the owners started siphoning into the profits that should have gone to the employees.”<sup>11</sup>

When the settlement was finally reached in December 1997, CFAC admitted no wrongdoing, and company officials said they had settled to avoid lengthy appeals. The Wall Street Journal reported Duker issuing a statement saying, “The company now considers the matter closed.” The case had drawn national attention to the plant and the small town. “We’re getting a lot of press,” Connie Fisher, the administrative assistant for the plant’s general manager, told the Seattle Times. “That is all we have to say.” The case continued to dominate the local newspapers, running on page one above a story about bears. “We know there are bears in the woods,” said Tom Lawrence, the managing editor of the Hungry Horse News. “We don’t know that there’s money in anybody’s pockets yet.” The Columbia Falls newspaper had run into trouble with some locals when it ran an editorial suggesting that the workers “join together to do something for the community” by donating a few thousand dollars for schools or city parks. Lorinda Walter and Brenda Chapman, wives of plant workers, accused the newspaper of “vulturism” in a letter to the editor. “If money was given to every request we have received by mail, phone or newspaper, we could expend all monies generated by the lawsuit, plus some,” they wrote.<sup>12</sup>

With tax men, attorneys, national correspondents, economists and salesmen to contend with, CFAC workers and their families hadn’t expected unwelcome suggestions from the local newspaper. The Hungry Horse News received half a dozen letters in April after the newspaper suggested that CFAC employees consider donating money for local schools

and parks. "After the government takes its \$40-50,000 or more, there's only retirement, college funds, braces and any number of 100 other things that we have had to cut way back on or stop altogether ever since Brack Duker took over dictatorship of CFAC 13 years ago," Ken Levitt said.<sup>13</sup> "We find it amazing that everyone feels a need to tell us what we should do with this money," said Lorinda Walter and Brenda Chapman, both wives of CFAC employees. "This mentality to us depicts vulturism in its worst form, which we might add is filling our mail boxes from many businesses in the valley." The two women said they wished there had been this much publicity or outpouring of concern when their husbands were laid off or took a 33% cut in pay and benefits in 1985. The noted that the money their husbands made every day went to supporting the local economy.<sup>14</sup>

"Why should the employees of CFAC donate money to Columbia Falls?" Gayle Kolden asked in a letter to the Hungry Horse News. "When the employees voted to strike in 1986, Columbia Falls did not stand behind them." Duker threatened to shut down the plant at the time, she said, "and Columbia Falls had a fit. They told the employees to take what they could get and stop whining." CFAC employees paid their taxes just like anyone else. "Columbia Falls needs to take what they can get in taxes and stop whining," she said.<sup>15</sup> Penny Mulcahy also chimed in. "I am very irate at the businesses that are hounding the employees, trying to get their hands in these people's pockets," she said. Mulcahy asked if editor Tom Lawrence took a pay cut, or if he offered to help out CFAC employees when they had less money for bills. She also asked for a list of businesses that were trying to get the settlement money. "I will no longer support them," she said.<sup>16</sup> Barry Schermerhorn drove the point home in case it hadn't been made. "Sir, this is not any of your business and you have no right to suggest what we do with it," he wrote to the newspaper. "We support this town and valley daily by living and playing here. We live here by choice. This is our home. CFAC workers are dedicated workers who know the value of their jobs and the value of this plant to the valley." Schermerhorn said it was a shame they had to sue to get the money they were owed.<sup>17</sup>

Lawrence apologized to CFAC employees in an April 9 editorial. "The voice on the phone was loud and clear – and so was the message," he said. "'We don't need any advice on how to spend our money,' said the man, a CFAC worker. 'It's not like we're going to be rich anyway.'" Lawrence explained how he had suggested in an earlier editorial that CFAC employees buy something for the school system or do something for a park. "I envisioned something around \$10,000 or \$20,000, nothing that great, really." The man on the phone was upset with the suggestion. "Lots of other guys feel the same way," the man had said. Lawrence said he received more calls with a similar message. He noted that many of the CFAC employees were fed up with all the attention given to their settlement money, and one man vowed not to spend a nickel in Columbia Falls. They

were also upset that so much of their money would go to lawyers and the IRS. "The CFAC workers had a motto during the financial fuss: EFP," Lawrence said. "And I know EFP stands for Every Final Penny. Or something like that." Lawrence said he agreed with one suggestion by CFAC employees: "Brack Duker and Jerome Broussard, the company's owners, should contribute to any memorial." In the end, Lawrence stuck with his initial position: "As I said last week, it's too bad something good couldn't come from all this."

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## **Distributing the profits**

On April 16, 1998, the Hungry Horse News reported that Allan McGarvey was "70 percent certain" the settlement checks would be issued between April 25 and 29. Deals worked out between the IRS, the Montana Department of Revenue and CFAC employees had been made, broken and re-established, McGarvey said. "But it could fall apart," he said. "It did before." Terry Smith said he agreed with those dates. McGarvey said it was the state of Montana that stopped the deal last time. "They played hardball with us," he said. The state wanted a greater share of the settlement, McGarvey said. While McGarvey said the salaried workers were satisfied with the progress on payouts, Smith said the hourly workers were "very irate." Smith said they had been misinformed several times and just wanted the money they had coming. "They're irritated," Smith said. "And you can't blame them."<sup>19</sup>

The Montana Department of Revenue was expected to close a deal with CFAC employees on the tax rates for the settlement money by April 22. "The closing agreement for the IRS is all done and signed," Terry Smith said. "Now we're waiting on Montana." Smith said he signed the agreement and sent it to Los Angeles where Duker's attorney signed it. The agreement was then sent to Washington, D.C. for an IRS signature and finally to U.S. Chief Judge Jack Shanstrom for his signature. The final piece of the deal was an agreement to treat 62% of the settlement money as income, Smith said. The remaining 38% was described as interest and punitive damages. Smith said hourly workers were not very happy with the deal and were weary of the whole process. "I'm just happy to get it over with," Smith said.<sup>20</sup>

Judge Shanstrom approved final terms with federal and state tax agencies on April 28. The federal government set a flat tax rate of 28%, and the state set a flat tax rate of 8%. In addition, a 7.65% Social Security tax would apply to about half of each worker's settlement payout. Hourly workers would pay another 10% to their attorneys, while the salaried workers would pay another 20% to their attorneys. "Who knows if it was a good deal? We got less than 50 percent of our money, that much I do know," Smith said. "I can't wait until it's behind me. It's unbelievable how long it has taken to get the checks to the people."<sup>21</sup> CFAC employees were expected to receive their settlement money on

April 30, and the company was expected to provide security for the payout and keep media away. "I think they'll spend it wisely," Smith said of the hourly workers. "This isn't the first lump sum payment they've received." <sup>22</sup> On April 29, Duker and Broussard wired the last portion of the \$97 million owed to employees to special bank accounts. <sup>23</sup> Then on Dec. 23, CFAC's hourly workers received the last payout from the settlement, splitting a \$5 million payout. <sup>24</sup>

The entire annual payroll of the 70,000 residents of Flathead County in May 1998 was about \$1 billion. The profit-sharing settlement came to about \$100 million, or 10% of the total income for the county, although about half of the settlement money never reached the workers. Financial planner Kevin Dunnigan, who was counseling a dozen workers from the plant, commented on the potential local economic impact. "In Denver it would be like a pimple on a pickle, but here it's going to have a big impact," he told local media. "It's like winning the lottery." Some locals expected the workers would splurge their earnings on big ticket toys. "People are looking for speedboats and four-wheel drives," reported Dave Bergert, owner of Ace Power Sports. Advertisements hawking goods at CFAC workers had become common in the media by May. One ad in the Hungry Horse News read, "CFAC Employees, We Need To Talk." But the workers felt like targets and resented it. "They make us out as a bunch of hillbillies," said Ron Loveall, a former union leader at the plant. The impact of missing income for so long had caused sacrifice and turmoil for a large number of employees, according to Roger Sullivan. "There really were kids who didn't go to college, there really were people who lived in houses who had to move into double-wide trailers," he said. Meanwhile the official word from CFAC was to get on with business: "CFAC settled the litigation resulting from a dispute over profit sharing so that the company can move on instead of staying embroiled in appeals for years to come. The company now considers the matter closed."

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In one telling of the aftermath, investment brokers called workers at their homes, truckloads of hot tubs rolled into town for special CFAC sales, newspaper ads targeted CFAC workers, merchants' flyers were found on workers' windshields, and some businesses even set up shop at the plant entrance. Judy Berardi, the wife of a CFAC employee and a key figure in the fight to save the plant before Duker and Broussard showed up in the Flathead, commented on the frenzy. "We're getting six or seven pieces of junk mail every day," she said. "Everyone wants to sell us something... it's disgusting. When we get our check, you can bet we won't give a dime of it to locals like that. We'd rather spend it out of town than give it to these people who have kept a hand in our wallets for months. And we're not alone. I'll bet a lot of people are so disgusted they won't spend it locally." Some workers spent their money before they had it in their hands, however, and some area retailers expected to see fleets of shiny new

trucks, cars, boats, motorcycles and recreational vehicles go out the door. "I suppose some of the guys will invest a bit, but the majority of the cash will flow right into the Flathead economy," Del Baker, a sales manager at the Ford dealership in Kalispell, told the Hungry Horse News. "I know a lot of the guys out there, and most of them are going to treat themselves to a little something in the way of fun." <sup>26</sup>

In July 1998, First Citizens Bank President Don Bennett reported that the \$97 million pay-out had created minimal long-lasting effects. About 1,000 employees had received average payouts of \$150,000. Bennett said his bank saw about \$14 million in deposits in two days, but "three days later, almost all of it flowed out." The bank's deposits increased to \$50 million until settling down at its normal \$37 million level, he said. "There was a lot of hoopla about it, but really the biggest winners in the whole thing were the IRS and the lawyers," Bennett said. Most of the employees used the money for practical things, such as paying off mortgages, other loans and credit card debt, he said. "A few people went off and bought pickup trucks or four-wheel-drive vehicles," he said. Snowmobile and furniture dealers also saw their business improve, but many people put money into mutual funds and retirement plans. Bennett noted that the large influx of money hurt his loan business, which slowed down a bit. But overall, the community "is a little bit healthier since the payout," he said – people had a "better attitude now." <sup>27</sup>

With an IRS flat tax of 28%, just shy of the 31% maximum, the state of Montana taking another 8%, just below the 11% maximum, another 7.65% for FICA taxes, along with lawyers' fees, most workers took home no more than half of their settlement share. Nevertheless, in the eight months after the settlement money reached the workers, car sales in Flathead County increased by 4% while they fell by 2% across Montana, truck sales in the county increased about 20% while they increased by 2% in the state, and motorcycle sales increased by 18 % in the county while they grew by 3% in the state. Many retailers were perplexed about where all the money went. "I suppose they invested it," said Craig Kendall, manager of a retail appliance store in Kalispell. "We hoped to sell some hot tubs and big-screen TVs, but it never happened. Maybe they just paid off debt and stashed it away for a rainy day, or maybe they took a vacation and spent it out of town." Real estate brokers also said they never saw the money. Bill Hendrix of American Investment Services Inc. thought he knew where the money went. "It didn't make it to the retailers. It didn't fly off on an airplane or go toward a new house or some real estate. It went to pay off debt and then the rest went into the bank," he said. "The people I saw invested it as a nest egg or as a college fund. To me, I think that this group was pretty darn fiscally responsible." A wife of a salaried CFAC employee concurred. "Of course we invested everything we could," she said. "It got tight over the years. When the paychecks were cut smaller and there were no profit shares, it got really tight. You did what you could." <sup>28</sup>

## Good guys, bad guys

A lot of moralizing and explaining by key players in the profit-sharing case followed the settlement pay-out. Tom Lawrence presented one view in an April 30 editorial in the *Hungry Horse News*. “When greedy tycoons ruled the country – even more than they do now – unions were formed to help the working class have a voice, a chance, a place to express views,” he said. “But then unions fell on hard times.” The efforts of CFAC’s union workers may have helped restore the unions’ past image, Lawrence said. “These people stood up to a massive corporation and a multimillionaire and triumphed,” he said. “They faced intimidation at the workplace and some derision from others who should have been beside them the entire time.” The workers didn’t get all they wanted, he noted. “But still, this small group of working class people took on a giant and won,” Lawrence said. “It’s a great tale that deserves to be recorded in history books.”<sup>29</sup> But there were two sides to the story, and attorney Mark Shipow was happy to explain the defendants’ position on the settlement. “The company denies it did anything wrong or intimidated anyone,” he said. He also disputed the employees’ estimates of how much money was owed to them. “The numbers are wrong and their figuring is wrong,” he said. When asked why his client settled for \$97 million, Shipow replied, “There’s no such thing as a slam dunk. Instead of trying the case, moving on to make a lot more money for everyone seemed to be the way to go.”<sup>30</sup>

Lyle Phillips, who started as a production worker at the aluminum plant in 1962 and worked his way up to chief operator at the rectifier, maintenance supervisor and then human resource manager, was directly involved in the profit-sharing case and the labor contract negotiations. “I was in the eye of the storm,” he recalled in 2005. He said his primary goal was to not let the lawsuit affect how the plant operated, and he credited the dedication of the workforce and the union leadership under Terry Smith. It would have been easy to go on strike, Phillips said, but Smith “had a lot of guts” and held the workforce together.<sup>31</sup> Larry Tate, who became CFAC’s new general manager in 1995, also focused on keeping the plant operating. “There were a lot of things going on, there’s no two ways about that,” he recalled in November 2000. “I held it together by trying to focus on things inside the fence, the things here in the plant that we had some control over.” Tate explained that he ignored the employees’ lawsuits and focused instead on workplace safety, environmental responsibility, increased productivity and cost-cutting. “Everything needed to revolve around those four issues in some form or another,” Tate said. “But it’s tough when you’ve got a lawsuit going on with employees suing the owner... lawyers fuming around. I just tried to keep myself out of all that. You can get tangled up in that kind of thing and lose your effectiveness pretty fast.”<sup>32</sup>

The huge settlement was hailed as a major victory by the national unions. George Becker, president of the national United Steelworkers union, called the settlement “the second largest in Steelworkers union history and a tribute to the Columbia Falls workers.” The largest Steelworkers court settlement in history was for \$415 million and involved pensions for Steelworkers at Continental Can Co.<sup>33</sup> On May 1, 1998, representatives from the Aluminum Workers Trades Council traveled to Washington, D.C. to celebrate with Steelworkers representatives. AWTC President Terry Smith and Jack Rogers, president of the Steelworkers local at CFAC, met with Becker and Curtis Peterson, former president of the Steelworkers local in Columbia Falls. “The story of the payback, one of the largest back-wage settlements in U.S. history, will be told,” the Steelworkers press release stated. “The resolution of this case is further proof that unions are essential to the welfare of workers,” Becker said. “While companies preach the merits of profit-sharing, it sometimes takes lawsuits and demonstrations to get them to deliver on their promises.” Smith described the case in David versus Goliath proportions. “There’s a great union message here for America,” he said. “Here’s this little union in this little town in Montana where people stood up for their rights and won.” The Daily Inter Lake, however, noted that most of the lawsuit case was handled by local attorneys representing salaried workers, not by the national unions.<sup>34</sup>

On May 5, 1998, several AWTC officers reflected on the long legal process. “It’s definitely a bittersweet victory,” Terry Smith said. “Duker stole our money, then fought us with our own money, and in the end he still has quite a bit of our money and we have a hell of a lot less than we deserve. But the option was to risk it all, so I guess what we got is better than nothing.”<sup>35</sup> The checks for hourly workers averaged about \$40,000 after taxes and legal expenses, Smith said. Some individual payout checks were held up by personal legal disputes, including divorces, and some hourly workers had died before the settlement was reached. “We’re just mopping up the little problems,” Smith said. There were still bitter feelings about what had happened. “A lot of them felt they were cheated out of the money earlier,” AWTC Treasurer Rich Burton said. The union leaders were concerned that the public didn’t understand that the plant’s workers had earned the money they were receiving. “I understand the human interest angle,” Smith said. “If I was on the outside, I’d be curious, too. But one thing people should know is it took a tremendous amount of courage for all the CFAC workers to stand up for their rights.” The union leaders also made it clear it was nobody’s business what they planned to do with their payout.<sup>36</sup>

Some union leaders wondered if Roberta Gilmore had hurt the workers’ cause by blowing the whistle on Duker. “Prior to her doing that, we were receiving profit sharing,” Burton said. He added that it was hard to say if the profit-sharing money would have continued to come, even if it was less than it was supposed to be. Ray

Sorenson, AWTC's director of political education, said layoffs began shortly after the lawsuit was filed by Gilmore. He said the question of whether Gilmore did the right thing wouldn't be answered for five years. According to a speculative theory, Duker managed to gain concessions from utilities, the railroad, and local and state governments when he created CFAC, but as the price of aluminum went up, CFAC workers started receiving larger profit-sharing payouts. According to this theory, Duker became concerned that utilities, the railroad, and local and state government officials would see the large payouts and want to re-negotiate. Duker only suspended profit-sharing temporarily and would have restored it later, the theory claimed, but when Gilmore filed the lawsuit, it prevented Duker from ever restoring profit sharing. Union workers also noted that Gilmore not only got a payout as a salary employee but also \$3 million from her wrongful termination suit. According to the Hungry Horse News, Gilmore was still a CFAC employee but not working due to medical issues. She wasn't talking and was weary of the media attention, the newspaper reported.<sup>37</sup>

Gilmore spoke publicly in a May 7, 1998, letter to the Hungry Horse News. "I want to belatedly thank many people for the support I have received over the past seven to eight years," she said. "I'm afraid I have seen the very worst and most evil I ever hope to see in my controversial dealings as the originator in the CFAC class action lawsuits. It has been an exhausting and overwhelming undertaking." She credited the work of attorneys Allan McGarvey and Roger Sullivan, who "were nothing short of brilliant," she said. She also credited the salaried advisory council for their bravery in guiding her decisions. "I have received an overwhelming amount of calls, letters, notes, flowers and thank you's from people and employees I know and love and from some I don't know at all," she said. "In the end, I did see the worst in mankind – but I also certainly saw the very, very best, and I thank so many of you for giving me the support that kept me going."<sup>38</sup>

For CFAC workers and their families, Duker and Broussard were not the only bad guys, according to a position taken by Sally Hayton-Keeva in a May 7 letter to the Hungry Horse News. "I have really been appalled by the lack of kindness and courtesy shown to the long-suffering employees of the Columbia Falls Aluminum Company," she said. "Surely their horrible treatment at the hands of the owners would have been painful enough, but to have been mocked and mistreated by some people in the valley is both shocking and sad." She noted that some state and out-of-state media had called the workers "hillbillies" and ridiculed them for spending their money unwisely. "Since when is it anyone else's business how people legally spend their own money?" she asked. "As far as I can see, the only mistake the CFAC workers made was trusting their employers and the judicial system." She expected most of the workers would use their payouts to fix their vehicles, buy a child braces or go back to school. "If a few throw the money away, so what?" she asked. She also noted that owners of the plant had "in their greed

and dishonesty, destroyed a lot of happiness, faith and trust. Marriages and children have suffered, dreams have died a slow death.”<sup>39</sup>

Robert Waltmire pointed to Duker’s misuse of public trust in the May 21 Hungry Horse News. “It is good to see CFAC workers finally get some of Duker’s ill-gotten gains,” he said. “It’s too bad they had to use the very expensive and snail-paced legal system to see contractually earned and due income.” Waltmire cited cases where Duker was unfair to the workers, from the threats during the 1995 labor contract negotiations to how he took on the Flathead County assessor, demanding a 25% tax cut. In those cases, the workers and the county backed down because they were afraid of Duker shutting down the plant. Duker also tried to lay the blame for a plant closure on the Bonneville Power Administration. The result was the local community and the Montana congressional delegation went to bat trying to get lower BPA power rates to keep the plant running.<sup>40</sup>

## **The local lawyers**

In January 1998, the attorneys who beat CFAC’s owners in the profit-sharing case reflected on the lawsuit in a Daily Inter Lake feature article by Jim Mann. Dale McGarvey, the founder of the four-man Kalispell law firm, said he had never encountered such a case in his career. “I never dreamed that we would have a case like this,” he said. “It really is one in a lifetime.” McGarvey had represented Loren Kreck and about 20 other local property owners in their air pollution lawsuits against the Anaconda Aluminum Co. in the 1970s. Inside the firm’s law offices were a hundred boxes filled with documents related to the profit-sharing case. According to Dale’s son Allan, the four attorneys collectively read every page in every box and were responsible for writing half of the contents. To handle this huge volume of evidence, Judge Shanstrom later ordered all document exhibits to be transcribed onto CD-ROM discs. Allan McGarvey carefully chose 1,000 key documents and had them put on discs for the court. In event of a trial where the jury might view the documents on a monitor, he had the discs numbered and referenced by bar code labels.<sup>41</sup>

When first confronted with the case, the firm took its time deciding whether to take on CFAC in what looked to be a “classic David-and-Goliath battle.” Dale McGarvey said the first step was to ascertain whether the case had moral merit. “In this case, there was no question that it would qualify,” he said. Duker had acquired the plant for only one dollar and then obtained wage and benefits concessions from the workers with the promise that he would share profits with them with a 50/50 agreement. Duker also used this promise in several business dealings. When Gilmore, a CFAC accountant, discovered significant discrepancies in the distribution of the company’s profits but could not get the company to do anything about it, she turned to her neighbor Roger Sullivan, another lawyer in the firm. “If Bobbie Gilmore hadn’t done what she did, this case wouldn’t have

happened,” Allan McGarvey said. “She’s one of the most courageous people I’ve known.” The next big issue to contend with was the impact on local politics. For many in the Flathead Valley, the lawsuit seemed to spell the end of the aluminum plant and a huge impact on the local economy. There was also opposition within CFAC’s salaried workers themselves. At some early organizational meetings, some management personnel wrote down names of people vocally opposed to CFAC’s owners. Over time, CFAC posted ads in the local papers trying to influence the community, and during negotiations for the 1995 labor contract the company hired an out-of-state security force, the attorneys noted.<sup>42</sup>

The four law partners had to strongly believe in the case to persevere under those conditions, Dale McGarvey said. Another major consideration was money – how would the little law firm finance such a case? To pay their office staff, support themselves and cover other expenses for a case that was expected to last at least five years, the firm ended up borrowing \$850,000. “When you go that deep in debt, you’ve got to say to yourself, ‘Is this worth it?’ You have to have a moral commitment,” Dale McGarvey said. Confronting the Kalispell law firm were dozens of lawyers periodically hired and fired by Duker and Broussard, including Montana law firms from Polson, Missoula and Butte and larger law firms from Los Angeles, Arkansas, Texas, Seattle and Washington. On top of all that, Duker had a special asset-protection team that included barristers specialized in the banking laws of the Isle of Man and Gibraltar, and an accounting firm with its own team of lawyers. According to Dale McGarvey’s estimate, Duker and Broussard spent millions in legal fees, “more than we’re getting out of this, I’ll tell you that.” In the end, the judge awarded the Kalispell law firm 20.85% of the payment to the salaried class, or \$6.6 million.<sup>43</sup>

The amount of money spent by the defendants became an issue in the case when the employees worried that their profits were being used against them. “That was a hard pill to swallow,” Dale McGarvey said. It was the hiring and firing of attorneys by Duker and Broussard that made them vulnerable in the end. “One advantage I think we had in this case was that the defendants went through so many attorneys they didn’t have the one single attorney who had gone through everything,” Dale McGarvey said. In simple terms, the case revolved around a breach of contract, but the case grew larger and more complicated over time. The Kalispell law firm was hampered during discovery as Duker tried to hide his assets and conceal company profits. At one point, Duker was held in contempt of court for failing to produce documents. One major discovery was the existence of Eural, the shell company in the Cayman Islands which negotiated tolling contracts for CFAC. In effect, however, Eural increased the plant’s expenses and diminished CFAC’s profits. “Money was being siphoned off – that was our contention,” Dale McGarvey said. With the company’s profits secreted away to banks in Gibraltar and

the Isle of Man, the Kalispell law firm was forced to hire legal experts in those places where they were successful in tying up the money with injunctions. In the end, Roger Sullivan said, they never felt outmatched. "We have capable and talented people," he said. "I don't think that is accidental. I think Dale McGarvey had a vision of a firm that could handle cases like this." <sup>44</sup>

In an April 23, 2014, interview, Alan McGarvey and Roger Sullivan recalled facing 40 opposing attorneys, including an attorney from the Rose Law Firm in Little Rock, where Hillary Rodham Clinton had worked. The two recalled entering the U.S. District Court in Missoula and facing a wall of well-heeled suits. "Sure, they brought in 20 lawyers and a team of security specialists, but when the gavel comes down all of a sudden, the power starts to even out," McGarvey said. "More often than not, David gets his day in court against Goliath." While the defense attorneys tried to stall the case and drain the Kalispell law firm's expenses with legal motions, McGarvey and Sullivan had a memo in their possession expressly defining the 50/50 profit-sharing agreement. Six years after the case was first filed, CFAC's owners agreed to pay the workers \$97 million, which was double the previous offer and eight times the proposed settlement in 1995. <sup>45</sup>

The little law firm was recognized by its peers for its achievement. In 1995, the Montana Trial Lawyers Association gave its Trial Lawyer of the Year award to Roger Sullivan. In 1998, the association gave the award to Allan McGarvey and Dale McGarvey. It also presented the Citizens Award that year to the Advisory Committee for the CFAC Class Action, which included Roberta Gilmore, Revo Somersille, Gary Saurey, Roger Beck, Joe Smith, Rita McLeod, Chris Finberg, Jim Goble and Terry Berardi. In 2001, the association gave its Career Achievement Award to Dale McGarvey. <sup>46</sup> In 1998, the Trial Lawyers for Public Justice and the TLPJ Foundation named Allan McGarvey and Roger Sullivan as finalists for 1998 Trial Lawyer of the Year. The national organization described the case as a "David-and-Goliath battle" involving more than 10,000 hours of work that put the law firm close to \$1 million in debt. <sup>47</sup> "McGarvey and Sullivan successfully battled against the company's attempts to hide damaging documents, uncovering key admissions by Duker and fraudulent transfers of disputed assets into sophisticated foreign trusts," the foundation said. "They then secured injunctions from both U.S. and foreign courts to prohibit further transfers of assets. Through the heroic efforts of the legal team and the courageous employees who risked their livelihoods, the 'mighty men of commerce' were held accountable for their egregious scam." <sup>48</sup>

On the other side of the case, Kalispell lawyer Dana Christensen, who had represented Broussard, went on to represent Touch America CEO Rich Gannon in a lawsuit brought by 50,000 to 60,000 shareholders of Montana Power Co. and Touch America. The shareholders won a \$67 million settlement in a tentative agreement reached with the

insurers for the officers and directors of the two companies and NorthWestern Corp. on July 14, 2004. The settlement in the class-action lawsuit was believed to be the second largest settlement in Montana history, behind the \$97 million settlement in the CFAC profit-sharing case. NorthWestern declared bankruptcy as a result of the case.<sup>49</sup> Seven years later, on Jan. 18, 2011, Christensen was interviewed by Sen. Baucus about replacing U.S. Judge Donald Molloy, who was retiring. Christensen was the only person recommended to Sen. Baucus by the committee for the position of U.S. District Judge for Montana.<sup>50</sup> Christensen succeeded Molloy in 2011.

## **Post-settlement lawsuits**

In March 1998, as CFAC's employees awaited word about their settlement money, Polson attorney Douglas Wold filed a lawsuit against Duker claiming the aluminum plant owner owed him \$3 million for keeping the profit-sharing settlement under \$100 million.<sup>51</sup> According to Wold, Duker and his insurance company, Aetna, hired Wold in June 1997 to help in the profit-sharing case. Then on Oct. 5, 1997, Duker contacted Wold and expressed concern about how the case was evolving. That's when Duker offered Wold \$3 million as an incentive if he could persuade the plaintiffs to accept a \$100 million settlement package, Wold claimed. "He desperately wanted the litigation settled and was willing to pay the plaintiffs up to and including the sum of \$150 million, exclusive of costs, attorney's fees, and taxes," Wold claimed. According to the March 1998 lawsuit, Duker told Wold that "he operates on the basis of giving key people incentive payments to gain better results." Wold was not optimistic about his chances to influence the plaintiffs but accepted Duker's offer and devoted much of his firm's time and money to the effort.<sup>52</sup>

On Jan. 14, 1998, after the \$100 million settlement was made, Wold's law firm sent a bill for \$3 million to Duker. On Jan. 29, Duker responded by letter, allegedly refusing to pay the bill. Wold sued Duker in federal court in Missoula, requesting \$3 million plus 10% interest and all legal costs associated with the case. Wold specified that he was making no claims against CFAC, and he demanded a jury trial. On April 12, 1998, after jury selection had ended and opening statements were set to begin in federal court, Duker agreed to pay Wold \$3,392,056 to end the litigation.<sup>53</sup> In February 2003, Wold announced his intention to run for a seat on the Montana Supreme Court. Wold had practiced law for 38 years, beginning as a criminal prosecutor in the Army. Later, with the appellate division in Washington, D.C., he worked on two landmark Vietnam War cases – the 1967 Gulf of Tonkin Resolution case and the appeal of Lt. William Calley. Wold also had worked in product liability cases involving Semitool, Cenex Harvest States and Farmers Union Mutual Insurance Co.<sup>54</sup>

Meanwhile down in California, Duker had sued his attorney, Mark Shipow, after hiring Shipow to resolve Wold's claim. On Feb. 28, 2002, California Appellate Court Judges P.J. Spencer and J. Ortega issued a ruling in the unpublished case, which revealed some of the back story in the CFAC profit-sharing case. According to their ruling, Duker and Broussard had entered into a "Shareholder Settlement and Release Agreement" which provided that CFAC would defend, indemnify and hold harmless Duker and Broussard from any claims, costs or expenses, including attorneys' fees, related to the profit-sharing litigation. The agreement stated that "it is expressly agreed that Duker and Broussard shall have no personal liability therefore." According to the ruling, CFAC had opted to pay those expenses for tax reasons – if the money had been distributed to Duker and then paid, it would have been taxed as Duker's personal income. By having CFAC pay the funds directly to the attorney and settling parties, the company deducted the payments as a business expense. According to Spencer's and Ortega's ruling, Duker owned 67% of CFAC's shares and Broussard owned the rest.<sup>55</sup>

In January 1998, Shipow's Greenwich, Conn. law firm, Whitman, Breed, Abbot & Morgan, filed a declarative relief action in Los Angeles County Superior Court, naming CFAC and Duker as plaintiffs and Wold as the defendant and seeking a declaration of rights with regard to the \$3 million incentive payment Wold sought and claiming legal malpractice and breach of fiduciary duty on behalf of Wold. The action was later dismissed for lack of personal jurisdiction. A few months later, Wold sued Duker in U.S. District Court in Montana, alleging breach of an oral contract to pay him the \$3 million incentive. Whitman Breed represented Duker against Wold and filed a counterclaim against Wold, alleging legal malpractice and breach of fiduciary duties. Before the trial began, however, Duker became dissatisfied with Whitman Breed, believing the counterclaim was frivolous and might lead to a claim of malicious prosecution, that Whitman Breed had failed to comply with a deadline for designating expert witnesses, and that Shipow had exaggerated his trial experience. After the jury was impaneled, Duker instructed Shipow's co-counsel, Edward Murphy, to settle the case, and Wold settled for \$3.4 million. The Columbia Falls Aluminum Co. paid the court costs, Whitman Breed's attorneys' fees and the settlement amount.<sup>56</sup>

According to Spencer's and Ortega's 2002 ruling, Whitman Breed continued to represent Duker after the Wold case was settled, and all of Whitman Breed's billing in the Wold case was paid by CFAC on company checks. On March 31, 2000, Duker sued Whitman Breed, alleging fraud, breach of fiduciary duty and legal malpractice. Whitman Breed motioned for summary judgment, and the trial court granted the motion on April 24, 2001, concluding that Duker had not incurred any damages since CFAC had paid all the settlement money, attorneys' fees and other expenses. Judgment was entered in Whitman Breed's favor, and Duker appealed. In his appeal, Duker maintained that as a

CFAC shareholder, any amount CFAC paid to others as a result of the Wold litigation were actually payments by him, that he had “personally suffered a financial loss as a result of Whitman Breed’s misconduct.” Duker’s appeal maintained that, “Had these sums not been spent on litigation, they would have gone directly to Duker. In other words, Duker personally lost over \$3 million.”<sup>57</sup>

In their 2002 ruling, Spencer and Ortega disagreed, citing California precedent that “shareholders own neither the property nor the earning of the corporation.” Spencer and Ortega noted that “any alleged harm to Duker was incidental to the injury suffered by CFAC. Corporate money, not Duker’s income, was used to pay the attorneys’ fees, costs and settlement amount. Whitman Breed was paid with CFAC checks. There was nothing personal about it.” Furthermore, Wold’s demand for an incentive payment was based on an alleged promise made by Duker as CFAC’s majority shareholder, “a promise that was intended to benefit CFAC by reducing the amount of the settlement payment it would make.” In addition, Spencer and Ortega noted that “Duker’s argument fails to recognize that CFAC exists separate and apart from its shareholders,” adding, “Duker certainly understood that distinction when he arranged for CFAC to pay all litigation expenses and write them off as a business expense. Now he wants to ignore the distinction so that he can personally recoup sums paid by CFAC.” Spencer and Ortega concluded that Duker “did not sustain a cognizable injury as a result of any alleged wrongdoing by Whitman Breed,” and “absent damage, Duker cannot prevail on any of his causes of action.” The lower court’s decision was affirmed.<sup>58</sup>

Duker and Broussard also sued their insurance company over a dispute in the profit-sharing case. Wausau Underwriters Inc. initially declined to pay for the employees’ claims in the profit-sharing case, arguing that the allegations were not covered by CFAC’s commercial general liability insurance policy. CFAC began its lawsuit against Wausau in June 1995 but requested a stay of discovery in October until the profit-sharing case was resolved. CFAC argued that it needed to conceal certain facts in the case because those facts could harm its defense in the profit-sharing case. U.S. Magistrate Judge Robert M. Holter directed the parties to file a stipulation limiting discovery, but the stipulation was not reached because CFAC apparently believed the profit-sharing case would soon be settled. More delays ensued, with CFAC contending that Wausau could have conducted discovery based on the availability of public court documents, and Wausau contending that if it did so, the action would have been construed by CFAC as grounds for a bad-faith claim. The profit-sharing case was not settled until December 1997, and the aluminum business was sold to the Swiss-based commodities firm Glencore AG in April 1999, with the rights to the insurance case transferred to Wilshire Acquisition. U.S. Judge Charles Lovell ruled in favor of Wausau on June 2, 2000, arguing that Duker and Broussard had pursued their case in a leisurely and

not a diligent fashion.<sup>59</sup> The Ninth Circuit Court of Appeals upheld Lovell's ruling against CFAC on April 28, 2005. The appellate court concluded that the employees' profit-sharing allegations did not involve the "administration" of the plans covered by the employee benefits liability coverage of the insurers. The appellate court ruled that the wrongful acts alleged by the employees involved the extent and calculation of profits, not the giving of counsel to employees with respect to those benefits.<sup>60</sup>

Seven years after CFAC's employees voted to approve a settlement in the profit-sharing case, the Ninth U.S. Circuit Court of Appeals ruled against a former salaried employee who claimed he hadn't received his fair share of the company's profits. On Jan. 14, 2005, the appellate court affirmed an earlier ruling by Judge Molloy that Lewis Card's lawsuit was barred by the four-year limitations period. In his lawsuit against CFAC, Duker and Montana Aluminum Investors Corp., Card alleged violations of the Racketeer Influenced and Corrupt Organization (RICO) laws, failure to pay wages, fraud and breach of contract. Card testified in court that he didn't know whether he was considered a member of the class that was certified to sue for profit-sharing money by the court in 1994. He said company managers didn't know if they belonged to the lawsuit or not, and his only participation in the lawsuit was on behalf of CFAC. He said he didn't pursue his own rights as a class member or bring individual claims against Duker. The appellate court, however, ruled that Card was "intimately aware of the class litigation and attended meetings on behalf of CFAC concerning that litigation." Card was excluded from the class-action settlement at the request of class counsel, and shortly after the settlement was made, Card asked CFAC for his share of the profits. By 1999, realizing he would not receive any of the profit-sharing money, he filed his lawsuit. The appellate court affirmed Judge Molloy by saying, "Because he now has asserted different legal claims, and he neglected to determine his status with regard to the class action, he is accurately described as a plaintiff who has 'slept on his rights.'" <sup>61</sup>

Speculation about the true size of the profit-sharing settlement focused on the \$100 million figure used repeatedly in media accounts. That rounded-off figure could be discounted as a rough estimate of \$97 million for copy-editing purposes, but the \$100 million figure was also cited by people directly involved in the case. Potter & Co., the Louisville accounting firm which disbursed the settlement checks to employees, referred to the \$100 million amount. Dana Christensen, who represented Broussard, spoke of a \$100 million settlement in his signed questionnaire for the U.S. Senate Judiciary Committee. Douglas Wold specifically claimed in his lawsuit against Duker that the settlement figure was \$100 million. As ballots were being cast for or against the settlement offer in December 1997, University of Montana Bureau of Business and Economic Research Director Paul Polzin, an expert witness for the defendants, told media, "The bottom line is that \$100 million is a lot of money." A motion for

receivership by the hourly workers was dropped in October 1995 when both sides agreed that CFAC would provide a constructive trust in the form of company stock worth \$100 million to provide security for any money owed to the workers. CFAC President Tom Hodson, however, noted in an Oct. 13, 1995, letter to a Whitefish city councilor that “the \$100 million figure that is so often quoted by the media” was never mentioned in Judge Shanstrom’s earlier ruling. But Mary K. Johnson, of Litigation Graphics in Kalispell, used the \$100 million figure in a 1998 ad she made for the McGarvey, Heberling, Sullivan and McGarvey law firm.<sup>62</sup> Union speculation explained the \$3 million difference this way – it went to Gilmore for her wrongful discharge lawsuit.

## **Dragged into politics**

Politicians had used the aluminum plant as a campaign backdrop since the early 1950s, but political manipulation reached a low point in the 2004 gubernatorial campaign after two Whitefish residents threw their hats in the ring – Republican school teacher Bob Brown and Democratic agricultural businessman Brian Schweitzer. The direct link to CFAC was Brown, who was hired by the aluminum company to be its external affairs manager in July 1998. He started at CFAC part-time and went full time in November 1998. “It was a good opportunity for me because it fit with what I’d been doing,” he told media at the time, adding that he was intrigued by the smelter’s high productivity rate and its rank among aluminum producers worldwide.<sup>63</sup> Brown had worked as an economics teacher in high school, taught teachers working on master’s degrees at Flathead Valley Community College, served in the Montana House for four years and served in the Montana Senate for 22 years.<sup>64</sup> It’s important to note that the profit-sharing case was settled by vote in early January 1998, and employees received their first check for settlement money in the case by May 1998 – two months before Brown was hired at CFAC.

On Aug. 6, 2003, Montana Democratic Party Chairman Bob Ream attacked Brown, who by then had declared his run for governor, for his role in CFAC’s profit-sharing lawsuit. “From 1988 to the mid-1990s, the Columbia Falls Aluminum Co. tried to bilk workers out of millions in profit-sharing monies, and darn near succeeded,” Ream said in an op-ed piece. “Whistle blowers in the company were fired, and security police were imported in an attempt to bully workers in this small and tight-knit community.” Fact sheets describing Brown’s employment history produced by the Montana Democratic Party were correct, Ream insisted. “Our fact sheet points out, correctly, that while this was still big news and a sore point for the community, Brown went to work as a lobbyist and corporate spokesman for the very corporation that secreted away millions of dollars to personal offshore accounts. Money that was supposed to be shared by all the workers in

the plant. Money these workers earned by working hard and agreeing to compromises to make the company profitable. Remember when your parents or grandparents said you're known by the company you keep? Well, Bob Brown kept company with a corporation that has an unsavory history, and any amount of blustering can't hide that fact." <sup>65</sup>

In mid-October 2004, Schweitzer's campaign website posted a position paper with 18 reasons why Brown was the "wrong choice for Montana." Among the reasons: "While Brown was an executive for CFAC, the company was being sued for using off-shore accounts to avoid paying out retirement and profit-sharing payments to employees, and then accused of tax loopholes and off-shore accounts to avoid paying Montana taxes. The company was finally ordered to pay \$97 million that was owed to its workers." Another reason was related to CFAC prior to the profit-sharing lawsuit. "As a state legislator, Brown helped pass a law cutting taxes for CFAC, which cheated workers out of millions in retirement funds. Then, after Brown left the Senate, he was hired by the very same company to be their highly paid lobbyist." <sup>66</sup> The Montana Democratic Party also began airing a television ad that repeated many of the same claims. Among the statements: "A career politician who pushed through huge tax cuts for Columbia Falls Aluminum" and "Columbia Falls Aluminum stole millions from workers' profit-sharing." <sup>67</sup>

Mike Dennison responded to the Democrats' claims in an Oct. 14, 2008, column in the Great Falls Tribune. "A few of the allegations are just flat-out wrong," he said. "Most, however, take the more common route of political distortion: Tell half the story and omit facts undermining the charge." Dennison said the Democrats' first line of attack was to charge Brown with guilt by association because he lobbied for CFAC. Dennison said the Democrats' accusation that Brown helped get CFAC a tax break in 1987 was not the whole story because the bill was approved by an 81-15 vote in the state House and a 40-10 vote in the state Senate, showing general bipartisan support. <sup>68</sup> Charles S. Johnson wrote about the allegations in an Oct. 17 column in the Missoulian. "Get out your barf bags. Put out your waders. Bring out the lie detectors. Have your TV clickers at the ready. It's that time when slimy political ads show up on television to try to sway votes through dubious claims," he said. Johnson said the reference to the theft of profit-sharing checks by Duker and Broussard "leaves the false impression that Brown was somehow responsible for the scandal" and that "it's an attempt to smear Brown through guilt by association, even though he had nothing to do with it." <sup>69</sup>

Jason Thielman, Brown's campaign manager, told the Associated Press that the corporate actions criticized in the television ad occurred primarily before or after Brown worked for CFAC. Aluminum Workers Trades Council President Terry Smith said union

members at CFAC were upset with the TV ad, which Smith said attacked CFAC and its workers simply because Brown had lobbied for CFAC. "He did a lot to help the workers and the plant survive and preserve these good-paying jobs with good benefits," Smith said. "We've needed a lot of help because CFAC has struggled through a lot of tough times... It has taken a team effort to keep it going – and to keep our jobs going. Bob was an important part of that effort, both as a legislator and as a CFAC employee." Montana Democratic Party Executive Director Brad Martin defended the statements, saying the ad's criticism was legitimate. "You're judged by the company you keep," Martin said. "After this company had all this press about all of its poor dealings with its employees, and hiding money from profit-sharing, Bob Brown still felt quite comfortably going to work for them."<sup>70</sup>

CFAC General Manager Steve Knight issued a press release on the Democrats' allegations on Oct. 18. "Throughout most of the company's nearly 50 years in operation, CFAC has purposely avoided direct involvement in politics, and we plan to continue to do so," Knight said. "However, we cannot in good conscience remain silent about the Schweitzer campaign attacks on our company, aimed at gaining some advantage over Bob Brown, that persist despite our private meeting with Mr. Schweitzer." Knight said the claim that CFAC had cheated workers out of millions of dollars in retirement funds was "absolute nonsense and unworthy of comment." As for the claim that CFAC was ordered by the court to pay its workers \$97 million for stolen profit-sharing money, Knight said it was "two individuals who formerly owned the company who were ordered to make that payment. Additionally, the company is now under new ownership, so whatever happened in the 1990s is irrelevant to the CFAC of today." In conclusion, Knight said, "Mr. Schweitzer, we ask you to retract these untruths and to stop using our company as a political pawn... The company provides some of the best jobs in Montana, and we intend to continue to do so well into the 21st century."<sup>71</sup>

CFAC attorney Steven Wade wrote to Bob Ream and Brad Martin on Oct. 18 requesting the Montana Democratic Party stop airing the television ad. "To accuse CFAC and its current owners of criminal wrong-doing is defamatory to the company, its owners, its officers and employees, and such statements should be immediately retracted," Wade said. "If immediate action is not taken to remove this advertisement, we reserve the right to pursue all available legal remedies," he warned.<sup>72</sup> Montana Democratic Party attorney Peter Michael Meloy responded to Wade three days later. Meloy argued that Duker and Broussard were "acting on behalf of CFAC" when they "diverted what would otherwise be profit into offshore bank accounts" and that "CFAC thus cheated its employees out of their share of those profits." Meloy also argued that Brown should be "called to task" for accepting a job with CFAC after the profit-sharing case. "For all the foregoing reasons then, the (Montana Democratic Party) could hardly correct the facts

you assert are false,” Meloy said. “If CFAC’s reputation has been damaged, it can look only to its owners for retribution. Similarly, Mr. Brown should expect to be criticized in the political arena for choosing to associate with such a company. The Party respectfully declines to make any retraction.”<sup>73</sup> Meanwhile, through his own personal campaign organization, Schweitzer continued to malign CFAC in the course of attacking Brown.<sup>74</sup>

CFAC’s two original owners eventually sold the aluminum plant and enjoyed the fruits of their investment – with yachts and horses. On June 24, 1998, as CFAC employees contemplated what to do with their settlement money, Brack Duker was sailing his 24-foot sloop Velerito of Marina del Rey before the start of the California YC Sunset Series yacht race when the Arana, a 51-foot boat sailed by John Carroll, accidentally ran into Duker’s racing boat. The Velerito was considered a total loss, and the tiller extension jammed into Duker’s right bicep. Duker sued, and the case went into binding arbitration in April 2001. Duker’s attorney contended that the Arana was obligated to stay clear of the Velerito, while Carroll’s attorney contended that the Velerito didn’t have sufficient lookout and should have taken evasive measures, and that the Velerito didn’t hold a proper course. A medical expert testified that Duker would lose 50% of the use of his right arm as a result of the accident. Prior to arbitration, Duker turned down an informal offer of a \$25,000 settlement. After four days of talks, the arbitrator ruled that the Arana was the give-way vessel but did not stay clear of the Velerito, and that the Velerito had maintained a proper course. On the other hand, the arbitrator found that the Velerito had an inadequate lookout and was 15% negligent. The arbitrator awarded Duker \$434,818 – which included the 15% deduction but not lawyers’ fees.<sup>75</sup>

The crash didn’t stop Duker from sailing. On June 1, 2000, his racing yacht Evolution placed second overall in Southern California’s Volvo Inshore Championship sailing race.<sup>76</sup> In 2005, Duker appeared on the website for a company that sold M242 sailboats. “Although I have owned and raced both the M242 and ‘Grand Prix’ boats for a number of years, I have always preferred the M242,” Duker said. “It is a very responsive and lively boat which is fun to sail. Yet it is also very accommodating of the crew and maybe best of all, requires only a total of four to race it competitively. In summary, a very fun and interesting boat with a very low hassle factor.”<sup>77</sup> On May 17, 2009, Duker won the California Cup for the fifth time with his Santa Cruz 70 sailboat Holua. This was the first time that the cup had been won five times by the same boat owner.<sup>78</sup>

Duker and his wife Betty were also art collectors. In February and March 1999, selections from their private art collection were put on display at the Irvine Fine Arts Center in California. The Dukers, who lived in the Pasadena area, declined to provide any information about themselves to the L.A. Times for an article in the newspaper’s art section. Their personal art collection included Christopher Wilder’s unusual “Orange

Monochrome Fur Painting,” a rectangle of synthetic fur stretched over a wooden support. Betty Duker recalled that when she bought the piece, her oldest daughter said, “Mom, do you ever think you might be getting taken?” In an essay in the catalog for the exhibition, Betty Duker wrote, “But how can we resist a painting that demands to be touched when everything we’ve ever been taught about art screams, ‘Look, don’t touch.’” Including pieces from the 1970s and 1980s, mostly from Southern California, the exhibition was titled “Between Reality and Abstraction: California Art at the End of the Century.”<sup>79</sup>

While Duker had left the Flathead for Southern California, Jerome Broussard continued to live in Whitefish through the profit-sharing lawsuit days. He also established a ranch in the center of the Flathead Valley named for his wife Rebecca, which gained a reputation for equestrian activities. The Event at Rebecca Farm started with a dedicated crew of local eventers at Herron Park near Kalispell. The inaugural competition at Rebecca Farm in 2002 was a considered a huge success, with more than 150 competitors. Two years later, The Event at Rebecca Farm was recognized by the United States Equestrian Federation and the United States Eventing Association as a Gold Cup Series event and as a Fédération Equestre Internationale World Cup eventing competition.<sup>80</sup> In 2005, Broussard and his daughter, the actress Rebecca Broussard, purchased a 21-room, 5,201-square-foot home in Los Angeles’ Pacific Palisades area for \$5.1 million. Rebecca Broussard, who once dated actor Jack Nicholson and had two children with him, also purchased a home in Los Angeles’ Venice area in May 2007 for \$3.3 million. The Pacific Palisades home was on the market in November 2008 for \$4.9 million.<sup>81</sup>

The Broussards played a leading philanthropic role in the Flathead. On Dec. 4, 2003, Flathead Valley Community College announced that Broussard and his family were committing \$500,000 over a five-year period to establish a scholarship fund at the college in the family name. A college spokesperson called it the “largest single donation other than planned gifts ever made to the community college’s foundation since the establishment of the college in 1967.” According to a college press release, the Broussard family “has been recognized in the community for their vision in the creation of Rebecca Farm, one of the country’s premier equestrian facilities, and for their support of charitable, cultural and performing arts activities.”<sup>82</sup> The college announced that the Broussards provided a second \$500,000 gift to the endowed scholarship fund on Dec. 21, 2007. Forty-nine students had received Broussard scholarships of \$500 to \$2,300 in the 2006-2007 school year, the college said. “It is particularly rewarding to help someone increase their knowledge and ability so that he or she can be a greater contribution to society,” Jerome Broussard said.<sup>83</sup> On June 26, 2011, newspapers reported that the Broussards had agreed to donate \$4 million to Flathead Valley

Community College for construction of a nursing and health center. The donation was made to honor Jerome's wife Rebecca, who had died on Dec. 24, 2010. She had earned a nursing degree at the University of Evansville in Indiana and worked as a nurse in Kentucky and in hospice in Jamaica.<sup>84</sup> Jerome Broussard had managed Alpart, an alumina refinery in Jamaica jointly owned by ARCO, Kaiser and Reynolds, just before coming to CFAC in 1985.<sup>85</sup>

By August 1999, Roberta Gilmore was no longer working at the CFAC plant. Workers recalled that she drove a foreign SUV to work with a vanity license plate that read CKAYAK. She occasionally taught sea kayaking classes in the swimming pool at the Summit health club in Kalispell. She also taught sea kayaking for the community college, including leading trips on the Missouri River through the White Rocks area. She also taught a class on how to cook fine cuisine during outdoor recreation trips. Gilmore was mentioned in George Ostrom's picture book "Glacier's Secrets – Beyond the Roads and Above the Clouds," an account of his climbs with the Over-the-Hill Gang, a group of older male mountain climbers who made weekly ascents in Glacier National Park. Apparently Gilmore was one of the first women allowed to join the informal club.<sup>86</sup> In August 2000, the PBS television show "On The Road" featured Gilmore as "an accountant at CFAC, who took a rare stand against her employer" in the profit-sharing case. "The notion that you are up against unbelievable odds shouldn't stop people," Gilmore said in the PBS show. "One person really can make a difference."<sup>87</sup>

CFAC management often claimed the profit-sharing lawsuit interfered with company business – including deterring potential tolling customers or scaring away prospective buyers. By May 1998, as CFAC employees collected their share of the settlement money, representatives from several large aluminum companies began visiting the CFAC aluminum smelter as potential buyers, including Kaiser, Glencore and Pechiney.<sup>88</sup> The sale of the company to Glencore wasn't finalized for about a year, but the new Swiss-based owner was not unknown to CFAC workers – CFAC had been tolling for the giant global commodities trader since 1995. But some workers also knew about the Swiss company's origins and what had happened at Ravenswood, W.Va., on Halloween Night 1990. It wasn't long before workers began to talk about the international fugitive Marc Rich.

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