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## SPECIAL REPORT: TOP LITIGATION SHOPS

# Taking on Goliath

by **W.S Ricks**

**T**homas K. Equels left Greenberg Traurig in 1986 and opened his own litigation boutique. One reason? He started attracting clients that wanted to sue the kind of corporate clients Greenberg represented.

Like many boutique practitioners, Equels, the managing director of the 10-lawyer Holtzman Equels in Miami, says he enjoys the freedom and flexibility of being part of a small litigation shop. But small size doesn't necessarily mean small verdicts, settlements or profits.

Even in the current anti-plaintiff lawyer political environment where Republican lawmakers are constantly trying to limit tort lawsuits, many South Florida litigation shops are flourishing. But that environment of prosperity is contingent on keeping tort law changes at bay — a dicey proposition in both the Florida Legislature and Congress.

Plaintiff lawyers continue to battle over the medical malpractice issue even as GOP lawmakers in Florida seek to wipe out insurance bad-faith lawsuits, provide nearly full malpractice immunity to doctors, eliminate joint and several liability, and overhaul state class action rules.

Nonetheless, South Florida litigation shops continue to rack up big wins. In a recent case, two Orlando lawyers hired Equels to represent them in a contingency fee dispute with "boy band" impresario Lou Pearlman arising out of their successful representation of him in lawsuits against 'N Sync and The Backstreet Boys. Last October, Equels won a \$15 million

judgment in Orange Circuit Court against Pearlman. A post-trial settlement in the case is confidential.

Equels attributes the victory to thorough preparation, which allowed him to present a "seamless case" at trial and effectively undercut the credibility of defense witnesses. "I think it's the best trial I've ever done," he said. "But obviously some of it is luck."

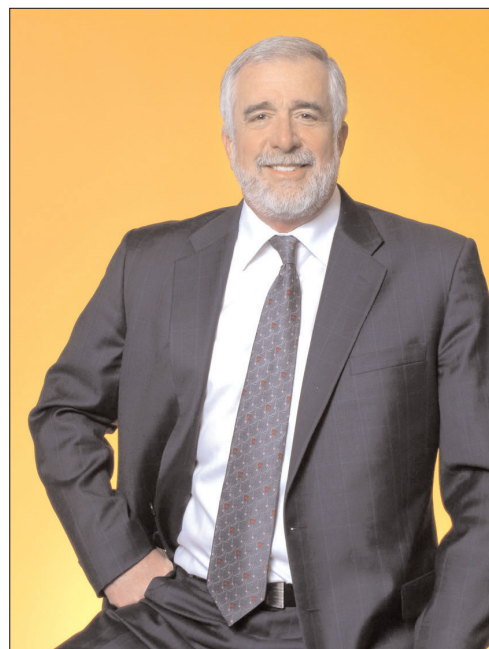
Equels' firm also has recovered more than \$100 million since 1995 handling receivership cases for the Delaware Insurance Commissioner's office relating to the insolvency of National Heritage Life Insurance Co.

But Equels, like many plaintiff lawyers, prides himself on what he calls "social justice" cases. He recently settled a U.S. District Court case in Miami involving U.S. Navy reservist Jorge Ortiz of Miami, who lost his job with Virginia-based defense contractor Dina Inc. after Ortiz was called to active duty. Ortiz's suit was based on a federal law that requires the rehiring of reservists. The contractor produced a waiver that it claimed was signed by Ortiz; Ortiz said it was a forgery.

Equels, a decorated Vietnam veteran, said the amount of the settlement is confidential. But he emphasized that the suit was about "making a point" and protecting the right of reservists to return to their jobs after they serve their country.

### **Morgan Stanley, FP&L**

Other South Florida litigation boutiques also have succeeded this year in making points against big companies and institu-



**Thomas K. Equels**

tions, though it took years of work and many thousands of dollars in expenses.

In May, Jack Scarola, a partner at Searcy Denny Scarola Barnhart & Shipley in West Palm Beach, won a \$1.45 billion civil fraud verdict in Palm Beach Circuit Court against New York-based Morgan Stanley, the world's largest securities firm, on behalf of billionaire financier Ronald O. Perelman.

The case, for which Scarola was co-lead trial counsel working with the Chicago firm Jenner & Block, focused on Morgan Stanley's role in Perelman's 1998 sale of the Coleman camping supply company to Sunbeam Corp. Perelman charged

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that Morgan Stanley conspired to disguise the ailing financial condition of Sunbeam, which partially paid for the Coleman purchase with its own stock. Delray Beach-based Sunbeam filed for bankruptcy in 2001.

The Scarola-Jenner team succeeded in winning motions against Morgan Stanley for discovery abuses that narrowed the case in what was effectively a partial summary judgment. As a result, under Judge Elizabeth Maass' ruling, the plaintiffs had only to prove reliance and damages, said Gerold S. Solovy, chairman of Jenner & Block and co-lead counsel with Scarola in the trial. Morgan Stanley has filed an appeal.

In another case in April, Grossman & Roth, a 10-lawyer boutique with offices in Miami, Fort Lauderdale and Sarasota, finally prevailed in a 1997 negligence suit against Juno Beach-based Florida Power & Light involving the traffic death of a 12-year-old Pinecrest girl.

The law firm, with the help of appellate attorney Joel Eaton of Podhurst Orseck in Miami, won a Florida Supreme Court decision in April that reinstated a \$10 million judgment in the case of Jill Goldberg. The girl's death occurred in a traffic accident at a stoplight that had been disabled by an FPL worker without notifying police or arranging traffic control. A Miami-Dade jury in 1999 had returned a \$37 million verdict in the case, which was reduced, then overturned.

Stuart Z. Grossman, cofounder of Grossman & Roth, praised the Supreme Court for "protecting people over a power company." Grossman contends that FPL had "unwritten immunity" in many Florida courts. But "now they have the same immunity everybody else has."

In another victory by Grossman & Roth against big institutions, partner Jay Cohen won an \$8.25 million wrongful death verdict in February on behalf of the parents and estate of Nancy de la Cruz, an 18-year-old high school student who died of an undiagnosed case of lupus, an immunological disease.

The verdict won by Cohen, which is on appeal, was against Dr. David Glabman, a

South Miami internist who was de la Cruz's personal physician. Cohen obtained a confidential out-of-court settlement with co-defendants Jackson Memorial Hospital, where de la Cruz was treated prior to her death, and the University of Miami Medical School, which operates and staffs Jackson.

The plaintiffs alleged that Glabman misdiagnosed the teenager as having a viral syndrome, then later rheumatoid arthritis. At trial, Glabman acknowledged that he suspected de la Cruz had lupus, but no proof was ever presented that he ever communicated that suspicion to anyone, Cohen said. Nor did the physician follow up once he sent a critically ill de la Cruz to Jackson Memorial for emergency treatment.

Grossman has accused UM of having serious quality of care problems and of failing to adequately address them.

Colson Hicks Eidson, a Coral Gables litigation boutique, also was a giant killer this year. In June, the firm won a \$165 million negligence verdict in Miami-Dade Circuit Court against Eller Media, a subsidiary of San Antonio-based Clear Channel Communications.

The case involved the electrocution death of a 12-year boy who had taken refuge in a Southwest Miami-Dade bus shelter during a 1998 rainstorm. The boy, Jorge L. Cabrera, allegedly was electrocuted by an electrical conduit that had been jury-rigged by an unlicensed electrician employed by Eller Media.

Representing the boy's father, Colson Hicks attorneys Roberto Martinez and Ervin Gonzalez successfully rebutted the defense theory that the boy was killed by a lightning strike. They also had to counter an attack on the character of the boy's father, including suggestions that he was not a significant factor in the boy's life at the time of the accident.

A firm of only 15 lawyers, Colson Hicks has been involved in a wide range of litigation, including personal injury, wrongful death, aviation, partner Lewis S. "Mike" Eidson says.

Taking on smaller giants, Robert Josefsberg, a partner at Podhurst Orseck

in Miami, represented two men who alleged they were beaten up by former baseball slugger Jose Canseco and his brother, Ozzie, at a Miami Beach nightclub on October 2001. The incident occurred after Jose Canseco's date was allegedly groped by someone she could not identify.

In April, Josefsberg won a \$1.1 million verdict for battery and intentional infliction of emotional distress, including punitive damages, against the Canseco brothers. Josefsberg said the key to winning the case "was the Cansecos themselves. They are bullies. I enjoy trying cases against bullies, whether they are persons or large corporations."

Despite having only 13 lawyers, Podhurst Orseck is a significant player in international aviation disaster litigation, as well as in the areas of automobile and product liability and medical malpractice.

Medical malpractice provided some of the biggest recent wins for South Florida litigation boutiques. Marci Fuentes Ball, an associate at Lytal Reiter Clark Fountain & Williams in West Palm Beach, represented Lesley Davis Lechleiter, whose newborn died at St. Mary's Medical Center in West Palm Beach in 2000, seven days after suffering severe brain injuries during delivery.

The plaintiff alleged that the baby should have been delivered by Caesarean section immediately after her water broke. Instead, the obstetrician, Anne Graham, sent Lechleiter home. The child was delivered a few days later after the mother continued to leak amniotic fluid.

Last December, Lechleiter won a \$5.3 million verdict against Graham in Palm Beach Circuit Court. Since then, Graham has moved to South Carolina and filed for bankruptcy, according to Lytal Reiter.

Plaintiff attorneys are finding that it's a growing problem to collect malpractice judgments against Florida doctors because nearly one-third carry no liability insurance and the state has been lax in enforcing its physician financial responsibility rules. Those rules require that the state suspend the license of doctors who fail to satisfy malpractice claims.

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Joseph Reiter, a Lytal Reiter partner, attributed the Lechleiter verdict to “good experts, the key to any case.” He added that Dr. Graham was “a lousy witness.”

Lytal Reiter has won several other notable verdicts this year. One was a \$2.65 million federal verdict in May against the Collier County Sheriff’s Department in connection with the 2001 strangling death of psychiatrist David J. Hoyer, who was performing a mental competency evaluation of a prisoner at the time of the fatal attack. Hoyer’s widow alleged that the sheriff’s department failed to warn and adequately protect her husband from a dangerous inmate.

In another large medical malpractice case, the 19-lawyer Fort Lauderdale boutique Krupnick Campbell Malone Buser Slama Hancock Liberman & McKee represented the family of Janet Pandrea of Coconut Creek, who died in April 2000 from complications of treatment for malignant non-Hodgkins lymphoma.

The problem was that Pandrea did not have non-Hodgkins lymphoma. A post-mortem suggested she was suffering from a benign tumor which could have been removed through surgery.

In June, Michael R. Ryan, a partner at Krupnick Campbell, won an \$8 million verdict in Broward Circuit Court against three doctors, University Hospital, and the North Broward Hospital District for wrongful death and negligence in treating Pandrea. An appeal is pending.

Also in June, the Miami litigation boutique Leesfield Leighton & Rubio, which has seven lawyers, won a \$24 million verdict against an obstetrician in Seminole County. The first-year doctor delivered an Orlando girl, Raven Shoaf, using a vacuum extractor; the mother’s uterus ruptured and the child was deprived of oxygen, resulting in severe brain damage, her parents alleged. The delivery occurred in 1997 at Florida Hospital Altamonte.

### Adapting to new law

Legal observers say the many large

verdicts won by South Florida litigation boutiques attest to their ability to adapt to the evolving legal and political climate. That includes recent federal and state legislative efforts to restrict tort lawsuits, notably the Republican-sponsored Class Action Fairness Act passed by Congress earlier this year.

That new federal law, supported by business groups, gives federal courts jurisdiction, with exceptions, over previously nonfederal class action cases. A class action lawsuit now must be filed in federal court if there are more than 100 class members and the total damages exceed \$5 million, or the members of the class reside in different states from each other or the defendant. The law also regulates how much attorneys may collect if they win a judgment or settlement for a class.

In addition, the law contains provisions permitting removal to federal court of any “mass actions” filed in a state court. The new law basically allows defendants to move many cases to federal courts, where it’s tougher for plaintiffs to win for a number of reasons, legal observers said.

Experts say that the new law will lead to the removal to federal court of most large multistate and national class actions. That will limit the ability of plaintiff lawyers to engage in venue shopping — seeking to place their cases in supposedly plaintiff-friendly venues like Palm Beach County and Madison County, Ill. But lawyers at some of South Florida’s top plaintiff boutiques don’t seem worried.

“It federalizes the practice more, which is not necessarily a bad thing” says Harley Tropin, a partner at 18-lawyer Kozyak Tropin & Throckmorton in Coral Gables which handles complex litigation. “The more marginal cases won’t be brought, and that’s OK with me.”

Tropin was co-lead counsel for the class of physicians across the country who sued managed health care insurers in consolidated litigation in U.S. District Court in Miami, overseen by Judge Federico Moreno. The doctors alleged that the insurers conspired to systemati-

cally underpay physicians’ claims in violation of the doctors’ contracts with the insurers.

In May, Tropin helped negotiate an \$80 million settlement with defendants Health Net and Prudential Insurance Company. Six defendants remain in the case. Aetna and Cigna previously settled with physicians for \$310 million.

The HMO case, which dates to 1999 and involves 11 plaintiff firms around the country, is an example of how litigation boutiques often band together to pursue common legal objectives or share information in similar cases or those involving a common defendant.

Some firms say they add lawyers on a case-by-case basis to assure the work is handled properly. “There’s always a manpower issue,” Thomas Equels said. “But you have to adequately staff the case. I’m not bashful if we need to partner up with somebody else. And I make that call sooner rather than later.”

“I’m always outspent and outmanned,” Tropin says. But being small is often an advantage when taking on some really large defense firms. “In many situations you have layers and layers of lawyers and they get in each others’ way,” he says.

Edward Ricci, a litigator at Ricci-Leopold in Palm Beach Gardens, is a self-described “consumer justice” attorney. He’s involved in numerous plaintiff cases, including litigation being mounted against pharmaceutical manufacturer Merck & Co. for deaths and injuries allegedly related to the prescription painkiller Vioxx.

“You can’t handle these cases alone,” said Ricci, whose five-lawyer firm has taken on 450 Vioxx plaintiffs. “Some parts of a case are generic, but there is specific causation for each case.”

Besides adding lawyers, many litigation boutiques use significant numbers of paralegals and other in-house experts, such as nurses, to analyze evidence and prepare for trial.

### Political front

But as they battle in the courtroom, plaintiff lawyers have had to engage politi-

cal adversaries, too.

Each legislative season, the Florida plaintiff bar, led by the Academy of Florida Trial Lawyers, sends members to Tallahassee to counter business, insurance, and medical groups that relentlessly seek to restrict tort lawsuits. The plaintiff bar has had to work particularly hard since 1999, when Gov. Jeb Bush, in tandem with a lopsided Republican legislative majority, took office and began pushing aggressively for his anti-lawsuit agenda.

Last year, plaintiff lawyers and physicians faced off on medical malpractice and spent an estimated \$37 million campaigning for opposing constitutional amendments — two on the lawyers' side and one on the doctors' side.

All three amendments were approved by Florida voters. One of the ballot initiatives established a de facto contingency fee cap for malpractice plaintiff lawyers. A second measure forces hospitals to reveal information regarding adverse medical incidents. The third requires the licensure revocation of doctors after three malpractice findings.

The contingency fee cap mandates that malpractice plaintiffs are entitled to at least 70 percent of the first \$250,000 in damages and 10 percent of anything above that in cases they win. That means a far smaller share for plaintiff lawyers, who under existing Bar rules are allowed to take 40 percent of the first million, 33 percent of the second million, and 20 percent of anything above that.

Plaintiff attorneys say costly, time-consuming malpractice cases won't be financially viable under such a fee cap. Many have responded by getting clients to sign agreements waiving the cap.

But the Florida Medical Association has asked the state Supreme Court to amend bar rules and require that attorneys comply with the cap. If the medical and insurance groups succeed in enforcing the cap — which would come on top of the 2003 legislative caps on noneconomic damages in malpractice cases — experts say the best and most experienced attorneys may leave the malpractice field.

Meanwhile, plaintiff attorneys complain

that the two lawyer-backed constitutional amendments on malpractice have been watered down by the Legislature in its implementing bills. If carried out as intended by voters, they say, malpractice plaintiffs would have an easier time obtaining key discovery to support their lawsuits.

While some litigation boutique firms don't see such politicking as part of their role, others like Ricci are not afraid to get out and take on political enemies directly. Ricci argues, optimistically, that "we've reached the outer limits of the tort reform fervor."

Still, he spends considerable time speaking on this issue and on how to improve the image of lawyers. One way, he says, is for lawyers to shift their emphasis from making money to doing "justice."

### Protecting the powerless

Howard Talenfeld, a partner at the litigation boutique Colodny Fass Talenfeld Karlinsky & Abate in Fort Lauderdale, is taking Ricci up on that challenge. He has moved his firm's passion for children's rights cases into the political arena as well as the courtroom. The firm also does appellate practice, commercial litigation, civil rights, employee discrimination, personal injury and insurance cases.

Talenfeld is president of Florida's Children First, an advocacy group for minors in the custody of the state. In a U.S. District Court case in West Palm Beach, he recently negotiated a \$1.6 million settlement with former state Department of Children and Families employees for a 14-year-old girl he claimed had suffered irreparable psychological harm. The harm, he argued, resulted from being held for 14 months in lockdown at a Palm Beach County crisis stabilization unit.

Talenfeld, who formerly served as an outside counsel for the predecessor agency of DCF, works with state agencies and lobbies the Legislature to fix the state child care system. "I felt it was critical to serve a role," he said. But, he added, he

finds it often difficult to hold the government accountable for problems in the system.

He said he has shifted into suing the state rather than using persuasion because "I became convinced the state didn't want to change the system." The governor and the Legislature, he said, were chronically underfunding the system.

Talenfeld acknowledges that such litigation over the child care system is difficult because the state has sovereign immunity. "The burden of proof is so immense when you sue state agencies," he laments.

The special niche occupied by Talenfeld and his firm illustrates the diversity of litigation boutiques in South Florida. According to senior partners at these firms, there are plenty of solid cases to go around.

Several said they anticipated a significant numbers of cases against insurance companies arising out of claims handling in the aftermath of the 2004 hurricanes in Florida and insurers' subsequent attempts to raise premiums.

One reason litigation boutiques tend to stay small is that they make lots of enemies. Recently, Thomas Equals was considering a merger with a larger firm. But his firm did a conflict of interest check of the two firms' clients, and found that many of his law firm's clients were suing the other firm's clients. That scotched the merger.

Equals argues that big corporate firms like Greenberg Traurig should be grateful to litigation boutiques because otherwise they would have too many clients who were suing each other.

"You have to have a firm like mine for the big firms to survive," he said with a laugh. ■