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## SPECIAL REPORT

# Small firms, big results

Smaller litigation shops win big through specialty expertise, individualized client attention

by **John Pacenti**

Six years ago, when Ed Giedgowd served as general counsel for a West Coast dot-com start-up known as E-loan, he learned that bigger is not necessarily better when it comes to legal representation.

His firm was being represented by 1,100-lawyer Brobeck Phelger & Harrison. But he found that the partner he was dealing with at the San Francisco-based firm seemed more interested in collecting the bill than doing the job.

Giedgowd said he discovered Miami-based Feldman Gale when partner James Gale was brought in to deal with an intellectual property dispute. Giedgowd was immediately impressed. "I ended up having more confidence in Jim's firm, and it was a better match for the company," he said. "They were smaller, and they helped us out with some things."

So he dumped Brobeck

Phelger for the small Miami intellectual property litigation boutique.

Brobeck imploded in 2003 when the technology stock bubble burst. But Feldman Gale is going strong with 22 lawyers, focusing solely on patent and intellectual property. Most of the matters involve litigation.

Feldman Gale recently represented the Roslin Institute, the Scottish medical organization internationally known for cloning Dolly the sheep. A rival company, Athens, Ga.-based AviGenics Inc., accused Roslin of stealing its secrets for chicken cloning. Gale said the case ended in a confidential set-

tlement in favor of Roslin. "We were happy with the results."

Feldman Gale exemplifies an aggressive group of small litigation boutiques in South Florida focusing on a particular type of practice, such as commercial defense, personal injury, or patent law.

Litigation boutiques gen-



AM HOLT

**Ervin A. Gonzalez says his 15-attorney firm's clients get to work with lawyers who've won big cases, not associates on the fringes of most cases.**

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erally are characterized as having one dozen to two dozen lawyers, a payment system other than billable hours, and careful selection of cases to enhance the firm's ability to provide individualized client service. The boutiques argue that they often provide better value than the litigation departments of larger firms.

Unlike bigger firms, many litigation shops offer a variety of payment options for clients — flat fee, contingency, or a mix that may include some billable hours. The billing approach depends on the type of litigation, and litigation shops focusing on commercial defense differ from personal injury firms.

"At the large firms, often what is heard is a large sucking sound," said Steven L. Schwarzberg, of Schwarzberg Spector Duke Schulz & Rogers, an 11-attorney firm in West Palm Beach that focuses on defending employers in suits filed by employees or former employees. "There are lots and lots of fees, but not a lot of results."

**Ervin A. Gonzalez**, of the 15-attorney Miami firm Colson Hicks Eidson, said his firm only does plaintiff-side, high-stakes complex litigation. "The benefit you get is real trial lawyers who are not afraid of trying cases and who can get to the bottom line effectively and efficiently without over billing," he said.

In addition, boutique firm leaders say, their clients don't get the beehive treatment seen at large firms, where junior associates may be brought in to carry the load.

"If a client hires me, they are going to get me, not just me lightly overseeing young associates doing the work," said **Gonzalez**, who has won a string of huge verdicts and settlements in Florida over the last several years. "The philosophy I use to meet the test is I ask myself what kind of lawyer would I want, how would I want that lawyer to act, and

then I try to be that lawyer."

Over the past year, **Gonzalez** has continued his streak as a heavy hitter at Colson Hicks, a firm specializing in personal injury, product liability and commercial litigation.

Last November, **Gonzalez** and his firm won one of the largest verdicts ever in a tort lawsuit against the federal government — \$65 million. A federal judge found the Mayport Naval Station in Jacksonville liable for medical malpractice in the delivery of a child with severe brain damage. The hospital and its doctors insisted on a vaginal birth despite clear signs of fetal distress. The child, now 2, can't speak, hear or swallow.

The litigation shops stress that they offer clients the specific expertise needed to win cases.

"I don't think there is a big firm in the country that has the aviation expertise that we have at this firm," said Ricardo M. Martinez-Cid, a lawyer at 11-lawyer Podhurst Orseck in Miami. "You have to have a few different subsets to work in aviation law. You have to work the technical side, the pilot side, the mechanical side and the environmental side."

Podhurst Orseck concentrates on trial and appellate litigation, emphasizing aviation, automobile, product liability and medical malpractice.

In March, Podhurst Orseck won a jury verdict of \$25 million in Broward Circuit Court for the family of a Boca Raton man killed in the 2003 crash of a Cessna 182 he was piloting. Steve Ross was flying home from a religious mission trip in the Bahamas. His plane collided over Deerfield Beach with another Cessna carrying a family of three. No one survived.

At trial, Martinez-Cid and Steven C. Marks, also of Podhurst Orseck, showed that the tower at Boca Raton Airport was short one air traffic controller and that the tower at Pompano Beach's airport was not

monitoring air traffic because its staff was preparing to close for the day.

Up until the end of trial, Marks and Martinez-Cid had offered to settle the case for just more than \$2 million. The defendant, New Haven, Conn.-based Robinson Aviation, which was contracted by the Federal Aviation Administration to run the two towers, rejected the offer. The jury came back with a plaintiff verdict in 90 minutes.

### Tort reform era over?

Many midsize and even large law firms call themselves litigation boutiques. But boutique firm leaders say that's like slapping a Starbucks logo on the Styrofoam cup of java you bought at a convenience store.

There is a mystique about boutiques that the litigation departments of big law firms can't match. There are few television shows about junior partners toiling away in windowless offices at giant firms.

"The economics of a boutique firm are a lot different than a large firm that has a general practice," said Joel Hirschhorn, a veteran Miami attorney who mostly represents white-collar defendants with his partner, Brian Bieber. "There is a certain amount of ego satisfaction being a boutique lawyer."

And there's very good money for successful ones. Some of the commercial defense litigators at Schwarzberg's firm say they are making more money than they ever would have at the big firms where they started.

That's even though personal injury plaintiff attorneys in Florida face more statutory caps on jury awards and other restrictions on tort lawsuits since Jeb Bush became governor and Republicans took control of the Legislature in 1999.

Earlier this year, Gov. Bush and GOP legislative leaders, with strong business and insurance industry

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backing, succeeded in repealing the doctrine of joint and several liability in tort cases, finishing the job they started in 1999. As a result, tort defendants can only be held responsible for the percentage of fault found by the judge or jury — even if that means a severely injured plaintiff can collect little or nothing from the defendant found most at fault.

Some predict that the political momentum to limit tort lawsuits will tail off when Gov. Bush leaves office in January. “I believe the pendulum is on the verge of swinging back,” said Hector J. Lombana, a partner at the four-attorney personal injury defense firm Gamba & Lombana in Coral Gables. “There was a time juries were reacting to the [tort reform] rhetoric, but that seems to have passed.”

“The Bush mantra has been tort reform,” said Edward Zebersky, a partner at Zebersky & Payne in Hollywood who serves as president of the Academy of Florida Trial Lawyers. “We hope that the new governor realizes taking away people’s rights and protections from big corporations does not make Florida a better place to live, and certainly not a safe place for children and families.”

Stuart Z. Grossman, a managing partner of Grossman Roth said, “We have one enemy — Republican legislation.” Still, things don’t look too shabby at Grossman’s office overlooking the golf course at the Boca Raton Resort and Spa.

Last December, Grossman’s colleague, Tom Pennekamp, scored a big victory in the case of a female bridge tender on the Miami River who fell 50 feet when the tower she was working in collapsed. She suffered numerous broken bones. After two failed mediation attempts, Pennekamp settled the case for \$3 million with two engineering firms that were contracted by the state to inspect the bridge.

In another December 2005 settlement, Andrew Yaffa of Grossman’s

firm won \$7.4 million from various defendants for Evaristo Leon, who lost his arm and suffered numerous internal injuries when he was crushed between a tractor and trailer at a Miami loading facility in September 2003.

“The clients who come here want to win,” Grossman said. “We prepare for trial and the other side knows it.”

Many attorneys at litigation boutiques got their training as young associates at big national firms, but yearned to get into the courtroom and try cases. For instance, many associates at Schwarzberg’s firm were cherry-picked from firms such as Greenberg Traurig, Steel Hector & Davis, Proskauer Rose and Ruden McClosky.

### No bit players

Christopher Duke, a partner at Schwarzberg’s firm, said attorneys leave the bigger firms because they want to be hands-on in cases, not just a bit player. “You can have much more of an immediate impact,” he said. “All of our partners here have come from big-firm backgrounds. We know what it takes to do high-level work.”

Schwarzberg’s firm has been able to attract some major clients, such as Sega Entertainment, a division of the San Francisco-based gaming corporation, and the Southeast Florida branch of Houston-based Sysco Foods. Both clients previously were represented by bigger firms.

Some clients say they prefer dealing with smaller law firms. “At the big firm, I felt just like a number,” said Jenni Yardley, director of human resources at Sega Entertainment, a division that manages restaurants, bars and video game establishments. “I really appreciate the individual attention. I think they have taken the time to get to know my company.”

Debbie Kump, director of human

resources of Sysco Food Services of Southeast Florida in Riviera Beach, said she pulled her company’s cases away from two big law firms because she felt like a “little fish in this giant sea.”

“While with the bigger firms, you are just kind of in the mix and the billing was outrageous,” Kump said. “Sometimes they missed the mark on what the true value of the case was.”

But John Sumberg, managing partner of the 100-attorney Bilzin Sumberg Baena Price & Axelrod in Miami, said it’s a myth that larger firms like his don’t give clients individualized attention for their litigation matters.

“If we have a commercial client and litigation becomes a spinoff of that commercial relationship, I think we care much more,” Sumberg said. “We have a much greater relationship and much greater knowledge of the client than a litigation boutique in which a client might walk in cold and they won’t know them.”

### Reputation is key

Reputation for success in a particular area of law plays a big part for boutique firms in attracting clients with golden cases.

Richard Critchlow, the current managing partner at the 25-attorney complex business and antitrust litigation firm Kenny Nachwalter in Miami, said the firm gets a fair amount of referrals because it is known for its high-end work in corporate anti-trust and business litigation. “When somebody looks for qualified litigators in complex matters, our name generally comes up,” he said.

Critchlow said that even though Kenny Nachwalter isn’t as big as a firm like Greenberg Traurig, it matches the big firms’ capabilities in its chosen niche. “We have as many bodies to put on these types of matters as the major firms,” he said.

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Last November, Kenny Nachwalter won an appeal in a major federal antitrust case. Kenny Nachwalter represents Miramar-based Spirit Airlines, which claimed that Northwest Airlines engaged in monopoly tactics to force the low-cost carrier to give up two routes out of Detroit. Spirit alleged that Northwest cut prices below operating costs to force Spirit to pay top prices for gate access in Detroit. The 6<sup>th</sup> U.S. Circuit Court of Appeals gave Spirit the green light to proceed with its case.

Similarly, in 2003, Colson Hicks' **Gonzalez** won a \$100 million settlement with Houston-based Service Corporation International, the world's largest funeral services company, for the desecration at two South Florida cemeteries. **Gonzalez** said that since then, he's attracted other cemetery liability cases.

The five-attorney firm Haggard Parks Haggard & Lewis in Coral Gables has won a national reputation for winning big payouts in litigation over the drowning of children in pools, especially at apartment complexes. "We've have been retained throughout the country in the same type of cases," partner Michael Haggard said.

The firm recently settled a drowning case in Atlanta for \$2.3 million. It also represented the family of former U.S. Secretary of State James Baker, whose 7-year-old granddaughter drowned in a spa in Alexandria, Va., four years ago.

Haggard Parks is one of the South Florida litigation boutiques that prides itself on representing the little guy against the big corporations, and turning cases into broader crusades for change. It has lobbied to change pool safety laws in Florida and across the nation, lobbying for laws mandating stricter requirements for pool fencing and pool pumps.

A number of boutiques focus on maritime law and cases against cruise lines. Ira Leesfield, managing

partner of eight-lawyer Leesfield Leighton & Partners, said he represents people who have been hurt, raped or assaulted while on vacation cruises.

"With a lot of tourists, their guard isn't up," Leesfield said. "Any of the big firms wouldn't take these cases on contingency. These clients come to a small firm where they can get individual attention by the lawyer."

In April, Leesfield's firm filed a federal wrongful death lawsuit against Norwegian Cruise Lines and two of its doctors on behalf of Dorothy Jones. Jones' husband, Donald, vomited blood while aboard the cruise ship Norwegian Star.

The suit contends that instead of evacuating Jones to a hospital or providing onboard care, the cruise line placed the 65-year-old man in a lifeboat and sent him to a small Mexican coastal village. Jones died there while waiting for a transfusion.

### Big firm advantages

But leaders of larger law firms say they still have lots of advantages over litigation boutiques. Some have structured their litigation departments to concentrate on particular fields of law, somewhat mimicking the boutiques.

Martin J. Alexander, the executive partner of Holland & Knight's West Palm Beach office, said "we have teams within the firm that specialize." Holland has groups for labor law, securities class action cases, and national construction, among other areas.

Holland aims to "offer one-stop shopping for legal services," Alexander said. The firm can put together expert lawyers in areas such as tax law and real estate to handle complex cases.

Sophisticated corporate clients know this, he said. "It's very difficult for smaller firms or boutiques to compete in that arena," he said.

The big firms also handle personal injury, medical malpractice and

product liability, often defending the corporations being sued by plaintiffs who are represented by boutiques.

But sometimes the big firms face the dilemma that the interests of their clients clash. In such case, smaller litigation shops often step in to represent one of the sides.

Sumberg said his firm often refers litigation matters other than commercial disputes to boutiques.

But Sumberg downplays the conflict issue and said it's a myth that bigger firms are too bureaucratic to give personalized service.

Even so, like litigation boutiques, Sumberg's firm seeks to distinguish itself from the giants. On its Internet site, Bilzin Sumberg brags that "it's not just another large firm."

Some midsize firms try to claim the middle ground, saying smaller litigation boutiques don't have the resources to take on giants like Holland and Greenberg Traurig.

Alan Kluger, the managing partner at the 60-lawyer Kluger Peretz Kaplan & Berlin in Miami, said clients with big commercial cases are better off coming to a mid-sized commercial litigation firm like his.

Boutiques with 10 lawyers "just don't have the bandwidth to battle with the big guys," Kluger said. "If they decide they want to squash you like a bug, then they can. With us, they can't do that."

But boutique leaders say they have no desire to grow much larger, saying if they become too top heavy and don't choose their cases carefully, they lose their appeal for clients.

"We have always fought growth," Podhurst Orseck's Martinez-Cid said. "We turn down big cases all the time. It's better for clients and better for the firm for us to be focused on the trial and appellate work we do."

Colson Hicks' **Gonzalez** agreed, "You want to manage growth and make sure you don't get too big and destroy the chemistry that you build." ♦