Most Effective Lawyers 2006

SPECIAL REPORT: MOST

Honoring excellence

These attorneys made impressive contributions to their profession in a variety of specialties, but all have one thing in common: They served their clients well

A look at the Daily Business Review's second annual Most Effective Lawyers report leaves little doubt about the scope and complexity of the South Florida legal market.

Lawyers recognized in this special report created a new city while at the same time assembling the state's largest conservation tract; protected an industry from potentially costly and protracted litigation; won the largest Federal Tort Claims Act verdict; exposed a fraud on the public; successfully defended the most vulnerable in our society — illegal immigrant children who were victims of abuse — and despite terrible odds helped clients overcome the impossible to achieve important business objectives.

What follows is recognition of the quality of legal work and achievements accomplished by South Florida lawyers on behalf of their clients.

This exercise is anything but a beauty pageant or a popularity contest. No committee or panel judged the nominees. The nominees were judged by the editorial staff of the Review based on tangible results.

The Review's staff conducted a two-month, results-oriented process that focused on client outcomes and the complexity of cases or deals. Other factors considered by the editors and staff included public-policy significance and business impact.

The selection process began with more than 130 nominations in 14 practice area categories. The editors made a first cut, eliminating submitted nominations that were incomplete or did not meet the criteria.

The editors then proceeded to evaluate and rank nominees. As a result of this exercise some categories were eliminated, and what remained were five to six semifinalists in 12 categories.

The editors met to review the semifinalists. In what proved to be the most difficult eliminations, three to five finalists were selected in each category. Only two extremely competitive categories — civil litigation and real estate — had more than four finalists. The remaining categories had one to four finalists.

The Review's law reporters and several freelance contributors were then assigned to research and report out the cases and deals handled by the finalists.

Editor-in-Chief David Lyons and Executive Editor Eddie Dominguez met in late November to review the findings and research by the Review's staff. In each category, the editors selected one case, deal or outcome that featured attorneys worthy of being recognized as South Florida's most effective lawyers.

Still, all of the lawyers featured in today's special report — whether they are finalists or ranked at the top of their categories — deserve recognition. All of the selections published here represent significant achievements on behalf of clients — the ultimate measure for any lawyer.

— The Editors

INTERNATIONAL

A successful acquisition — after two misfires

Hunton & Williams partner **Carlos Loumiet** was intrigued last April when Panama's Grupo Banistmo asked him to help the bank respond to a purchase offer from London's HSBC Holdings.

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HSBC is the world's third-largest bank, while Banistmo is Central America's biggest financial services institution, with 220 branches and operations in a dozen countries.

The deal would be made by means of a tender offer — which Loumiet calls a novel procedure in a region where publicly traded companies are relatively scarce.

"Any international transaction, where you are blending different legal systems and trying to make them work seamlessly, presents interesting challenges," said Loumiet, co-chairman of Hunton & Williams' international practice group and chairman of its Florida business group. "This is a perfect example."

For Loumiet and **Fernando Margarit**, a fellow partner at Hunton & Williams, it meant eight months of negotiations to obtain a selling price the Banistmo board could recommend to its shareholders. On top of that, HSBC — a giant many times the size of Banistmo — is notoriously tight-fisted.

It was not easy. Talks broke off twice before a final agreement was reached last July. In the end, HSBC agreed to pay $1.77 billion, Margarit said, because "Banistmo is a pearl."

With operations in Costa Rica, Honduras, Colombia, El Salvador, Nicaragua, Guatemala, the Bahamas and the U.S., Banistmo "looks to strengthen [HSBC's] presence in one of its fastest-growing markets," according to a British securities firm that follows the bank's stock.

Making the deal was only the start of the task for Loumiet and Margarit. Banking laws and regulations of 10 separate jurisdictions had to be met, Loumiet said, further complicating an already difficult transaction.

Bank deal: Hunton & Williams partners Carlos Loumiet, left, and Fernando Margarit represented Panama's Grupo Banistmo, which was sold to HSBC Holdings for $1.77 billion.

Especially troublesome, according to Margarit, was the fact that Panama's tax laws were being amended at the time to make certain that the country collected what it regarded as its fair share from this new phenomenon, a tender offer. In the end, that meant a higher price had to be negotiated to make Banistmo shareholders happy.

Despite the challenges, both attorneys described the experience as especially rewarding. They already had been representing Grupo Banistmo for several years as it engaged in a series of acquisitions of its own. "The people at Banistmo were sophisticated and experienced about such transactions, and the lawyers all got along well," Margarit said.

In fact, he added, coming to the end of the job was "bittersweet. I made many friends in Banistmo, and now they're no longer our client."

— Dan Cordtz

FINALIST

Venezuelan telecom deal: Complex connections

In September 2005, **Jose E. Sirven**, a partner in Holland & Knight's Miami office, was approached by Venezuelan telecommunications company Telvenco S.A.

Telvenco, which is controlled by Caracas businessman Oswaldo Cisneros, wanted to dominate the mobile telephone service market in Venezuela. To accomplish that goal, Telvenco sought to purchase Corporacion Digitel C.A., which was owned by a Venezuelan subsidiary of Italian company Telecom Italia.

The catch was that Telvenco also wanted to purchase two other Venezuelan mobile service providers — Digicel and

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EFFECTIVE LAWYERS

ENVIRONMENTAL LAW

He spent nine years proving clients didn't pollute wellfield

It took nine years and a team of experts costing millions of dollars. But Miami attorney **Matthew Coglianese** finally convinced the U.S. Environmental Protection Agency last year that his clients were not responsible for contaminating a water wellfield in Davie. In January, a federal judge signed a final consent decree.

In 1997, Coglianese was chosen to represent 50 companies and governmental entities that were among 3,000 parties notified of their financial liability for cleaning up the Florida Petroleum Reprocessors Superfund Site in Davie.

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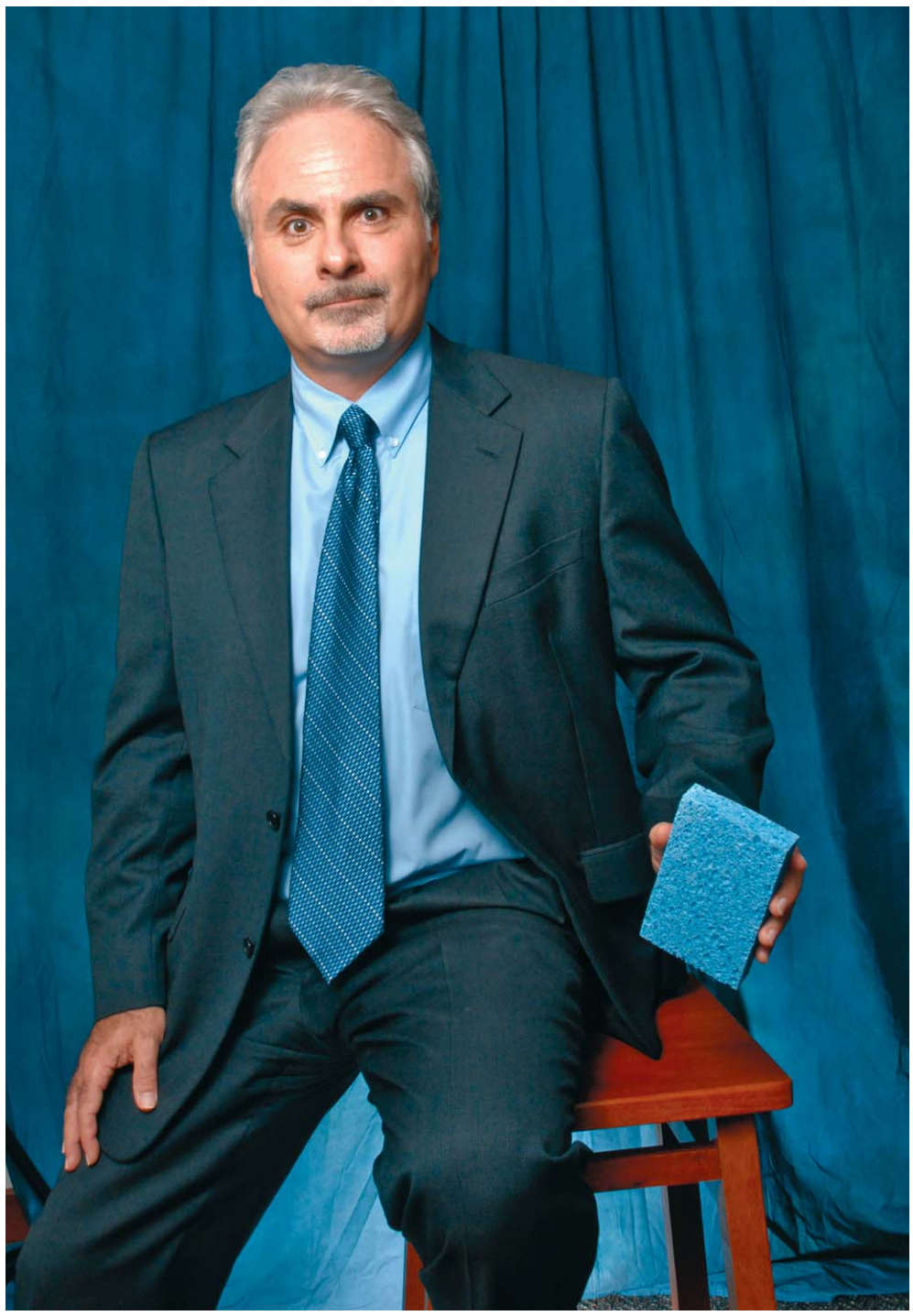
For years, the site was a designated petroleum recycling spot. A variety of entities, from the city of Fort Lauderdale to small gas station operators, dumped used oil there. But the site became a political hot potato. Public hearings were held in Fort Lauderdale after concerns were raised about whether the site was contaminating a water wellfield in Davie. The wellfield is a mile from the Superfund site — and significantly uphill.

Coglianese's task was to negotiate with the EPA and persuade the agency to assign some of the cleanup costs — estimated at $15 million in total — to other entities, as well as to persuade the agency that his clients were not responsible for the contamination of the wellfield. He also was tasked with developing a "reasonable" cleanup plan.

Coglianese, who heads the environmental practice at Peckar & Abramsom in Miami, first hired two teams of environmental experts to match the Army Corps of Engineers, which served as the EPA's experts. Coglianese and his experts held half a dozen meetings with the EPA, the U.S. Department of Justice, and the Army Corps of Engineers in Atlanta, Fort Lauderdale, Miami and Washington.



Cleanup man: After a protracted fight, Matthew Coglianese convinced the Environmental Protection Agency his clients didn't contaminate a water wellfield in Davie.

Negotiations, he said, were "long and hard."

The EPA wanted to shift the entire cost of the $15 million cleanup to Coglianese's clients. Those clients then would have to recover the costs from the nearly 3,000 other users of the site.

Instead, Coglianese persuaded the EPA to bill his clients only about $6 million and go after the other users directly. That was no small feat, he said. "They took the risk of recovering the money themselves," Coglianese said. "Usually they put the risk on a group."

Then, Coglianese had to persuade the EPA that there was no way the Superfund site could have polluted the wellfield. Both the EPA and the city of Fort Lauderdale were pushing for Coglianese's group to construct a $2 million barrier on the south side of I-595 to block further alleged contamination of the wellfield.

"The EPA was getting a lot of political pressure from the city of Fort Lauderdale," Coglianese said. "But it was physically impossible for such contamination to occur."

Eventually, the EPA agreed. The two sides came to an agreement and presented it to U.S. District Judge Paul C. Huck in Miami for approval in January.

But even then, Coglianese had another obstacle to overcome. At the 11th hour, the city of Fort Lauderdale filed a motion to intervene and thwart the settlement. Judge Huck held a meeting among city officials, Justice Department lawyers and Coglianese to hash out the differences. In January, Huck denied the city's motion to intervene and signed a final consent decree.

Coglianese, 53, an environmental lawyer for 21 years, attributes his success to "persistence and taking the technical high road. We didn't put out anything outlandish or any junk science."

— Julie Kay

FINALISTS

State pays $7.2 million settlement to purchaser of submerged lots

In 2002, Developers of Coral Bay Inc. purchased 18 submerged lots in the Lugo Avenue area of Coral Gables. The Florida Department of Environmental Protection denied the developers' applications for permits to fill the property. That decision was based on the creation of the Biscayne Bay Aquatic Preserve, a protected area established by the Florida Legislature in 1974.

Nelson

Widom

In 2004, the developer, represented by Miami attorneys **Howard Nelson** and **Mitchell Widom**, filed suit, asking the state to pay it for the 18 lots. Nelson and Widom sought inverse condemnation, in which private landowners try to force the government to pay them for property.

DEP attorneys argued that the land was not rendered useless by the state's denial of the developer's request for fill permits. The properties could still be used for floating dockage, DEP argued.

The plaintiff argued that the denial of permits to fill the land for development constituted a taking of property because all practical uses for the property had been eliminated by governmental regulation and restriction.

On Aug. 1, the state settled with Nelson's clients for $7.2 million.

Nelson, a partner at Bilzin Sumberg Baena Price & Axelrod in Miami, focuses on environmental and land-use law. He said his previous work as a planner with Keith and Schnars, and his work for the South Florida Regional Planning Council, help him better understand environmental and land use issues.

He also had other land use successes this year. Among the cases he:

- Represented the developer Shoma Homes in a 400-acre residential development project in western Miami-Dade County.
- Handled acquisition and permitting for a 300-acre construction and demolition debris landfill near Lake Okeechobee.
- Represented EB Developers in the permitting process for a 150-acre residential development in Doral.

— Forrest Norman

BANKRUPTCY

Unique liquidation proposal earns judge's approval

When Far & Wide, a Miami-based global tour operator, filed for bankruptcy with no warning in 2003, it stranded 5,000 vacationers around the world. It didn't look like those travelers or thousands of others who already had put down deposits — or the employees who were stiffed on their last paychecks — would recoup a penny.

Far & Wide was started in 1998 by two Harvard-educated lawyers, Phil Bakes and Andrew McKey, who had worked for former Eastern Air Lines chairman Frank Lorenzo.

The company sold "trips of a lifetime" to North Americans. It used deposits as a float to expand the company and bought mom-and-pop travel agencies around the country, according to **Craig Rasile**, the attorney who represented the Official Committee of Unsecured Creditors in the case.

By 2001, the company had $305 million in revenue, 21 divisions and 400 employees around the world. Just days before declaring bankruptcy, the company was still selling trips. "The company was insolvent 18 months before it filed for bankruptcy and should have filed then," Rasile said.

During the first four months of the bankruptcy, the company sold off all its divisions as going concerns for $13 million. It had spent more than $150 million acquiring those divisions. Rasile took that as an ominous sign.

"Once the assets were sold, it was clear that the remaining $155 million in creditors would receive barely a penny on the dollar from the proceeds generated by the asset sales," said Rasile, who heads the bankruptcy practice at Hunton & Williams in Miami.

But Rasile joined forces with the U.S. Tour Operators Association and went after the officers and directors of the company for breach of fiduciary duty and negligence. He announced his intentions to recover monies from the officers and directors in his reorganization plan and also threatened to file a lawsuit against them. He said he's holding off on the suit because mediation is scheduled for January.

Complex journey: Craig Rasile's plan assigned creditor claims against directors and officers to a trust.

His proposed liquidation plan contained a provision that has never before been put forth in a bankruptcy court in Florida. It legally assigned the individual claims of any creditor against the directors and officers to a directors and officers trust, which could prosecute those claims on behalf of the creditors.

The company's former directors and officers vigorously fought the plan, arguing for conversion of the case to Chapter 7. A Chapter 7 trustee's claims against the former directors and officers would be limited to only the claims that the debtor itself could have brought against them.

The officers and directors hired heavyweight lawyers, including Adam Harris of Schulte Roth & Zabel in New York and Nick Gravante, the Boies Schiller & Flexner lawyer who represents former American International Group chief executive Maurice "Hank" Greenberg in an accounting fraud case. Five contested, all-day hearings were held throughout 2005 before Judge Robert A. Mark of the U.S. Bankruptcy Court in Miami.

"We had to do a lot of legal jockeying to get this done," Rasile said. "But Judge Mark was intrigued by our plan."

Despite the protestations and protracted litigation, Mark ultimately confirmed Rasile's plan in December 2005. The order was appealed in U.S. District Court, where oral arguments were heard Sept. 22. No ruling has been made. As of yet, no monies have been returned to the unsecured creditors.

Rasile, 45, has been practicing bankruptcy law for 17 years. He currently is serving as a receiver for the U.S. Securities and Exchange Commission for a $1.2 billion hedge fund. He cites the Far & Wide case as among the five most complex bankruptcies he has ever handled.

— Julie Kay

INTERNATIONAL

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Infonet Redes de Informacion. If Telvenco's Cisneros couldn't have all three, he didn't want any of the companies.

That gave Sirven pause.

"Closing one deal is complicated in and of itself," Sirven said. In this case, he had to "make sure that you've got three deals, all of which get documented, signed and closed, or none of them get documented, signed and closed."

Sirven

Sirven worked for months on the deal. He also worked in conjunction with the lawyers handling the other two acquisitions. In January, Telvenco agreed to pay $425 million for the common stock of Corporacion Digitel. The deal closed in May. With the other two acquisitions, Telvenco expanded its network in Venezuela to cover the entire country.

Sirven said another big hurdle was the strict foreign exchange rules in Venezuela. "Part of the challenge for us was to obtain the dollars that we needed to pay for the business through the regulatory maze that existed in Venezuela," he said.

Even though the deal included the purchase of a Venezuelan business by a Venezuelan buyer from an Italian seller, Cisneros wanted Sirven to structure the deal under U.S. law. "Large, sophisticated clients like to do deals under U.S. law, where possible," Sirven said.

Sirven originally was hired for this Venezuelan job partly because Cisneros had a close working relationship with Tinoco Travieso Planchart & Nunez, a Caracas law firm allied with Holland & Knight.

Sirven said that the policies of Venezuela's leftist President Hugo Chavez were not a big worry for his client. "All I know is our client is Venezuelan and I guess he's got faith in the future, because otherwise he wouldn't have done this deal," Sirven said.

— Daniel Ostrovsky

FINALIST

Tracking down a dictator's treasure

Greenberg Traurig shareholder **Pedro Martinez-Fraga** scored several successes this year in locating hidden funds in Miami allegedly swindled by former Chilean dictator Augusto Pinochet.

Martinez-Fraga is Chile's lead counsel in the U.S. in the criminal prosecution of Pinochet. He's being prosecuted for corruption before a special appellate tribunal in Santiago.

In March, Martinez-Fraga announced that more than 100 Pinochet-linked accounts had been located. Twice this year, he forced discovery over the objections of bank representatives, eventually locating about $9.5 million and compelling production of eight hours of deposition testimony and thousands of pages of financial documents.

Martinez-Fraga

Martinez-Fraga said he has located a total of about $200 million in Pinochet-linked funds.

Martinez-Fraga said the elderly Pinochet's money is a moving target. "There are people hiding these assets, and moving them every day," he said. "There are more than a hundred accounts linked to Pinochet out there."

Efforts to uncover Pinochet's money have led to multiple discovery hearings in U.S. District Court in Miami. South Florida is where much of the money is located. "Bit by bit, we have uncovered more and more of this money, and we add new accounts regularly," Martinez-Fraga said. "That's the nature of searching for international funds in flux."

There is much more Pinochet-linked money to be found, Martinez-Fraga said, though he added it won't be an easy task to locate the funds.

"It's a tremendous challenge poring over these documents and bank records," the lawyer said. "It's not just a quantitative challenge of plowing through all the paperwork. It's the qualitative challenge of spotting the questionable numbers and transactions."

— Forrest Norman

LOBBYING/LAND USE

Shifting urban boundary: Hard work, clever tactics

Proposals to move Miami-Dade County's urban development boundary are only considered once every two years, and then almost all of them are turned down. This year was no exception.

When the County Commission took up the controversial issue in August, eight of the nine requests to open up more of the county for development and encroach further into the Everglades failed.

The only application approved by the commission — with just one negative vote — included 349 acres of land belonging to the Miami Lakes-based Graham Cos. An earlier proposal to bring that land within the boundary had been dismissed before it even reached the commission. A key force for that August decision was the Graham Cos.' attorney and lobbyist, Greenberg Traurig shareholder **Kerri L. Barsh**, a veteran of many county regulatory struggles.

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Part of her winning strategy was to attach the Graham proposal to a larger UDB expansion application submitted by the city of Hialeah that was backed by a number of high-powered political and financial leaders. It included what many believed was a sweetener for some county officials — the city of Hialeah's offer to sell 17 acres of the new land for a new stadium for the Florida Marlins baseball team.

The original Hialeah application included almost 800 acres of land for industrial and commercial development, a public park and a new fire station.

The Graham piggybacking maneuver, which Barsh said was suggested by members of the county planning and zoning department staff, was not warmly welcomed by Hialeah officials. "But they didn't mind as long as we didn't cost them votes," Barsh said.

Still, throughout the process, she feared that there might be attempts to split the Graham and Hialeah proposals. Much of her attention was focused on making sure no split occurred.

Winning strategy: Kerri L. Barsh helped get 349 acres owned by the Graham Cos. moved within the urban development boundary.

While linking up with Hialeah had advantages, Barsh said, it also posed problems. "We had to work together and coordinate our efforts, and we had to be consistent in our arguments."

The initial county staff support for the Graham project faded as fierce and well-organized opposition developed. "There was so much fear that every decision to move the line would be taken as a precedent," Barsh said. "We had to convince them that this wouldn't lead to more and more urban sprawl."

She rolled out maps and aerial photographs to buttress her argument that the Graham Cos.' parcel logically belonged within the development boundary. If Hialeah's request were granted, she pointed out, "we would have been the only remaining land east of the Turnpike that was still not included."

Moreover, on the west side of the Turnpike there were lakes created by rock mining operations. That would make further development due west of the Graham Cos.' parcel all but impossible, thus reducing the future threat of sprawl.

Opponents also claimed the development planned under both proposals posed problems of overloaded transportation and inadequate water supplies.

Barsh successfully responded with a covenant promising close regulation of transportation and assurances that the planned industrial development would not generate the water demands of residential use. The same arguments also were effective in overcoming late reservations of the Florida Department of Community Affairs.

But county staff professionals were only the first hurdle, according to Barsh. The county commissioners remained.

"I had an uphill battle from the start," she recalled. "You start with just a general sentiment against ever moving the line, and then you have to get a supermajority."

In the end, Barsh said the proposal prevailed because it "was just good common sense."

As attorney for a number of rock mining companies, Barsh is no stranger to controversy. But she described the 17-month UDB process as one of the toughest and most complicated she has tackled. "So many hearings, so many stakeholders, a tough battle from start to finish."

— Dan Cordtz

FINALIST

With government rules unsnarled, Miami transit projects moved ahead

Miami attorney **Albert Dotson** negotiated several layers of complex governmental regulations to facilitate two mixed-use developments to be built around existing Metrorail stations in Miami's Overtown and just west of Coconut Grove.

Dotson

The projects were public-private joint ventures designed to make better use of land at the Metrorail sites. "There were a lot of moving parts that combined community, politics and the law," said Dotson, a partner at Bilzin Sumberg Baena Price & Axelrod in Miami who represented Development and Land Group, which initiated the projects. "At points it was like herding cats."

At the Overtown station, just north of the Government Center in downtown Miami, the plan was to build an office tower with some residential and retail space. The final design called for the elimination of the residential component because the office tenants required more space. That expanded office space in turn made the project more viable.

Construction began more than a year ago, but the doors have not yet opened on the project. Previously, there had been virtually no development in that immediate area.

The project was initiated by Taylor Development and Land Group, which sold some of its interest to a Virginia-based company called NGP Overtown. A third partner in the joint venture is Agnes Rainbow Village Development, a nonprofit Miami economic development organization.

The Coconut Grove project will be located at the Coconut Grove Metrorail stop at U.S. 1 and 27th Avenue. Plans there call for a mix of commercial, residential, and retail space, with a possibility of a hotel component as well. Some site work has been done, but construction has not yet begun in earnest.

Dotson said the most complicated issue in the two projects was dealing with the myriad of federal, county and city regulations, which he helped his clients navigate. Because the federal government helps fund the Metrorail project, the

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developers had to follow federal rules on using disadvantaged and minority businesses and contractors to complete the projects.

Since the county owns the Metrorail stations and the land they sit on, the new buildings had to comply with county regulations as well as city zoning laws.

Even harder, Dotson said, was that sometimes various regulations were at odds with each other, including rules on height limitations and setback limitations. To resolve zoning and other inconsistencies, Dotson and his team had to lobby the city or the county to waive portions of their respective rules.

For example, the original terms of the joint venture with the county required residential space in the Overtown project because the idea was to reduce the need for people to commute. But as the housing market in Miami softened, the county realized that expanding the office space was a better way of proceeding with construction, he said.

The city-county elements were the toughest part, Dotson said. "When you go to city or county, that's the dance that becomes difficult," he explained. There also were significant easement and air rights issues to deal with, he said.

Projects like the two Metrorail joint ventures exemplify responsible community development, Dotson said. "You've got a community component, you're developing along a transit corridor and it's going vertical in hopes that it will reduce traffic impact in our community."

— Carl Jones

FINALIST

Broward a winner in airport concession case

Dawn Meyers of Berger Singerman in Fort Lauderdale spearheaded a successful lobbying effort to persuade Broward County authorities to open the news and gifts concession of the Fort Lauderdale/Hollywood International Airport to competitive bidding for the first time in two decades.

For 22 years, a single company, Atlanta-based Paradies Shops, had the contract to sell newspapers, books and magazines, along with local mementos like T-shirts, caps and coffee mugs. Meyers' effort persuaded the Broward County Commission in March to put the contract out to bid. The commission also decided to split the single contract for the four terminals into two separate contracts covering two terminals each.

Meyers

The bids on those contracts will guarantee the county more than $13 million a year.

Meyers represented the East Rutherford, N.J.-based Hudson Group, which operates concessions in more than 50 airports around the country, including New York, Los Angeles, Chicago and Atlanta.

On Tuesday, a county committee selected Hudson to operate concessions in half of the airport. Paradies, which long dominated the retail operations at the airport, was picked to operate the other half. The contracts must still be approved by the county commission, but with nine commissioners sitting on the committee that made the decision, approval is expected.

Meyers said Paradies had kept the contract by simply extending it over more than two decades. Her main argument was that opening up the contract to bid would create competition, benefiting the county and travelers. She argued competition would mean more revenue for the county, more capital improvements at the airport and better stores for customers.

She said the hardest obstacle was persuading the county commissioners to go against the status quo.

"You had a 22-year incumbent who had established contacts, was well known and firmly entrenched in the airport and in the market," Meyers said. "And that was a huge hurdle to overcome."

Meyers did significant research on airport concessions agreements, worked to persuade each of the nine county commissioners individually and argued her client's position at board and committee meetings for more than a year.

Paradies made a last-ditch effort to hold onto the contract. In July, the company sent a letter to the commissioners saying it would make substantial capital improvements in its concessions operations and change its payment arrangement to benefit the county.

"When we got a hold of that letter, that's when we knew we were on the right track," she said. The letter gave Meyers tangible proof that they could get a better deal. "I got to wave that letter around and say, 'I told you, I told you. This is what the mere threat of competition brings you. Imagine what will happen when you have real competition.' "

Winning for her client was a "slow, tedious process" in which the County Commission was often evenly divided. In March, the commission adopted her client's model for the contract.

Four companies including Paradies and Hudson have submitted bids, and a selection committee has recommended both companies to the commission for a decision in January. Paradies is claiming that Hudson did not properly answer all the questions the commission asked of the bidders.

In the end, Meyers said her job was made easier because her research showed that opening up the concessions contract made good business sense.

"I had the beauty of having facts on my side, that's a real benefit," she said.

Meyers has worked for nearly 12 years in governmental relations.

— Carl Jones

APPELLATE

Massive tobacco award snuffed out

Elliot H. Scherker and **David L. Ross**, shareholders at Greenberg Traurig in Miami; **Alvin B. Davis**, managing partner of Squire Sanders & Dempsey in Miami; and **Wendy F. Lumish**, a partner at Carlton Fields in Miami, persuaded the Florida Supreme Court to throw out the record $145 billion punitive damage award against five major tobacco companies.

The state's high court agreed in July with the 3rd District Court of Appeal that the 2000 award by a Miami-Dade Circuit Court jury was "excessive as a matter of law."

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While the Supreme Court decertified the Engle class, it also said Florida smokers or their survivors may proceed with individual liability suits against the tobacco companies and that they have one year to file them. The court majority said key liability findings by the jury in Engle — that smoking causes diseases and that the tobacco companies engaged in deceptive practices to cover up the health risks of their products — will not have to be relitigated.

Scherker argued the case before the Supreme Court and the 3rd DCA on behalf of all of the defendants in *Howard Engle, et al. v. Liggett Group et al.*, except Liggett, which was represented by Davis.

"It certainly was one of the great challenges of a legal career that's now past its 30th year," he said.

Scherker said one of his greatest challenges was to review the trial record, which at more than 50,000 pages was perhaps the longest in Florida history.

Ross, the lead trial counsel for Lorillard, helped Scherker assemble briefs and prepare for arguments throughout the appellate stage.

The wining team: David L. Ross of Greenberg Traurig, Alvin B. Davis of Squire Sanders, Elliot H. Scherker of Greenberg Traurig and Wendy F. Lumish of Carlton Fields, inset at right, who was unable to attend the group photo session.

"The biggest challenge on appeal was getting your hands around the case and trying to focus on which issues were going to be pursued on appeal and which you just didn't have time to pursue," Ross said.

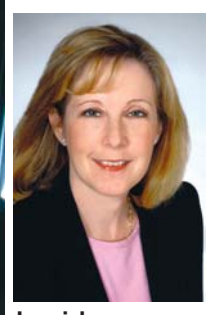
That was echoed by Lumish, who was the Florida counsel for R.J. Reynolds and was involved in every stage of the appellate proceedings, including strategizing, brief writing and assisting in preparing the oral argument.

"The toughest part of the appeal was taking three years worth of a trial and formulating that into arguments that an appellate court could understand, focus on and address," she said.

Davis represented Liggett on appeal. His maverick client admitted at trial that smoking was harmful and earlier turned over potentially incriminating documents to states suing the cigarette industry.

"The question became how to frame an argument that reflected our separate situation and yet didn't look like we were going after the other manufacturers because I didn't think that was going to be a meaningful distinction to anyone," Davis said.

The class action suit was filed in 1994 on behalf of sick Florida smokers led by Engle, a Miami Beach pediatrician. The group claimed they became ill by smoking an addictive product that cigarette makers denied was unsafe even though they knew for decades that it caused disease.



Lumish

The other defendants were industry leader Philip Morris, Brown & Williamson and R.J. Reynolds. The trial ended in July 2000 after a two-year, three-part trial before Circuit Judge Robert Kaye. After granting compensatory damages to three class representatives, the jury issued the biggest punitive award in U.S. history.

— Daniel Ostrovsky

FINALIST

Bruce Rogow succeeds in getting Miami-Dade County strong-mayor issue on ballot

If Miami-Dade Mayor Carlos Alvarez can persuade voters to approve a change in county government making his office stronger, he'll owe **Bruce Rogow** a debt of gratitude.

Rogow

Rogow, a Fort Lauderdale appellate attorney and Nova Southeastern University law professor, represents the political action committee trying to put the strong-mayor initiative on the ballot in Miami-Dade.

He persuaded a three-judge panel of the 3rd District Court of Appeal to overturn a ruling by Miami-Dade Circuit Judge Michael Genden, who concluded the ballot proposal violated Florida's Constitution.

The measure would give the mayor the power to administer county government and hire and fire the county manager and department heads, currently duties held by the manager and County Commission.

Genden ruled the proposal would diminish the commission's constitutionally appointed role as the county's governing body. Rogow argued and the appellate panel agreed that the change was primarily administrative and did not affect the commission's constitutional standing.

The appellate panel ruled in May, and the Florida Supreme Court refused to hear the case in September.

Rogow's first legal experience was representing civil rights workers in Mississippi in 1965 and 1966. He came to Miami in 1967 and began a career that has spanned the spectrum of appellate law. He is easily recognized by his trademark bow tie.

"I've represented rich men, poor men, beggar men and thieves, doctors, lawyers and Indian chiefs," Rogow quipped. "This is literally so."

Rogow successfully defended then-Seminole Chief James Billie in 1987 after he killed and ate a Florida panther, claiming it was his cultural and religious right to do so. The verdict hinged on whether the panther was a pureblood cat protected by the Endangered Species Act.

When he's not busy with Indian chiefs, the attorney has taught at Nova Southeastern University's law school, and undertaken an eclectic mix of appellate cases. He has argued 11 cases in the U.S. Supreme Court, more than any other Florida lawyer.

— Forrest Norman

PRO BONO

Immigration victory kept 75-case streak alive

Holland & Knight associate **Leon Fresco** won an important case that will make it easier for abused young illegal immigrants to remain in the United States.

Fresco, who exclusively does pro bono work as a Chesterfield Smith Fellow at his firm, represented J.A.G., an illegal immigrant from Honduras.

MOST EFFECTIVE LAWYERS 2006

The young man was abandoned by his mother and beat up by his stepparents. He came to this country at 17 and properly filed his petition for special immigrant juvenile status with the U.S. Citizenship and Immigration Services. But he turned 18 before the agency made a decision on his application.

To gain lawful permanent resident status, illegal immigrants between the ages of 18 and 21, under federal law, must apply for special immigrant juvenile status with the federal agency. Prior to filing the application, these young people also have to be declared dependent in state juvenile courts. By federal law, both the declaration and the application must be completed before the person's 18th birthday.

Until last year, illegal immigrants in Florida could remain under the dependency jurisdiction of the juvenile court system only until their 18th birthday. In some other states, juveniles could remain dependent through the age of 21.

Florida state law meant that juveniles with meritorious petitions for special immigrant juvenile were in danger of being deported if the federal agency failed to grant their petition by the time they turned 18.

Last year, however, the Florida Legislature passed a law that made it possible for illegal young immigrants to remain on dependency status until their 22nd birthday — but only if they were applying for special immigrant juvenile status with the federal agency.

Follow the leader: Holland & Knight associate Leon Fresco with a photo of the late Chesterfield Smith, the firm's champion of pro bono service. Fresco helped an abused Honduran teen remain in the U.S.

Nevertheless, the federal agency's Miami office took the position that the state law was enacted solely to get around the federal statute. It refused to grant any juvenile petitions that relied on the new state law.

Fresco convinced the Administrative Appeals Office of the federal agency that J.A.G. and other young immigrants in the same situation should be able to rely on the Florida statute and should not be deported. In May, the Administrative Appeals Office held that illegal young immigrants in Florida who are neglected and are between the ages of 18 and 21 are eligible for special immigrant juvenile status under the new state law.

"Most people thought this was going to be a losing case," Fresco said.

Fresco will spend more than 2,700 hours this year on pro bono work. If he were to bill at $250 an hour, that would translate to a $675,000 contribution by Holland & Knight to legal services for the poor, not including Fresco's salary.

Over the past year, Fresco has helped about 75 immigrants from 15 countries facing immigration status problems remain in the United States. None of his clients has been deported so far.

— Daniel Ostrovsky

FINALISTS

Settlement may be uncollectible, but Honduran victims get closure

In April, Carlton Fields board chairman **Benjamine Reid** won a $47 million federal verdict for victims of a former Honduran military official in a human rights case.

U.S. District Judge Joan Lenard issued a default ruling that former Honduran National Investigations Directorate chief Juan Lopez Grijalba was liable under the Alien Tort Claims Act for the abduction of a student leader in 1981, the murder of a student in 1982 and the torture of two people in Tegucigalpa in 1982. After a nonjury trial on damages, Lenard awarded $47 million to the plaintiffs.

Reid

Reid, a Carlton Fields shareholder in Miami, was lead counsel for the plaintiffs. He represented them on a pro bono basis. They included the relatives of two deceased Grijalba victims, as well as Oscar and Gloria Reyes, journalism professors who were kidnapped and tortured for months by Grijalba.

Grijalba was not present or represented at the trial. He was deported by the United States.

"We don't know if the money is collectible," Reid said. "We believe there are people in the Honduran government who might be interested in helping us collect. But the important thing is that this trial helped bring closure. This gave these victims and the victims' families a chance to air their grievances."

Reid also serves on the board of the Florida Justice Institute, which recruits lawyers for pro bono cases, and contributes his time — as much as 5 percent of his total hours in recent years — to pro bono work.

— Forrest Norman

Victory overcomes 'arbitrary' Medicaid guidelines

When **Howard Talenfeld** was first appointed in late 2004 as attorney ad litem on a pro bono basis for minor J.W. in a dependency case against his parents, he quickly saw the state would need to provide additional services once the boy turned 18 years old.

Talenfeld

A founding partner at Colodny Fass Talenfeld Karlinsky & Abate in Fort Lauderdale, Talenfeld said his client, a high school junior, was reading at no more than a third-grade level.

Despite IQ testing that confirmed significant verbal problems caused by J.W.'s left hemisphere brain damage, the Florida Department of Children & Families denied him Medicaid benefits.

The state-run Medicaid program is supposed to provide health coverage to all low-income developmentally dis-

See Talenfeld, Page AA11

CLASS ACTION

Duo heads off potential class action threat to Bacardi, spirits industry

When the father of a Washington, D.C., teenager filed a class action lawsuit against half a dozen manufacturers and distributors of alcoholic beverages in late 2003, alarm bells rang loudly throughout the industry.

Ayman R. Hakki alleged that brewers and distillers had, by persuasively advertising beer and liquor, induced youngsters like his son to buy alcohol illegally with money provided by their parents. This, he said, constituted unjust enrichment and negligence on the part of the defendants.

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His requested remedy was "reimbursement" by the industry of all those dollars — estimated by the plaintiffs at upwards of a billion dollars a year — and all the money that might be spent on booze by underage drinkers in the future.

The total was, quite literally, unimaginable. Some attorneys predicted another legal feeding frenzy like the one that previously had hit the tobacco industry.

Similar suits — with plaintiffs largely represented by the same coalition of class action lawyers — were filed in Florida, Colorado, Ohio, Wisconsin, Michigan, West Virginia and North Carolina.

But up to now, not one of the suits has reached a jury or has even been certified as a class action. Two veteran litigators from the Miami office of Hunton & Williams have played leading roles in heading off the potential disaster for their client, Miami-based Bacardi USA Inc.

Briefs written by Marty Steinberg, Hunton's Miami managing partner, and partner Jeffrey W. Gutchess have helped persuade judges in all those jurisdictions to throw out the cases. Their defense has been so successful that the Florida suit, filed in Fort Lauderdale in March of last year, has been dismissed for lack of prosecution.

Record of success: Veteran litigators Marty Steinberg, left, and Jeffrey W. Gutchess have helped liquor giant Bacardi USA avoid damaging lawsuits.

Although appeals are pending in several of the cases, judges so far have accepted the arguments made by Steinberg and Gutchess that the plaintiffs have failed to show that advertising for alcohol products deliberately targets underage drinkers; that such advertising is responsible for youthful purchases of beer and liquor; or that the manufacturers have any responsibility to police teenagers for their parents and prevent them from committing the crime of underage purchase of alcoholic beverages.

These victories on legal grounds were vitally important in keeping the cases away from juries, which can be a wild card.

"Corporate defendants always prefer to have cases decided by a judge on the law, rather than by a jury that may be swayed by emotion," Steinberg said. "Not that we'd be afraid of a jury, because I think they could figure it out. But it's always preferable if a case can be decided by the judge on the law."

Gutchess added that "it's much better even to keep the cases from reaching the discovery stage. It's easy to imagine plaintiffs digging up some really objectionable ad that some agency dreamed up that would be damaging even if it was never used or even seriously considered."

Hunton & Williams has counted Bacardi among its most important clients for many years and has handled a variety of the company's cases. But none of those cases, Gutchess said, ever posed a financial threat to the liquor giant that compares with these "reimbursement" lawsuits.

Although he and Steinberg express confidence they will continue to prevail, he cautioned that the plaintiffs "only have to win one of these cases. We have to win them all."

— Dan Cordtz

FINALISTS

Revived suit could impact how HMOs pay ER doctors

Paul Geller, a partner at Lerach Coughlin Stoia Geller Rudman & Robbins in Boca Raton, won an appeal before the 4th District Court of Appeal in a class action case that could have far-reaching implications for how health management organizations pay emergency room doctors in Florida.

Geller

In October, a 4th DCA panel reinstated the suit, which claims that HMOs were illegally paying out-of-network emergency room doctors well under the going rate. The suit is based on the state HMO Act. A Palm Beach Circuit judge had dismissed it.

Under Florida law, emergency room doctors must treat any patient who comes through the door, regardless of insurance status. Health insurers then are required to pay the doctors the lesser of either the usual and customary fees for similar services within the community, or a mutually agreed-on charge, within 60 days of a claim.

According to the suit, which was filed on behalf of emergency room doctors in Florida, health insurers were paying 120 percent of Medicare reimbursement rates. Lawyers for the class argued that this was below the usual and customary fees for similar services in the community.

The named plaintiff is South Florida orthopedist Peter Merkle. The HMOs named as

See Geller, Page AA11

Success in fee fight nothing to be embarrassed about

Eugene Stearns and **Mona Markus** of Stearns Weaver Miller Weissler Alhadeff & Sitterson led a successful battle to win a bigger share of the hundreds of millions of dollars in legal fees in the ExxonMobil class action lawsuit in Miami federal court.

After 11,000 gas station operators settled their suit, the lawyers who moved in and out of the case over its 15-year history began debating how to split 31.33 percent of the $1.1 billion award.

Stearns

Markus

In July, U.S. District Judge Alan Gold in Miami awarded Stearns Weaver 75 percent of the $325 million in legal fees, an increase over the 25 percent it would have received under a contested 1996 fee arrangement with Pertnoy Solowsky & Allen, which recruited Stearns Weaver.

Stearns Weaver claimed it was misled into agreeing to the arrangement by not being told how much work was left to do.

Pertnoy Solowsky filed documents last year claiming it had just learned that Stearns Weaver did not intend

See Stearns/Markus, Page AA11

TALENFELD From Page AA9

abled Florida residents. But the administration of Gov. Jeb Bush has taken aggressive steps to cut Medicaid spending, including controversial moves to remove some vulnerable groups from eligibility.

DCF's stated reason for the denial was that subsections of J.W.'s IQ test scores were a few points higher than the cutoff score of 69.

But after Talenfeld's victory in a recent appellate case, J.W. and other Floridians who score too high on certain sections of the IQ test still will be able to receive Medicaid benefits, as long as they lack the functional skills needed to independently survive in the community.

Talenfeld argued his client's case three times — once before a dependency division judge and twice at hearings before DCF officers. When an administrative hearing officer denied J.W.'s application for Medicaid waiver services through the Agency for Persons with Disabilities, Talenfeld appealed to the 4th District Court of Appeal.

In October, a 4th DCA panel unanimously reversed the administrative hearing officers' ruling and remanded the case for further proceedings. "We agree that the hearing officer used an erroneous legal standard in upholding the agency's denial of his application for waiver services," the court said in an opinion written by Judge Martha Warner.

Talenfeld said this decision opens the door for hundreds of people in J.W.'s situation to obtain Medicaid coverage. "This opinion confirms what I've always believed — that those standards are arbitrary and they have been arbitrarily enforced in eligibility determinations."

The case will go back to a hearing officer or an administrative law judge. But Talenfeld said he hopes DCF will recognize his client is eligible for Medicaid coverage without the need for another hearing.

Beyond the J.W. case, Talenfeld, 53, has dedicated hundreds of hours a year to helping children. In 2002, he founded Florida's Children First, a statewide nonprofit child advocacy organization devoted to protecting the legal rights of at-risk children.

In the past year, Talenfeld also has worked through Florida's Children First to help obtain an $8 million legislative appropriation for the guardian ad litem program.

On a pro bono basis, he is representing a Fort Lauderdale woman who wants to adopt a mentally disabled 6-year-old boy suffering from a brain injury resulting from being shaken as a baby. Talenfeld said his organization plans to use this case to lobby the Legislature to boost funding for people willing to adopt children with disabilities.

Talenfeld said he is drawn to cases involving developmentally disabled children because his younger sister Bess, 40, is mentally retarded. Talenfeld became Bess' guardian in 2001 after their mother died.

— Jordana Mishory

GELLER From Page AA10

defendants in the suit include Aetna Health, Vista Healthplan, Neighborhood Health Partnership and Health Options.

Attorneys for the HMOs had argued that even if Merkle had a valid claim, he would have to seek redress through arbitration.

Palm Beach Circuit Judge Jonathan Gerber had dismissed the suit, finding that Merkle did not have a private right of action under the state HMO Act. He also ruled that the HMOs received no benefit from Merkle, therefore the doctor had no valid claim for unjust enrichment.

But the 4th DCA panel reinstated three of the four claims in the original suit. The appellate court agreed that the plaintiff class had a right of action under the HMO Act and that arbitration hearings are not the only avenue for review of a claim. The court also said that since there is an actual dispute between the two parties, not just a hypothetical dispute, a request for declaratory relief is appropriate.

Geller said the seriousness with which the HMOs took this case was indicated by the fact that they were represented before the 4th DCA by prominent Washington, D.C., attorney Miguel Estrada of Gibson Dunn & Crutcher, who was nominated for an appellate court position by President Bush.

Geller called the 4th DCA ruling an "enormous" victory that will change the way HMOs pay doctors.

In addition to the HMO case, Geller helped represent a class consisting of motor vehicle drivers in a case against West Palm Beach-based Fidelity Federal.

The bank was accused of violating the federal Driver's Privacy Protection Act by purchasing the names and addresses of new vehicle owners from the state. In July, Fidelity Federal agreed to a $50 million class action settlement.

— Rebecca Riddick

STEARNS/MARKUS From Page AA10

to honor the 1996 agreement even though Stearns says the firms disagreed over the arrangement almost from the beginning.

Stearns said his firm's only obstacle to getting a larger piece of the pie was convincing Judge Gold that his firm's lawyers earned the money.

Stearns said that was the easy part.

He called Pertnoy Solowsky's argument "a silly position because no federal judge in the country has ever found such an agreement to be enforceable, and we didn't think that Judge Gold would be the first."

Stearns, who led the trial team, said: "He watched our work. He had certainly seen who did what."

Stearns Weaver also had to show how each firm claiming a stake in the fee contributed to the win and establish the value of their contribution, something that Stearns concedes is a thoroughly subjective analysis.

By using a variety of visual aids, Stearns and Markus demonstrated that simply looking at billing records was not a good way to properly estimate the value of each firm's work.

Stearns said he doesn't think the firm deserves any special recognition for its $149 million payday.

"The litigation over fees is an embarrassment, frankly," he said. Stearns insists his firm was ready to accept whatever portion of the fee Judge Gold felt was fair.

"What makes this unique is we didn't worry about it," he said.

— Carl Jones

PUBLIC INTEREST

Fire-fee case: Taxpayers won, others got burned

Miami solo attorney **Patrick Scott** said he started looking into Miami's infamous fire-fee case out of sheer curiosity. What he uncovered turned into a victory for Miami taxpayers and a legal and political debacle for Miami Mayor Manny Diaz, then-City Manager Joe Arriola and attorney Hank Adorno.

Scott was checking on a class-action case filed in Miami-Dade Circuit Court by property owners seeking restitution for a fire-rescue fee assessed on property taxpayers in the 1990s. In 2004, Miami-Dade Circuit Judge Peter Lopez said the fee was illegal after the Florida Supreme Court ruled in 2002 that emergency medical service could not be funded by special assessment. Estimates of the full refund amount exceeded $20 million.

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"I kept checking the public documents, but I couldn't get the information I wanted," Scott said. "Then the docket showed that it was settled, but there wasn't really a public announcement and the settlement seemed to remain a secret. That's when I started talking to Richard and Michael."

Scott called his friends **Michael G. Petit**, a trial lawyer with a Miami solo practice, and **Richard Williams**, another solo practitioner who generally handles complex commercial litigation.

The three attorneys formally intervened in the case and uncovered the settlement's now-notorious details.

Before the class was certified, the city had negotiated a $7 million settlement with the seven individual named plaintiffs. No other taxpayers would receive compensation. The statute of limitations had run out before the settlement became public knowledge.

Miami's infamous fire-fee case was a political debacle for the city's popular mayor, controversial city manager and prominent attorney Hank Adorno.

That left thousands of other Miami taxpayers out in the cold. Adorno & Yoss was ordered to pay back the $1 million in fees it already had received, out of a $2 million total legal fee.

Scott, Petit and Williams then intervened on behalf of a new group of plaintiffs, which was allowed to replace the original plaintiffs as class representatives. In March, Judge Lopez ruled that the seven original beneficiaries of the $7 million payout would have to give the money back.

The fire-fee case did political damage to Miami's popular mayor and his controversial city manager, who resigned not long after Judge Lopez's ruling. In addition, the case triggered a Florida Bar ethics investigations into the conduct of Diaz, Adorno, city attorney Jorge Fernandez and former assistant city attorney Charles Mays. The Bar investigation is pending.

— Forrest Norman

Patrick Scott, Michael G. Petit and Richard Williams uncovered Miami's $7 million settlement with the seven individuals.

FINALISTS

State's top rights defender will never be short of work

Randall Marshall, legal director for the American Civil Liberties Union of Florida, has had a tiring but successful year.

The First Amendment and other civil liberties have been under repeated assault in Florida, and Marshall and his colleagues have successfully fought to protect the rights of Floridians.

Marshall

In June 2006, the ACLU filed suit in U.S. District Court in Miami against the Miami-Dade County School Board for banning the book "Vamos a Cuba" from school libraries. The children's book, which is part of a series on the lives of children in different countries, favorably portrays life in Cuba under the Fidel Castro government.

In a nationally watched case, the ACLU argued that the book ban violated the First Amendment. Judge Alan S. Gold ruled in the ACLU's favor, stating that the board's decision to ban the book was improperly motivated by political viewpoint, as opposed to education policy. The School Board has appealed the ruling.

The ACLU also filed a First Amendment suit in the Southern District of Florida challenging the constitutionality of a new state law effectively banning state university professors and students from traveling to Cuba,

See Marshall, Page AA13

In fight over synagogue, he helped city get religion

Fort Lauderdale attorney **Franklin Zemel** says he gets no joy out of suing cities. But he's good at it.

The Arnstein & Lehr partner represented the Chabad-Lubavitch synagogue, part of the orthodox Jewish movement, in its yearslong legal fight against the city of Hollywood to stay in its Hollywood Hills location. The synagogue occupies two adjacent houses in the middle of an exclusively residential block, which it moved into in 1999.

Zemel

The city, despite proclaiming that its zoning laws prohibited the presence of a synagogue in residential areas, settled with Chabad for $2 million in July after U.S. District Judge Joan Lenard in Miami held that the city's rules violated the First Amendment.

"The days when cities thought they could just ignore houses of worship and dare them to file suit, I think those days are over," Zemel said.

The settlement allows the Chabad to stay in its two Hollywood Hills houses. The settlement, which was strongly opposed by the synagogue's neighbors and Mayor Mara Giulianti, also enables the synagogue to rebuild the homes and expand its base

See Zemel, Page AA13

MARSHALL From Page AA12

Iran, Libya, North Korea, Sudan and Syria for study and research, even with private funding. A ruling is expected later this month.

In addition, the ACLU sued the Palm Beach County School Board and the state Board of Education in the Southern District of Florida on behalf of a student who refused to stand during the Pledge of Allegiance. U.S. District Judge Kenneth Ryskamp ruled unconstitutional the statute requiring students to stand to recite the pledge or get parental permission to be excused. The state has appealed.

The ACLU also won a Fourth Amendment suit against the Tampa Sports Authority challenging the authority's random pat-down searches of football fans at the Raymond James Stadium for Tampa Bay Buccaneers games. As a result, stadium officials are prohibited from conducting patdown searches.

The ACLU also prevailed against Polk County in a suit challenging the county's decision to establish a "First Amendment Zone" that was available only to those who could afford to buy $500,000 of insurance. The court ordered the county to allow the ACLU and other groups to put on displays without insurance.

The ACLU also has litigated to challenge a law requiring parental notification for minors' abortions on behalf of several individuals who were denied judicial bypasses of the requirement. The ACLU is trying to set legal standards for bypasses through the appellate courts.

To help cope with incursions on civil liberties, the ACLU of Florida has hired four new attorneys to assist Marshall. That includes one attorney to focus on gay and lesbian issues, two to handle racial and voting rights issues, and one to concentrate on reproductive rights. Previously, the organization had only one-and-a-half attorneys to handle legal issues in Florida.

Randall Marshall is 'not interested in schmoozing or going to bar functions. He focuses on getting the work done, says one ACLU colleague.

While many lawyers in nonprofit organizations receive less pay but work shorter hours compared with law firm practice, Marshall receives less pay and still works long hours, frequently answering e-mails and phone calls on weekends.

During the fierce legal fights in 2004 and 2005 in the Terry Schiavo end-of-life case — in which the ACLU played a major role in writing the briefs challenging state and federal legislation to continue her artificial feeding and hydration — Marshall oversaw teams of lawyers around the country. He worked around the clock to make sure daily briefing deadlines were met.

"He's a practical, no-nonsense person," said Rebecca Steele, the Tampa-based regional director of the ACLU of Florida. "He's not interested in schmoozing or going to bar functions. He focuses on getting the work done."

"I think we've been doing quite well this year," said Marshall, 55, who joined the ACLU in 2000. "Whenever I hear of civil liberties problems going on around the country, I say, 'We have all those problems in Florida.' Florida is a challenging state."

— *Julie Kay*

ZEMEL From Page AA12

within a four-block radius, without any special permit. In addition, Hollywood must rewrite its zoning laws.

"I always knew that we would win," Zemel said. "Their code was so blatantly unconstitutional."

In 1999, the Chabad purchased two homes on North 46th Avenue in Hollywood Hills and converted them into houses of worship. Neighbors continually complained about the noise and parked cars. The city initially granted the religious group a temporary permit in 2000, followed by a permanent special operation permit in 2003. But several months later, the city yanked the permit, citing its zoning codes.

In 2004, the Chabad filed a discrimination suit against the city and City Commissioner Sal Oliveri, claiming that Hollywood's zoning laws violated the Religious Land Use and Institutionalized Persons Act of 2000. This act requires religious and nonreligious entities to be treated equally. The following spring, the U.S. Department of Justice joined the religious discrimination suit.

According to Zemel, the Hollywood Hills Chabad house is still operating and is growing. He said it hasn't expanded in size, and doesn't know if it ever will.

Zemel said the high-profile nature of the case helped send a message to other cities. He has received calls from religious groups around the country seeking help.

Zemel is also representing a rabbi in Cooper City who has been unable to obtain a license for his Chabad outreach center because the city's code prohibits houses of worship from operating in commercial areas.

Zemel credits the Cooper City government for working to improve its codes. Last month, the city changed its zoning rules to allow houses of worship to operate in office parks and recreation districts.

But Zemel said that if the city doesn't allow religious groups to operate in commercial districts, he will file suit. "They didn't fix all the problems and they still haven't made any effort to remedy past discrimination," he said.

Still, Zemel said none of his other cases compares with the Hollywood case. Zemel said his wife, Karen, was so "disgusted" by the way the City Commission handled the case that she is planning to run for a seat that recently became vacant with the suspension of Commissioner Keith Wasserstrom, who is under indictment on corruption charges.

"Nothing I have seen comes close to the circus of city hall in Hollywood," Zemel said.

— *Jordana Mishory*

CRIMINAL JUSTICE

On second try, prosecutors win conviction of a prominent banker

After a judge declared a mistrial in the first bank fraud case against former Hamilton Bank chairman and chief executive Eduardo Masferrer last year, federal prosecutors **Peter Outerbridge**, **Ben Greenberg** and **Andrew Levi** vowed that they were not going to lose the second time.

Masferrer, 57, a prominent Miami businessman and civic leader, was accused of defrauding investors and depositors out of nearly $22 million. Prosecutors charged Masferrer with misstating the true value of some bad Russian loans and swapping those loans with Latin American loans without revealing the swap, as the law requires. They also charged him with lying to banking regulators in an effort to cover up the scheme.

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The three assistant U.S. attorneys, led by 27-year veteran Outerbridge, spent lots of time strategizing. For many months, they took over the conference room at the U.S. attorney's office in Miami. They kept reams of documents on the shelves and spent 16-hour days camped out in the room, leaving only for quick meals at the Bayside Marketplace.

The prosecutors started out by divvying up the work. Levi, 40, was assigned to issues dealing with investors and analysts, as well as interpreting data from Bloomberg News, the financial reporting service. Outerbridge, 52, handled the "flippers," two former employees of Masferrer who pleaded guilty in exchange for testifying against their former boss. Greenberg, 34, oversaw outside bankers and traders who testified for the prosecution.

Serving Lady Justice: Federal prosecutors Ben Greenberg, Peter Outerbridge and Andrew Levi won a conviction in Eduardo Masferrer's $22 million fraud case.

The prosecutors took the rare step of hiring a jury consultant, Nona Dodson of Cathy E. Bennett & Associates in Lewisville, Texas. The U.S. attorney's office doesn't often fund this type of effort. But the three prosecutors persuaded U.S. Attorney Alex Acosta to do so because of the importance of the case.

They also enlisted the help of a full-time case agent who is a trial technology specialist. That enabled the team to post documents on computer monitors for the jurors. Additionally, they were assisted by a financial consultant and three paralegals.

The prosecutors realized that jurors may not have grasped the complex financial details during the first trial. Preparing for the second trial, they constantly ran facts and arguments past friends, relatives and other prosecutors to simplify their presentation of the case. They also decided to put more alleged victims on the stand during trial, to show jurors the human face of the crime.

At the suggestion of their jury consultant, they also hired focus groups to use as mock jurors and test strategy.

Another new strategy for the prosecution was to file motions to exclude testimony that the Russian loans were paid off, about Masferrer's charitable contributions to the community and about how Hamilton Bank officers did an independent analysis of the suspect loans and found them proper.

U.S. District Judge K. Michael Moore agreed to the exclusions. Defense attorneys cited that as the main reason they lost the case.

The prosecution's efforts paid off. After a 17-day trial and two hours of deliberations, jurors returned a guilty verdict in May. Judge Moore sentenced Masferrer to 30 years in prison and ordered him to pay $31 million in restitution.

— Julie Kay

FINALISTS

Slots defense strategy left nothing to chance

Miami criminal defense attorney **David O. Markus** challenged a prosecutor to a game of slots to win an acquittal for his client on charges that she ran an illegal gambling house in Pompano Beach.

Gale Fontaine, a Broward County woman, operates several establishments in Broward and Palm Beach counties featuring slot-type machines that pay out coupons for small prizes instead of cash jackpots. She was charged in November 2005 by the office of Broward County State Attorney Michael Satz for running the Tropicana arcade.

Markus

State law makes it a third-degree felony for anyone other than a Broward pari-mutuel facility to operate a facility with slot-type machines — unless the machines require some level of skill by the players. While other operators of such machines have pleaded to misdemeanors and closed their arcades, Fontaine wanted to go to trial and defend her business.

Markus' defense focused on whether Fontaine's machines could be beaten by skilled and experienced players. He had regular players testify about the tactics they used to win, and even challenged the prosecutor to play head-to-head against one of the patrons. The prosecutor, Gregg Rossman, refused.

See Markus, Page AA15

Roy Black's aggressive strategy kept broadcaster Limbaugh out of jail

Miami criminal defense lawyer Roy Black helped keep Palm Beach County's most famous alleged drug abuser out of jail.

In 2003, the National Enquirer reported that conservative radio host Rush Limbaugh, who lives part of the year in Palm Beach, illegally purchased and possessed thousands of powerful prescription pain pills worth hundreds of thousands of dollars. The drugs he allegedly obtained included powerful OxyContin, sometimes known as hillbilly heroin.

Black

Limbaugh quickly admitted publicly that he was addicted to prescription painkillers, announced that he was going into a short drug rehabilitation program, and hired Black, of Black Srebnick Kornspan & Stumpf, to represent him. The police and the office of Palm Beach County State Attorney Barry Krischer launched an investigation.

Krischer's office ended up exploring possible charges that Limbaugh withheld information from a medical practitioner to get the doctor to prescribe pain pills. So-called doctor shopping is a third-degree felony.

But this past May, Black helped orchestrate a quiet ending to the case that spared Limbaugh jail time.

Under the agreement with Krischer's

See Black, Page AA15

MARKUS From Page AA14

But Markus believes the key to winning the case was Fontaine's testimony. "The real turning point," he said, "was when she took the stand, because she came across like a truthful and honest person."

More than 300 senior citizens packed the courtroom every day during the trial and held rallies outside the courthouse in support of Fontaine.

Fontaine was acquitted by a jury after a week-and-a-half long trial held in August before Broward Circuit Judge Michael Kaplan. The acquittal is thought to be a first for anyone charged under the state anti-slots law.

"This is why I became a lawyer — for people like her," he said. "She's a great person who believed in her business and was willing to go to trial."

Markus said Satz's office still is charging Fontaine separately for operating her other slots facilities. "She will not back down," Markus said.

— Carl Jones

BLACK From Page AA14

office, Limbaugh agreed to participate in a pretrial diversion program designed for first-time drug offenders. He must undergo periodic drug testing and participate in a drug rehabilitation program for 18 months. He also had to pay the county $30,000 to cover the cost of its investigation.

If Limbaugh successfully completes the program, the doctor-shopping charges will be dropped and his record expunged.

Black went on the offensive from the start, an approach he has become famous for in other cases. He fought efforts by prosecutors to view Limbaugh's medical records, and appealed the issue all the way to the Florida Supreme Court, which declined to hear the case. In the end, however, Krischer's office was only able to see a limited number of files.

That significantly delayed the case and forced Krischer's office to expend scarce resources on a case some observers thought shouldn't be brought. Prosecutors also were stymied in their efforts to obtain testimony from Limbaugh's personal doctor.

Black said his vigorous defense approach helped his client obtain a much better deal than he might have otherwise received. "We're a firm believer that you've got to battle them tooth and nail," he said. "And many times things will work out much better."

Limbaugh's political notoriety played a role in the case, making it harder to defend. "I would think [Limbaugh's] celebrity and his controversial nature caused the prosecution and police to doggedly go after him," Black said.

Another issue Black had to worry about — which is unique to celebrity clients — was making sure he didn't say anything or include anything in motions that would harm Limbaugh's public reputation.

At the time the deal was made in May, Krischer spokesman Michael Edmondson said Limbaugh's case ended in an outcome that's common for first-time offenders. Other observers, however, say Limbaugh got off light because of Black's aggressive efforts.

— Rebecca Riddick

CORPORATE

Bond provided vital funds to insurer of last resort

Albert del Castillo called the bond deal historic. Rather than search for financing after a catastrophe, Citizens Property Insurance created a fund in advance.

Albert del Castillo, a partner with Squire Sanders & Dempsey in Miami, led a team of the firm's attorneys from Miami and Tampa as bond counsel for Citizens Property Insurance in the largest new-money municipal bond deal in state history.

The bond deal will provide Citizens with $3.05 billion. The financing will ensure the state-chartered insurer of last resort will have almost enough resources to meet the needs of a once-in-a-century storm.

MOST EFFECTIVE LAWYERS 2006

Citizens ran up a $1.7 billion deficit after back-to-back hyperactive hurricane seasons in 2004 and 2005.

"Citizens is a very important entity here to provide windstorm insurance," del Castillo said, noting that hundreds of thousands of Floridians might otherwise go without windstorm insurance for their homes.

The deal, which closed June 28, was structured with 22 series, each bearing interest at variable rates to be determined through a Dutch auction. The auction gradually lowers the auction price until it sells at an acceptable bid. Series 1 though 10 sold on a seven-day schedule, while Series 11 through 22 were on a 28-day schedule. The first auction was July 10. The rolling schedule allowed the interest rate to continually change.

Del Castillo called the bond deal historic, not just for its size, but also for its substance. Rather than search for financing after a catastrophe, Citizens created a fund in advance. Because the bonds are "pre-event" bonds, they are taxable.

Due to the large size of the deal, there are four senior co-managing underwriters — Bear Sterns, Citigroup, Merrill Lynch and UBS — and 10 smaller underwriters and four bond insurers.

Del Castillo also worked to provide Citizens with a $750 million bond that was named Bond Deal of the Year by Bond Buyer magazine in 2004. This year's deal was cited by the magazine when ranking the most active bond counsel. Squire Sanders & Dempsey was ranked fourth nationally.

— Rebecca Riddick

Storm preparation: Albert del Castillo helped plot a $3 billion bond deal for Citizens Property Insurance, the insurer of last resort in hurricane-prone Florida.

FINALISTS

Greenberg Traurig team helped wed Codina Group, big landowner

A team of Greenberg Traurig attorneys helped close Florida East Coast Industries' $270 million purchase of the Codina Group.

The Miami-based Greenberg team was led by partner **Ira Rosner** and included partner **Michele Keusch**.

Rosner

Keusch

The deal for the Coral Gables-based private industrial group was signed in January and it closed in April. The Greenberg team was brought on board in October 2005, toward the end of the negotiation process, to work on due diligence and draft documents. The Greenberg lawyers ended up working on all aspects of the deal, including land-use and environmental issues.

"This was a unique asset and a unique marriage," Rosner said.

St. Augustine-based Florida East Coast, a publicly traded company, was founded by railroad tycoon Henry Flagler. It is the parent company of Flagler Development and Florida East Coast Railway. The Codina Group's founder was Armando Codina, a powerful Miami area developer and former business

See Rosner/Keusch, Page AA17

Despite numerous detours, $780 million deal got delivered

Holland & Knight Miami partners **Rodney Bell** and **Tammy Knight** helped put together a $780 million cash asset sale of Lakeland-based Watkins Motor Lines' service centers, tractors and trailers to Memphis-based FedEx.

The sales agreement was signed May 26 and closed in September. It included more than 14,000 tractors and trailers and 140 service centers across the United States and Canada. Bell said because it was an asset transfer, each different item — including all the trucks, trailers, service centers and equipment — had to have its title transferred individually.

Bell

Knight

Knight estimated that in larger deals like this, nearly 95 percent of companies would normally merge or one would purchase the other's stocks. Knight said asset transfers are unusual in deals like the Watkins-FedEx one because it has so many moving parts, including all the service centers.

"It was like 140 different real estate deals," Bell said.

Bell and Knight led a

See Bell/Knight, Page AA17

ROSNER/KEUSCH

From Page AA16

partner of Gov. Jeb Bush.

Rosner said the Codina Group's desirable assets included plenty of developable land. Keusch said the acquisition of the Codina Group by Florida East Coast Industries, which owns major acreage upstate, was important to allow the company to grow in South Florida.

Florida East Coast's stock price has increased since the acquisition. Company revenues have increased 17 percent over the past year, and the company's stock price was up 38 cents in the third quarter of 2006 compared with same period a year earlier.

The deal was uniquely structured. The Greenberg attorneys set up a holding company so that Florida East Coast could purchase Codina Group without needing the approval of FECI's shareholders.

The purchase price included $168 million in equity, $36 million in debt that was assumed or repaid at closing, and transactions totaling $66 million in which subsidiaries of Florida East Coast bought Codina Group land with tax-deferred sale proceeds. Ninety-two acres at Beacon Commons in Doral and the 457-acre Beacon Countyline industrial site in Hialeah were included in the deal.

Work on the deal was interrupted by Hurricane Wilma, which forced the Greenberg attorneys to camp out in conference room at White & Case during negotiations. White & Case represented the Codina Group. Other Greenberg lawyers involved included partners Lorne Cantor and Gary Epstein.

— Rebecca Riddick

BELL/KNIGHT

From Page AA16

team of nearly 40 Holland attorneys who worked on parts of the deal ranging from transferring assets to due diligence work.

Watkins Motor Lines was founded by Bill Watkins in 1932 with a red Dodge pickup truck. The privately held company generated more than $1 billion in revenue in 2005. Under the deal, Watkins, which specializes in long-haul, less-than-truckload units, was rebranded as FedEx National LTL. Although the entire trucking business has been sold to FedEx, the company owns other businesses including real estate development and seafood restaurants.

FedEx Freight reported $3.6 billion in revenue in its latest fiscal year.

The attorneys declined to comment on why Watkins decided to sell and why it decided to do the deal as an asset transfer.

Knight said in most large company sales, the purchasing company buys stocks. Because FedEx purchased Watkins' assets, it was not liable as a successor company to any potential lawsuits against Watkins that could pop up in the future, Knight said.

In addition to transferring titles and leases for the trucks and properties, each Watkins customer had to sign a consent agreement. Every Watkins license, including those for its computer programs, had to be transferred to FedEx.

This transaction allowed the FedEx freight division to expand its service operations by 42 percent and its trucking operation by 28 percent.

Knight, 33, said transferring all the assets in a three-month period during the summer was challenging. The Nova Southeastern University law school graduate said although there was no exact deadline for the deal to be finished, everyone was pushing to close as soon as possible.

"Vendors were on vacation," she said. "We were chasing people around who were not available. We'd get a message that they'll be out for three weeks, but we don't have three more weeks."

Bell, 38, who heads Holland's securities practice in South Florida, said his firm has represented the Watkins family before but this transaction was his and Knight's first time working with them.

Bell, a New York University law school graduate, has been a partner at the firm for more than six years. Knight, also a corporate and securities attorney, has been a partner for a year.

— Jordana Mishory

REAL ESTATE

Land deal to create new city, wildlife conservation tract

When West Palm Beach developer Syd Kitson decided in April 2005 to make a bid for a piece of the giant Babcock Ranch in southwest Florida, he knew the odds against success were long.

The state had been trying for years to purchase the entire 91,000-acre property to create a wildlife conservation tract extending from Lake Okeechobee to the Gulf of Mexico. It had been rebuffed repeatedly.

So Kitson turned to Akerman Senterfitt shareholders **Teddy D. Klinghoffer** and **Andrew M. Smulian**, chairman of the real estate practice group, for assistance in attempting a new approach. The result was one of the biggest Florida real estate deals in memory.

MOST EFFECTIVE LAWYERS 2006

"We knew that one of the main obstacles to a state purchase had always been the fact that the state only wanted to buy the land," Klinghoffer said. "But for tax reasons, the Babcock family members were only willing to sell the stock in the parent company."

So the Akerman lawyers first put together a joint venture combining Kitson & Partners with Morgan Stanley Real Estate Fund and Evergreen Partners as key providers of equity financing.

Backed with such financial firepower, Kitson was able to make an offer to the family, which was represented by White & Case, for the Babcock Co. and its primary asset, the Babcock Ranch. The vast acreage includes cypress swamp, native grassland, flatwoods and land used for agricultural operations.

"That made the family happy," Klinghoffer said. "Kitson then was able to sell the state and Lee County the land they wanted for the wildlife corridor."

Going green: Andrew M. Smulian, left, and Teddy D. Klinghoffer worked the sale of a 91,000-acre property that includes cypress swamp, native grassland, flatwoods and land used for agricultural operations.

Once the problem of structuring the deal was solved, negotiating a price did not prove too difficult. Although the 42 Babcock family shareholders did not reveal it publicly, the transaction was valued at $500 million. The Kitson joint venture then recouped most of its investment, getting $310 million from the state and $40 million from Lee County for the sale of about 74,000 acres for the wildlife corridor.

Klinghoffer said it was one of the most complicated deals he has ever done. "I had 15 or 20 people in my firm working on it. There was a lot of tax work, a lot of corporate stuff, joint venture work, environmental due diligence. We even had employment lawyers doing some work on it, because the ranch had several ongoing businesses on it."

It was also a lengthy process, Klinghoffer said, "because there were so many contingencies that had to be thought through. What happens if the state didn't come up with the money, for example?"

The deadline had to be extended 10 times. Two days before the July 31 closing, the attorneys discovered that the maps being used by the buyers and the state did not match. There was a 17-acre discrepancy in the boundaries of the parcels. A surveyor had to be dispatched in the middle of the night to ascertain the correct property lines.

Kitson now will turn 17,000 acres of the property into a new town with 18,000 residences, offices, schools and 150,000 square feet of space for government and civic uses.

It's not every day that a law firm gets the opportunity to play midwife at the birth of a brand-new city. Klinghoffer said he's equally pleased that the deal accomplished a conservation goal that had eluded state officials for years: establishing the wildlife corridor.

— Dan Cordtz

FINALISTS

He worked 13-piece puzzle, made all the players happy

Miami attorney **Oscar Rivera** had to juggle closings on the sales of 13 parcels held by six owners so they all would close simultaneously. That was the unusual way the Altos Plaza project in Little Havana was pitched.

"It was a crazy deal," said Rivera, a partner at Siegfried Rivera Lerner De La Torre & Sobel, which concentrates on construction law.

Rivera

The Altos Plaza project, planned for three blocks between Southwest First and Third streets, would be made up of two 24-story towers. Expected tenants include a Publix Sabor, a Hispanic-oriented cousin to the Florida grocery chain, 40,000 square feet of office space, and 335 residential units.

Rivera represented Miami-based B Developments, a company that partnered with Tampa-based Brandon Partners for the project. Brandon put the properties under contract, and B Developments worked with a New York-based lender that Rivera declined to identify.

When B Developments told Rivera of the plan to close on the 13 parcels simultaneously, he said he was shocked at its complexity. "I looked at my client and said 'My God, this is a hornet's nest,' " Rivera said. "But we tightened our belts and said, 'Let's do it.' "

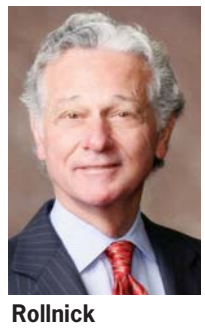
See Rivera, Page AA19

Apartment sale required patience and ability to multitask

Neil S. Rollnick, partner and chair of the real estate practice group with Adorno & Yoss in Coral Gables, negotiated the $86 million purchase of Emerald Dunes, a 486-unit apartment complex in West Palm Beach.

Rollnick represented buyer Allen Greenwald, the principal behind Villas at Emerald Dunes LLC.

Greenwald expressed his interest to Rollnick in the property at 6442 Emerald Dunes Drive in the summer of 2004 while the property was under construction.



Rollnick

Greenwald was interested in converting it into condominiums.

From there, Rollnick had wide latitude to negotiate with Texas-based seller Fairfield Emerald Dunes L.P.

Negotiations proved difficult as the selling investment partners became nervous about the purchase price and put the property on the market through a broker.

"This matter took a tremendous amount of diligence," Rollnick said.

He maintained talks with the seller, the seller's attorney and the broker.

"Through that process, I negotiated a purchase and sale that was acceptable to the broker, to the seller, to the seller's moneyed partner and to my client,"

See Rollnick, Page AA19

FINALISTS

A passion for property rights, a $10.5M check for tire maker

When the Florida Department of Transportation wanted to annex Bridgestone Aircraft Tires Inc.'s Miami facility to expand two state roads, the company wasn't going to give up its 3.3- acre property without a fight.

The tire manufacturing facility needed to establish a factory in a new location before it lost its old one. And that new facility needed certification from the Federal Aviation Administration.


Tobin

So the company hired attorney **Mark Tobin**, a partner at Brigham Moore in Coral Gables, which focuses on representing property owners in eminent domain cases.

Tobin helped settle the case for $10.5 million — nearly 250 percent of what FDOT initially offered. In addition, this settlement enabled Bridgestone to stay in its current location near Miami International Airport until at least June 2007, as it prepares to move to Mayodan, N.C.

"It is extraordinarily challenging, because we didn't want the patient to die on the table," Tobin said of the case. "We were very careful and committed to ensuring the transition would be smooth so [Bridgestone] would have no interruption in its business."

Bridgestone remanufactures used tires for commercial airlines and the military.

In September 2005, FDOT filed its takings case against Bridgestone in Miami-Dade Circuit Court. The department offered Bridgestone $3.8 million for the facility, which has more than 46,000 square feet of enclosed space situated on the 3.3-acre site.

Tobin said he first tried to limit FDOT's acquisition to a smaller portion of the property, which he believed was all the government needed for its road improvement.

FDOT wanted to use the land for its interchange improvement project at State Roads 826 and 836.

In June, Bridgestone agreed to accept FDOT's offer of $10.5 million. In addition, the government is paying $1.4 million in attorney fees and to help pay for Bridgestone's relocation. Judge Maria Espinosa Dennis entered the final judgment on Oct. 6.

According to Tobin, Bridgestone will pay FDOT a reduced rent as its transitions into its new facility.

Tobin, a 43-year-old University of Miami law school graduate, said one of the most challenging parts of the deal was finding reliable and current market data to demonstrate the facility's high value.

Tobin has been with Brigham Moore in Coral Gables for his entire legal career, joining the firm in 1987. He sees his eminent domain work as a personal cause.

"There are very few issues as fundamental to our freedom as being able to own property," Tobin said. "When oppressive regimes fall, one of the first things you hear about is giving citizens the right to own private property. [That freedom] is precious and worth protecting."

— Jordana Mishory

RIVERA *From Page AA18*

Some of the closings went easily, but others took extra pressure from brokers, Rivera said. But the true crisis erupted when one seller, an insolvent liquor store, asked a federal judge to hold onto the property so it could keep its substantial liquor inventory. The motion by Only Liquors Inc. might have sunk the whole project.

With the bankruptcy judge set to rule on whether the liquor store could stay, Rivera scrambled for a contingency plan. "Up until the last minute, we were trying to come up with alternative ideas," he said. Those included working with the lender to extend the closing dates, and rearrange other terms of the financing deal.

In the end however, Rivera negotiated with the seller's attorney to close on the property by the closing date, and let the owner take control of the remaining inventory.

The challenges were exacerbated by the fact that the parties were spread throughout Florida and New York. "It just took a lot of logistical coordination to put things together," he said.

Rivera said the project called for a lot of late nights, but all the parties ultimately were satisfied. "Real estate lawyers have a different mentality than litigators," he said. "We all need to work together to make sure that at the end of the day, everybody's happy."

— Carl Jones

ROLLNICK *From Page AA18*

Rollnick said.

He also introduced Greenwald to another client, Mellon United National Bank, which went on to finance the full purchase price.

Emerald Dunes was still under construction when it changed hands in two phases. A $58 million segment closed in February, and the second phase closed in September.

"The area in which I was effective more than anything else — which is what I do for my clients — is I got the deal," Rollnick said.

— Daniel Ostrovsky

CIVIL LITIGATION

Hospital negligence case yields record award

Coral Gables attorneys **Ervin Gonzalez** and **Deborah J. Gander** won the largest federal tort claims verdict ever awarded in the United States on behalf of a child who suffered a catastrophic brain injury before delivery in a Jacksonville naval hospital.

The $61 million verdict came in November 2005, after a three-week bench trial before U.S. District Judge Jose A. Gonzalez Jr. in Fort Lauderdale. At trial, the two plaintiff attorneys from Colson Hicks Eidson in Coral Gables showed how negligence at the Navy Hospital of Jacksonville led to the injury suffered by Kevin Bravo Rodriguez.

MOST EFFECTIVE LAWYERS 2006

The verdict has since been reduced to almost $41 million — still a record for a federal tort claims case. Judge Gonzalez reduced by $10 million each the pain and suffering awards for Kevin's parents. Federal sovereign immunity law does not limit the amount collectable by the plaintiff. The government has appealed the verdict.

The Federal Tort Claims Act requires all cases against the U.S. government be decided by a judge, not a jury. Shortly after the trial, Kevin's father, Oscar Rodriguez, a resident of Miami-Dade County, shipped off to Iraq for naval duty.

The mother reported to the hospital for an induced delivery early in the morning on June 10, 2003. The fetus was healthy but late.

Her water broke at 4 p.m. that day and there were signs of fetal distress. But the doctors and hospital staff took no immediate steps to deliver the baby.

Kevin Bravo Rodriguez suffered a catastrophic brain injury before delivery in a Jacksonville naval hospital. The child died last month and his father has been shipped off to Iraq.

The fetal heart rate decelerated through the night. By the next morning, the heart rate had crashed.

Doctors delivered the baby by Caesarean section, more than 29 hours after the mother had arrived at the hospital. Kevin was blue, had no heart rate and was not breathing. After 15 minutes of CPR and three epinephrine injections, he was resuscitated. But he had been without oxygen for too long, and suffered a catastrophic brain injury.

Last month, Kevin developed pneumonia and died at age 3.

Gonzalez said he had concerns about trying the case before a judge without a jury but that his trial team handled the case the same as if it had been a jury trial. He brought in experts and recreated a day-in-the-life of Kevin.

U.S. Sen. Bill Nelson, D-Fla., launched an investigation of the problem-prone hospital after the trial concluded because of information that came to light in this case.

— Rebecca Riddick

Record result: Ervin Gonzalez and Deborah J. Gander earned a $61 million award, which has since been reduced to $41 million.

FINALISTS

A big defeat is transformed into an exhilarating victory

In a stunning reversal of fortune, **Jonathan Goodman**, a partner at Akerman Senterfitt in Miami, and his trial team got a $78 million federal jury verdict overturned by the trial judge.

The verdict originally was awarded last December to the plaintiff, AlphaMed, a Largo-based pharmaceutical company that had sued a larger company, Arriva Pharmaceuticals in California, for theft of trade secrets. Goodman represented Arriva.

Goodman

The jury verdict was the biggest loss of Goodman's 23-year legal career. So when U.S. District Judge Cecilia M. Altonaga, in an unusual move in June, granted Arriva's post-verdict motion for judgment as a matter of law and overturned the jury verdict, Goodman — who was on a skiing vacation when he received the news — said he felt exhilarated and vindicated.

AlphaMed attorney James McDonald, of Squire Sanders & Dempsey in Miami, has appealed Judge Altonaga's ruling.

The case was one of several filed around the country after two founders of a drug company had a bitter split. John Lezdey, a chemist, and Dr. Alan Wachter, a physician, were involved in the invention of a drug called Alpha 1-antitrypsin, which they claim can be used to treat maladies ranging from

See Goodman, Page AA21

Fisher Island developer avoids costly upgrades

Alan T. Dimond, a shareholder at Greenberg Traurig in Miami, successfully represented the developer of swank Fisher Island in litigation that centered on whether the developer had a contractual obligation to improve the island's transportation system and parking.

Fisher Island is an exclusive residential community south of South Beach and close to the Port of Miami. The island is home to some of the wealthiest residents in South Florida. Entertainer Mel Brooks, lawyer Roy Black and BCBG designer Max Azria all own property on the island. Former residents include talk show queen Oprah Winfrey and tennis great Boris Becker.

Dimond

Eight years ago, the now-defunct Mutual Benefit Life Insurance Co. in New Jersey, which owned the island at the time, decided to sell its interest in the island. That touched off protracted litigation between Mutual Benefit, the residents of the island and developer Fisher Island Holdings LLC.

Under an agreement with Miami-Dade County, the developer is prohibited from building a bridge or a causeway to Fisher Island. Thus, the island is accessible only by ferry.

The residents of Fisher Island sued the

See Dimond, Page AA21

FINALIST

Critical jurisdictional victory results in $30 million award

It took almost two years to get a decision allowing a breach of contract claim filed by **Leoncio de la Pena** against one of the wealthiest Salvadoran families to be heard in the United States.

The hard worked paid off.

Just three months after de la Pena cleared a key jurisdictional hurdle, a Miami-Dade Circuit Court judge awarded $30 million in September to his client, an international investment company.

De la Pena

Northern Ireland-based Valat International Holdings sued the Safie family and its telecommunications and textile businesses in September 2004 for failing to repay nearly $30 million in loans and interest owed to the now-defunct Hamilton Bank in Miami.

Valat picked up the loans when the Federal Deposit Insurance Corp. auctioned off the assets of the seized bank. The suit claimed the Safies personally guaranteed payment but didn't make any after Valat assumed the loans.

The Safies claimed the case belonged in their homeland of El Salvador because that's where they lived when they received the loan from Hamilton.

But de la Pena of de la Pena Group in Miami said the loan documents specified Florida law would be applied to any disputes.

Judge Mindy Glazer denied the defendant's motion to dismiss in June. She followed by granting summary judgment in favor of Valat and ordered the defendants to repay their loans.

Valat International Holdings sued the Safie family and its telecommunications and textile businesses for failing to repay nearly $30 million in loans and interest owed to the now-defunct Hamilton Bank in Miami.

"These guys knew that once we prevailed on jurisdiction, it would be a rolling locomotive going downhill against them," de la Pena said. "That's why they put the bulk of their fight" on jurisdiction.

The breach of contract case was filed against Oscar Antonio Safie, his son, wife and daughter-in-law. Other named defendants included their telecom company El Salvador Networks and two textile firms, Rayones de El Salvador and Hilanderias de Exportacion.

The defendants filed a notice to appeal in October.

De la Pena said the fight over attorney fees is about to begin. He said he and his team are seeking fees in excess of $8 million.

He also has initiated litigation in El Salvador to domesticate the judgment. He said other upcoming litigation includes a fraud suit against the defendants alleging they have transferred assets to other entities under their control.

As of now, Valat has identified and intends to seize $1.5 million in U.S. assets, de la Pena said.

— Jordana Mishory

GOODMAN *From Page AA20*

ear infections to emphysema. The drug is not yet on the market.

Lezdey wound up at AlphaMed and Wachter at Arriva. Both men continued their race toward clinical trials and FDA approval, with great animosity between them. The two sides traded allegations of private investigators sifting through trash, gunfire directed at doctors' offices, pepper spray attacks and death threats against clients.

In 2003, AlphaMed sued Arriva in Miami, alleging misappropriation of trade secrets, tortious interference with a business relationship and unfair competition. Arriva was represented by Goodman and Akerman lawyers Carolina Maharbiz, Sam Heywood and Julie Nevins.

Goodman knew he would have a hard time going into trial, since his client acknowledged sifting through AlphaMed's trash and contacting the FBI. A retired FBI investigator, George Spinelli, became a co-defendant in the case, accused of pulling trade secrets from the trash.

"We were dealing with a very provocative set of facts that we knew could make a jury upset, even though we knew we were justified," Goodman said.

Goodman drafted much of the 40-page motion for judgment and conducted the two-and-a-half hour oral argument. When Goodman presented the motion pretrial, as is typical, Judge Altonaga denied it, but left the door open for a post-trial motion. When Goodman presented the same motion post-trial, she agreed with many of Goodman's arguments and ruled in his favor.

In her lengthy ruling, she cited Florida's "new business rule" statute, which states that while existing, profitable companies can sue for damages when their operations are interrupted, start-up companies with no track record of profits have a higher burden to overcome. She also wrote that "only a miniscule percentage of drugs in development ever reaches the commercial market."

It's unusual for a judge to override a jury verdict, and AlphaMed has appealed Altonaga's ruling. The two sides are scheduled for mandatory mediation on the matter this month.

— Julie Kay

DIMOND *From Page AA20*

developer in 1998 in Miami-Dade Circuit Court, alleging that under the agreement with the county the developer was obligated to build a number of facilities to improve the island's transportation system. The residents were represented by David Freedman of Burlington Schwiep Kaplan & Blonsky in Miami.

"This is what you call complex civil litigation — a cliché that's overused," Dimond said. "It was complicated in a sense that it involved a lot of participants, lengthy documents and expert opinion."

Both sides had to present their interpretation of contract language and present experts to testify about the necessity of the improvements to the transportation system.

The facilities the residents argued the developer was obliged to build included off-island parking facilities for Fisher Island employees, permanent barge facilities and permanent backup facilities for moving vessels to and from the island. The facilities would have cost the developer more than $30 million.

A trial was held in June before Senior Judge Herbert Stettin. Under an agreement between the parties, the trial was held at the Miami offices of Greenberg Traurig. Because this was a trial and not an arbitration, the parties were able to appeal Herbert's decision.

After listening to experts from both sides on the technical necessities of transportation systems during a weeklong trial, Judge Stettin ruled in the developer's favor. That means Dimond's client won't have to provide the transportation and parking enhancements. An appeal is pending.

— Daniel Ostrovsky

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Trust Overcomes Fear

A MOST EFFECTIVE LAWYER BEATS PROSTATE CANCER

This is Robert E. Garner of Garner, Stein, & Dean, of Amarillo, TX and Cherokee, OK. Bob defended Oprah Winfrey when she was sued for slander by the folks who sell beef. He also filed suit and forced the American Quarterhorse Association to register embryo-transfer foals. Bob was a Most Effective Lawyer.

Three months after surgery, Bob was in the cutting-horse competition at the Fort Worth Coliseum. He was back in the saddle, literally and metaphorically.

Bob Garner was one in six American men who is diagnosed with prostate cancer. At age 69, Bob was thrown off a horse. He wound up in the hospital and his spine X-ray was abnormal. This led to a PSA test because prostate cancer can spread to the spine.

Bob did not have cancer in his spine, but his PSA was 9 ng/ml, which is associated with substantial risk of prostate cancer. His biopsy showed cancer.

Bob and his wife, Carolyn, came to my office. Bob looked me in the eyes and said: "I sue doctors." Carolyn clenched her fist. Wives drive men's health. Wives make appointments for a prostate check, they research treatment options, and sometimes, they facilitate communication with the doctor. Men with prostate cancer who are married live longer than men who are not married.

Because Bob had smoked for years, his next stop was to see the cardiologist, who called me saying, "This guy has lousy coronaries." I told him that's why I sent him to a cardiologist. The cardiologist went on: "And he sues doctors." I told the cardiologist I had been informed. We know that all patients, including lawyers, face risk, and that malpractice lawyers like Bob understand this.

Bob had come to me for a laparoscopic radical prostatectomy, a minimally invasive operation for prostate cancer that I introduced to the United States in 1999. This operation is associated with reductions in bleeding and pain. For all men, especially the active and the not so healthy, these are substantive considerations.

Bob was out of the hospital twenty-four hours after surgery. The next day, when I made a hotel call, Bob was in his boots, buckle on, and smiling. He was ready for a burger.

You're not supposed to wait until you're thrown off a horse before you get your prostate checked. It should be done at your annual examination. The point is to detect prostate cancer early, because early detection is the key to effective management.

Bob fell off a horse before he got his prostate checked. Don't you wait so long! When you get your prostate checked, ask to see the number of your PSA blood test, too. Learn the number, and learn what it means.

If you do have prostate cancer surgery, should you have it laparoscopically? Should you minimize bleeding and pain? *Res ipsa loquitur.*

I will long remember Bob, a *Most Effective Lawyer* from Texas who panicked but who, with the support of his wife, was able to overcome his fear of surgery. I will also remember Bob as one of the first Americans to benefit from laparoscopic radical prostatectomy, the operation for prostate cancer that was the path of relative safety that he so desperately needed.

Bob has since died of an unrelated lung cancer. May he rest in peace.