

OF COUNSEL

A quarterly report
to clients
and attorneys.

VOLUME 05
NUMBER 3

SDSBS Teams Up To Win Landmark Victory

Perelman: \$1.58 Billion
Morgan Stanley: 0

On May 18, 2005, a jury in West Palm Beach, Florida delivered an historic judgment of almost \$1.45 billion against Morgan Stanley & Co. on behalf of financier Ronald O. Perelman's company, Coleman (Parent) Holdings, Inc. The jury found the investment banker liable for its role in a fraud relating to the 1998 sale of Coleman Company to Sunbeam Corporation. Reportedly, it is the largest judgment ever returned in the U.S. for the benefit of a single individual. The case was marked by the defendant's efforts to evade obligations to produce evidence and its accusations of improper conduct against everyone from the judge to its own lawyers.

It was a David vs. Goliath battle. Mr. Perelman's David, however, had the determination and resources necessary to pursue Morgan's Goliath. The battle took place before Palm Beach County Circuit Court Judge Elizabeth T. Maass, who frequently found herself and the integrity of the legal system challenged by Morgan's aggressive defense.

In December 1997, Mr. Perelman, with controlling interest in Coleman, was approached by Sunbeam with an offer to buy Coleman. No agreement was reached. Morgan then contacted Mr. Perelman on behalf of Sunbeam, and negotiated the sale. The sale was completed in March 1998, netting Mr. Perelman \$1.5 billion, \$680 million of which was in Sunbeam stock. Morgan's fee was \$10 million.

Weeks later, Sunbeam's market value dropped. New sales and earnings figures conflicted with earlier statements backed by Morgan. Sunbeam's accountant, Arthur Andersen, withdrew an audit of the company's books. In 2001, Sunbeam filed for bankruptcy and its share-

holders were left with worthless stock. Mr. Perelman focused on Andersen's role in Sunbeam's demise.

During the Andersen litigation, Mr. Perelman's legal team discovered a letter from Andersen to Morgan dated days before the Coleman-Sunbeam sale closed. It outlined Sunbeam's decreasing sales, escalating debts, and accumulating losses. Nonetheless, Sunbeam issued a press release, drafted with Morgan's approval, that presented Sunbeam's economic performance as optimistic, concealing the true facts.

Charged by Mr. Perelman with fraud for its part in the cover-up, Morgan argued that it had accurately reported all of the information available to it at the time, and that it, too, was being lied to by Sunbeam. However, Morgan not only knew of Sunbeam's financial difficulties, but had participated in concealing them. In May 2003, Mr. Perelman sued Morgan.

Jerold Solovy, of Jenner & Block, was the primary litigator for Mr. Perelman. Mr. Solovy had successfully partnered with Jack Scarola, of Searcy Denney Scarola Barnhart & Shipley, for a \$70 million ***Continued on page two.***



SDSBS Wins \$1.58 Billion Verdict Against Morgan Stanley Financial Services Firm



Jack Scarola

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settlement on the case against Andersen. Jack Scarola was asked to partner on the case against Morgan.

During discovery, Morgan engaged in a concerted effort to delay and obstruct the litigation. It failed to produce court-ordered documents, destroyed evidence, and falsely certified that it had disclosed other documents.

Confronted with Morgan's misconduct, Judge Maass opted for sanctions against Morgan, directed at correcting the misconduct rather than punishment. Morgan continued to evade court orders, charging the judge with bias and emotionalism. The Court escalated sanctions against Morgan.

In March 2005, Judge Maass concluded that the abuses by Morgan during discovery had come to "infect the entire case". She directed the jury to accept as fact that Morgan had conspired with and assisted Sunbeam in perpetrating a fraud. As the Court summarized its findings, "[D]iscovery abuses and misrepresentations by Morgan Stanley . . . would take a volume to recite." The plaintiff no longer had the burden to show that fraudulent behavior occurred, but only to show that Mr. Perelman had relied on false information from Sunbeam/Morgan and had suffered damage as a result.

Morgan tried to have Judge Maass removed from the case, arguing that she had "bias, antagonism, and hostility" toward the company. Morgan's motion was denied by Judge Maass and by the appellate court. On May 16, the jury awarded Mr. Perelman \$604 million in compensatory damages for having relied on Morgan's misrepresentations. Two days later, the jury awarded Mr. Perelman \$850 million in punitive damages. And a month later, the trial judge added millions in interest owed by Morgan Stanley to Ronald Perelman. The judgment now totals \$1.58 billion. Morgan said it plans to appeal the verdict.

Lawyers representing Mr. Perelman's company, Coleman (Parent) Holdings, Inc., intend to pursue contempt sanctions against Morgan, including millions of dollars in attorneys' fees and costs. Federal regulatory and enforcement agencies have focused on the disclosures made in this case. Morgan's current CEO, Philip Purcell, recently announced his resignation following the earlier departure of several other Morgan executives. The very future of Morgan Stanley, a Wall Street giant, is in question.

Morgan's Goliath may not be dead, but Ronald Perelman has certainly brought this Goliath to its knees. ■

“Justice is most often depicted in art as a woman. She is blindfolded. In one hand she holds scales, and in the other hand a sword. The reason for the blindfold is because justice is, indeed, blind to power, position, wealth, religion, national origin. Those things do not matter. The scale is there so that equity and justice may be accurately weighed. And when the scale is placed out of balance, when it is tipped in a way that results in injustice, that strong and powerful woman is prepared to use her sword in order to restore the balance, in order to make certain that the scales are not tipped unfairly again. Each of you, no matter what your gender may be, have your hand on that sword. It is an awesome responsibility. It is a tremendous power that you have.”

**- - Excerpt from
Jack Scarola's
closing argument**