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LITIGATION

Boutique  
of the Year

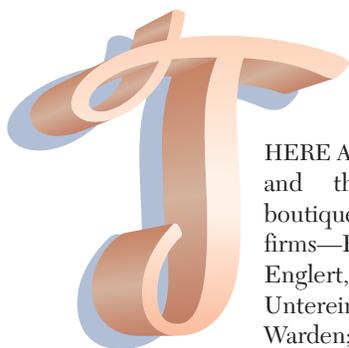
*Small* even by  
boutique standards,  
these *firms* still  
manage to win  
*big-ticket cases.*



*Honorable Mentions*

# Little Shops of Power

BY HEATHER SMITH



HERE ARE BOUTIQUES, and then there are boutiques. These three firms—Robbins, Russell, Englert, Orseck & Untereiner; Yetter & Warden; and Eimer Stahl Klevorn & Solberg—are not only young (the oldest, Yetter & Warden, opened in 1997), they're tiny. Really tiny. Both Robbins, Russell and Eimer Stahl have just seven partners. Yetter & Warden has four.

The three share more than youth and short rosters. The founders all fled Am Law 200 firms for the freedom to pick and choose their cases and specialties. They don't try to meet a client's every need. But clients, cocounsel, and even opposing counsel rate them as the best at what they do: Robbins, Russell spins courtroom losses into U.S. Supreme Court wins; Yetter & Warden wins over judges and juries by breaking complex issues into bite-size portions; and Eimer Stahl resolves sticky cases for big-name clients.

These firms can't handle cases with mountains of documents without help from other firms. They rely heavily on technology to handle their work and minimize overhead costs, like libraries and support staff. As a result, they offer laser focus, lower bills, and, perhaps best of all, personal attention. "When you hire Yetter & Warden, you're going to get

either Yetter or Warden," says R. Paul Yetter.

"We get phenomenal service at a price less than if they were still at Mayer, Brown, Rowe & Maw, with even more service and attention," says client Barbara Taylor, general counsel of BDO Seidman, LLP. Taylor has turned to Robbins, Russell five times since it opened in 2001. Currently it's fighting class certification in a \$400 million securities fraud case after devising a creative way to steer it away from the late Judge Milton Pollack. "I couldn't be happier," Taylor says.

Microboutiques offer clients more than cheap service. They offer reliable service. They're less likely to bow out over conflicts because, very simply, they have fewer clients and handle fewer types of matters for them. So other firms are happy to send conflicts their way because once the job is done, the microboutique sends them right back for corporate, tax, or employment matters.

Fried, Frank, Harris, Shriver & Jacobson partner Richard Sauber has served as cocounsel to Robbins, Russell several times. "Lawyers are awful about competition and stature," Sauber says. But, he adds, it's different working with Lawrence Robbins: "I get hired for people who need me to be able to send 15 lawyers to devote to a matter. He gets hired to write a cert petition. I'd never get hired to do that."

And therein lies a business model.

# A Higher *Authority*

## **ROBBINS, RUSSELL, ENGLERT, ORSECK**

& Untereiner was born nearly three years ago as an appellate specialty firm. Now that it's all grown up, it's still an appellate specialty firm. "We decided not to be a full-service law firm—no corporate, no tax services. There's a whole range of things we don't do and don't want to do," says Lawrence Robbins, one of the four founders from the Washington, D.C., office of Mayer, Brown & Platt. (The fifth, Donald Russell, was a 24-year veteran of the antitrust division of the U.S. Department of Justice.)

Why diversify when Robbins, Russell is so good at what it does? Its lawyers have argued six cases before the U.S. Supreme Court, including two back-to-back one morning in December 2002. It has four wins and one split decision. The ruling in the sixth is pending.

Robbins, Russell gets many of its cases through referrals from other lawyers, who know the firm will not poach their clients. "They are basically a portable appellate department," says Isaac Pachulski of Los Angeles bankruptcy boutique Stutman, Treister & Glatt.

Pachulski, representing Owens Corning creditors, worked with Robbins, Russell to help argue to recuse federal judge Alfred Wolin from five high-profile asbestos bankruptcies. "It doesn't matter how good your facts are. You need someone who can convey those facts well. You don't hire these guys for cookie-cutter appeals," he says.

In addition to their private practice experience, many Robbins, Russell lawyers have government backgrounds helpful for appellate lawyers. Robbins and Roy Englert, Jr., worked in the Office of the Solicitor General; managing partner Gary Orseck worked in the civil division of the Justice Department.

These government connections produced Robbins,

## **ROBBINS, RUSSELL**

**SIZE** 7 partners, 5 associates

**FOUNDED** 2001

**FIRM ORIGIN** Spun off from Mayer, Brown & Platt.

Russell's first new client:

Napster, Inc. When the music industry rogue needed help navigating a crippling court order, Napster's then general counsel, Jonathan Schwartz, a Justice Department alum, called some old colleagues, who pointed the way to Robbins, Russell. Napster lost its battle, but it was just the sort of client Robbins says he and his partners left for. "We could not have done that work at Mayer, Brown because of conflicts," says Robbins.

Referrals go both ways: When W.R. Grace & Co.'s creditors decided that, like Owens-Corning's creditors who brought in Robbins, Russell, they wanted counsel on the appeal to recuse Judge Wolin, Englert recommended his old boss, former solicitor general Charles Fried. A professor at Harvard Law School, Fried enjoyed the work so much that he's worked with them on two other appeals. "They enjoy what they're doing. They pick their cases carefully, and when they pick them, they stay with them," says Fried.

Despite the high-end work, Robbins, Russell avoids high-end fees by keeping down overhead. Robbins says that his partners typically charge \$400–\$450 an hour, \$100–\$200 less per hour than large New York firms he often teams with. Despite charging less, partners say they make as much as before. Small may be beautiful, but it can also be efficient.

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We are a small law firm with a big-firm practice. We provide focused, efficient, and hands-on representation by lawyers with extensive experience dealing with high-stakes legal issues. Appellate litigation is one of our focuses, but our lawyers also focus on complex civil litigation, all types of antitrust work, white-collar criminal defense, and the entire spectrum of government investigations and enforcement proceedings. Our clients range from Fortune 500 companies to mid-sized companies, governmental entities, associations, and individuals. With just 12 lawyers, the firm has experience and credentials to match or exceed the litigation and antitrust departments of many larger firms.

- **Civil Litigation.** We represent defendants and, on occasion, plaintiffs in all types of civil litigation, with an emphasis on defense of securities fraud and accounting matters. For example, we represent BDO Seidman, LLP, in its defense of a novel suit based on allegedly misleading audit opinions issued by one of BDO Seidman's foreign associated firms; we represent a national internet service provider in ongoing matters relating to copyright issues and peer-to-peer file sharing; we are representing a Saudi governmental entity in the 9/11 civil actions consolidated before Judge Casey in the Southern District of New York; and we were hired to assist with trial strategy and a variety of trial and appellate issues in the Federal government's civil RICO action against various tobacco company defendants.
- **Antitrust Matters.** Our antitrust practice includes representations in matters before the Antitrust Division and the Federal Trade Commission as well as trial and appellate litigation. Our lawyers have extensive experience in the antitrust review of mergers and acquisitions, including representations of BellSouth in connection with the largest cash merger in history, Cingular's acquisition of AT&T Wireless, and EchoStar's proposed acquisition of DirecTV. Antitrust appellate matters include the successful representation of LePage's, Inc. in connection with its \$68.4 million judgment against 3M, where we argued on behalf of LePage's to secure the reinstatement of its judgment in an *en banc* rehearing before the Third Circuit and successfully opposed 3M's petition for Supreme Court review.
- **Government Investigations/White-Collar Defense.** Our lawyers have tried more than forty criminal matters to verdict, and our criminal cases range from pre-indictment representations to trials to appellate work. We represent corporate and individual clients in numerous civil and criminal investigations, including parallel proceedings, that have been instituted by U.S. Attorney's Offices across the country, Main Justice, the SEC, and other agencies. These investigations include allegations of insider trading, tax-shelter improprieties, government-contracting fraud, accounting fraud, and other complex matters. On the appellate side, we currently are representing a doctor and an investment banker in well-publicized federal cases, and our lawyers have argued many criminal appeals, including more than a dozen in the Supreme Court.
- **Appellate Litigation.** Since founding, our lawyers have argued six cases in the U.S. Supreme Court: *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *Barnes v. Gorman*, 536 U.S. 181 (2002); *Scheidler v. National Organization for Women*, 537 U.S. 393 (2003); *Chavez v. Martinez*, 538 U.S. 760 (2003); *Hillside Dairy, Inc. v. Lyons*, 539 U.S. 59 (2003); and the pending case of *Wilkinson v. Dotson*. We won *Barnes*, *Scheidler*, *Chavez*, and *Hillside Dairy*, achieved a partial victory in *Morgan*, and are awaiting the result in *Dotson*. Some of our many other appellate matters include a successful proceeding in the Third Circuit to obtain a writ of mandamus requiring a district judge to recuse himself in consolidated asbestos litigation, a successful argument in the Third Circuit about preemption under the Medical Device Amendments, and the successful appeal in the Federal Circuit in a patent infringement lawsuit brought against Hewlett-Packard Co. and others, resulting in a reversal and a grant of partial summary judgment in our client's favor.
- **Plaintiff-Side Work.** Although much of our work lies in the area of civil and criminal defense, we also represent plaintiffs in both large and small actions. For instance, we are co-lead counsel on behalf of a plaintiff class of more than 15,000 New York City police officers who allege that the City and the New York Police Department have violated the Fair Labor Standards Act in the payment of overtime wages and other benefits.
- **Pro Bono.** Our *pro bono* work includes both trial and appellate litigation. We represented a criminal defendant in a week-long case arising out of the execution of a search warrant that resulted in the declaration of a mistrial. We submitted an *amicus* brief in *Lawrence v. Texas*, which involved due process and equal protection challenges to convictions under the Texas Homosexual Conduct Law. In the Supreme Court's October 2004 Term alone, we are representing a prisoner in a case pending decision that one of our lawyers argued in December; we submitted an *amicus* brief for Families Against Mandatory Minimums in *United States v. Booker*, relating to the constitutionality of the United States Sentencing Guidelines; and we submitted an *amicus* brief for the National Association of Criminal Defense Lawyers in *Shepard v. United States*.