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Courtroom 'Magician' Outduels Morgan Stanley

By [Dan Lynch](#)
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Three years ago, West Palm Beach, Fla., plaintiffs attorney Jack Scarola was coming off a big civil fraud suit against Prudential Insurance in which three of his clients had received only \$66,106 in damages and nine others had received nothing. At the time, a dejected Scarola described the verdict as "the highest-profile defeat I've sustained."

But last week, Scarola more than recovered, with an \$850 million punitive damages verdict in financier Ronald O. Perelman's civil fraud suit against New York-based Morgan Stanley, the world's largest securities firm. A few days earlier, Scarola had won a \$604.3 million compensatory damages verdict in the case.

When he heard the news, David C. Prather, the president of the Palm Beach County Trial Lawyers Association, called Scarola right away.

"You're back on top," Prather said he told Scarola. "You're the man."

Two days after the giant punitive damages verdict, Scarola was sitting at an open-air restaurant table near his waterfront office building as the sun glinted off his white BMW convertible in the parking lot. At 57, the father of five and the grandfather of seven, his win in the huge case has left Jack Scarola at high tide.

He admits that he was nervous during the case, given its national profile, considerable stakes and the fact that everyone expected him to win following Palm Beach Circuit Judge Elizabeth T. Maass' key pretrial ruling against Morgan Stanley.

"I would rather win the case that nobody thinks I can win than lose the case that everybody is certain I'll win," Scarola said over coffee and an English muffin.

Most observers familiar with the case expect a settlement rather than a full-blown appellate battle, which likely would center on Maass' controversial pretrial ruling. But the size of the total award, \$1.45 billion -- one of the largest damage awards in U.S. history in something other than a class action -- is bound to prolong any settlement discussions.

Scarola declined to discuss settlement negotiations. The likelihood is that any settlement will be worked out either directly between Perelman's organization in New York and Morgan Stanley, or that it will be handled by Scarola's co-counsel in the Perelman case, Chicago's Jenner & Block.

It was Jenner & Block attorneys who drafted the detailed complaint in the case. Scarola was the legal team's courtroom gunslinger.

Morgan Stanley's main counsel, Washington, D.C.-based Kellogg Huber Hansen Todd Evans & Figel, declined to comment for this article. Joseph Ianello, a shareholder at Carlton Fields in West Palm Beach who served as local counsel for Morgan Stanley, was not available for comment.

Smooth delivery Scarola was not the only person who was nervous about the case, because there had never been a civil case this big in Palm Beach Circuit Court.

Scarola was representing Perelman in his suit claiming that Morgan Stanley was part of a conspiracy to defraud Perelman. The claim arose from a 1998 deal in which Perelman, on Morgan Stanley's advice, accepted 14 million shares of Sunbeam Corp. stock as partial payment for Sunbeam's purchase of the Coleman camping goods company. The stock ended up worthless when Delray Beach-based Sunbeam declared bankruptcy in 2001.

When he couldn't get \$20 million from Morgan Stanley to settle the matter before litigation began, Perelman filed his civil fraud suit asking for \$2.7 billion in compensatory and punitive damages.

Note

As the trial drew near, Maass grew frustrated with what she saw as Morgan Stanley's deliberate refusal to obey discovery orders. As a sanction, she granted Perelman partial summary judgment, shifting the burden of proof to Morgan Stanley. The securities firm was left to prove that it hadn't been part of a conspiracy with former Sunbeam chief executive Albert "Chainsaw Al" Dunlap to defraud Perelman.

All Perelman had to prove was that he'd been damaged and had relied on Morgan Stanley's advice in doing the deal with Sunbeam on the Coleman Co.

It was Scarola's job to make that point to the jury. He did so in his characteristic fashion -- meticulously articulating every argument in his resonant voice. He posed questions to witnesses in precisely chosen phrases, never stumbling over a word, laying out Perelman's grievance with the smooth delivery of a TV anchorman reading the nightly news.

That's also the way Scarola speaks in private conversation, choosing every word with care. At one point during his direct examination of Perelman, he asked the same question about the financier's reliance on Morgan Stanley's advice a dozen different ways, eliciting almost precisely the same answer each time.

Yes, Perelman replied to Scarola over and over, he'd trusted Morgan Stanley. No, he said, he would never have made the Sunbeam purchase if Morgan hadn't assured him that this was a good deal.

"You want to be sure that the jury doesn't miss anything," Scarola said last week. "You want to be sure they get the point."

His approach worked with the jury. "We all thought Jack was very well spoken," said Lauri Stallone, a financial analyst who served as foreman of the jury in the Morgan Stanley case. "He can tell a story, and his voice travels well. Everybody took to him."

ADMIRERS AND DETRACTORS

A partner at Searcy Denney Scarola Barnhart & Shipley, Scarola is a veteran of countless courtroom wars, first as a prosecutor in highly publicized criminal trials and then as a litigator in high-profile civil cases. His exploits have produced some bitter enemies, but his admirers are lavish in their praise.

Prather, an associate at Lytal Reiter Clark Fountain & Williams of West Palm Beach, said he tries to emulate the way Scarola handles himself in the courtroom. "He's a magician with words," Prather said.

Stanley Dale Klett Jr., a partner at Rutherford Mulhall in West Palm Beach and outgoing president of the Palm Beach County Bar Association, has litigated against Scarola. Klett described Scarola as highly capable in the courtroom and a competent, reasonable negotiator in settlement discussions.

Stallone said Morgan Stanley's counsel presented their client's case well, too. But not well enough.

Note

The jury's verdict was another blow against embattled Morgan Stanley chief executive Philip Purcell, who's under fire from stockholders and former executives demanding his ouster. The securities firm fired Kirkland & Ellis of Chicago, its law firm during the discovery process, and has set aside \$360 million to fight this case on appeal.

Toward the end of the trial early this month, Morgan Stanley hired David Heleniak, a senior partner at New York-based Shearman & Sterling, to take command of the company's legal unit, overseeing corporate counsel Don Kempf, who previously had reported directly to Purcell. Kempf had supervised the securities firm's legal affairs while Morgan Stanley had repeated problems with discovery issues.

Note

Three years ago, Morgan Stanley was one of six Wall Street firms forced to pay regulators an \$8.5 million fine for failing to retain e-mails. Ten months ago, the firm paid a total of \$2.45 million for delays or failure in handing over documents in defending against investor-complaint cases.

Scarola said the Perelman case reflected continuing problems with Morgan Stanley's compliance with discovery orders.

"I saw no indication that anybody other than Morgan Stanley was responsible for the astounding misconduct that occurred in this case, and Judge Maass' orders make that clear," he said. "It was a full-out assault on the judicial system, and it seemed to be the client who was the problem, not the law firm."

WON'T SLOW DOWN

The fact that the Morgan Stanley case probably will bring millions to his firm and to himself has in no way motivated him to let up, slow down and take things easier, he said.

Born in Brooklyn and raised in Hicksville, Long Island, as the eldest of six children, Scarola comes from a family of achievers. His father was a draftsman who ended up as chief executive of a large international engineering firm. His three brothers are engineers. One sister is a certified public accountant and the other an airline executive.

After receiving his undergraduate degree at Georgetown University in Washington, D.C., Scarola attended Georgetown's law school. Robert Freeman, who attended the law school at the same time and is now an attorney for New York state, recalled that Scarola was a campus politician, like Bill Clinton, who attended Georgetown law school at the same time.

With his law degree in hand, Scarola moved to Palm Beach County with his wife, Anita, and two children at the urging of law school friend Harold Cohen, later a Palm Beach Circuit judge.

Scarola went to work for what was then the Palm Beach County solicitor's office, now the state attorney's office, as a prosecutor. Solicitor Daniel T.K. Hurley, now a federal judge, offered him a job for \$12,000 a year, and Scarola got a chance to handle big cases right from the start.

He said he loved the work. But by the time he had five children, he needed more money and moved into private practice. He ended up working for prominent Palm Beach County plaintiffs lawyer Robert Montgomery. Years later, that relationship broke down over a fight centering on which lawyer deserved the legal fee for a multimillion-dollar settlement.

"I have absolutely nothing to say about Jack Scarola," Montgomery said when asked about his old protege.

As for Montgomery, Scarola would say only, "Bob is a very good trial lawyer for whom I have profound respect. But we have very, very different philosophies about some things."

With the Morgan Stanley case behind him, Scarola now is spending his time conferring with other clients he had no time to talk with during the five-week trial. He said he might take some time off to go to Australia in August. But he has a trial set to start in July in Miami, and he might not make the trip.