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Plucked From the Sky

Podhurst Orseck earned a reputation — and millions of dollars — representing the victims of airline disasters. But its plucky founder Aaron S. Podhurst says the firm has just begun to define its niche. By Jaime Hernandez

Anxiety creeps over attorney Steven C. Marks whenever he steps aboard an airliner. Marks represented the families of victims of the 1997 Silk Air jet crash in Indonesia, and images of the charred wreckage, left in the wake of the crash, often mingle with worries for his own two young daughters.

What spurs the feelings, says the Podhurst Orseck PA partner, is a visit he made two years ago to discuss a lawsuit against an airplane parts maker with the family of one of the victims. That evening, in the Singaporean family's dining room, a surviving daughter of one of the victims momentarily brought the conversation to a halt. "When's daddy coming home?" the young girl asked between sobs.

"It's very rare that I don't think of that event," Marks says from his office at the firm's headquarters in Miami. "There are certain cases that will haunt me."

His sentiments are only a small measure of the institutional memory at Podhurst Orseck — a firm with a global reputation for successfully litigating cases against airlines and other companies involved in airline disasters. Since opening its doors in 1967, it has handled more than 70 such cases and applied that expertise to broaden the firm's reach into product liability and other resource-intensive casework.

The Silk Air case, for example, was a long, drawn-out legal saga that cost the firm and its co-counsel \$4 million in out-of-pocket expenses. Last year, Marks convinced a California jury to give his clients approximately \$20 million in damages. He won an additional \$23 million for two other families who lost relatives in that crash.

Podhurst Orseck's roots in wrongful death and personal injury law are deep, stretching back to the firm's founders Aaron S. Podhurst and Robert Orseck — childhood friends who became hotshot tort attorneys working for the Miami-based personal injury firm of Nichols, Gaither, Beckham, Colson, Spence & Hicks. When that firm broke apart in 1967, Podhurst and Orseck hung their own shingle outside. Indeed, the dissolution of Nichols, Gaither spawned several leading South Florida law firms, including Colson Hicks Eidson in Coral Gables.

The law partners continued to take on personal injury cases during the late 1960s and the 1970s, developing a reputation as formidable litigators among other lawyers and judges. The turning point for the firm came in 1972, when Eastern Airlines Flight 401 crashed into the Everglades, killing 101 of the 172 passengers aboard.

The 1972 Eastern crash was the first in a string of airline disasters whose victims' families the firm has represented. In a very real way, that crash put the firm on the map in a global sense.

Since then, Podhurst Orseck has helped fight for financial awards numbering in the millions of dollars, including more than \$250 million for the families of passengers who died in the May 1996 ValuJet crash in the Everglades and \$187.5 million for the families of three Brothers to the Rescue pilots killed when their civilian airplanes were shot down by Cuban fighter jets over international waters in 1996. In 1999, the firm won the appeal of a \$37 million case against Juno Beach-based FPL Group on behalf of the family of a 12-year-old Pinecrest girl who died in a car crash because FPL workers had disconnected a traffic light.

Despite the preponderance of wrongful death and personal injury casework, Aaron Podhurst, the firm's president, chafes at the label "ambulance chaser."

"The public is concerned over whether lawyers are doing the right thing," Podhurst says. "It's important for us to be honest and hardworking. Believe it or not, the other lawyers and judges not involved in a matter will pass along our name."

And industry experts agree with him.

"This type of firm is a very high-quality litigation practice," says Andrew J. McClurg, a law professor at Florida International University who specializes in tort law and product liability cases. "It's incredibly expensive to try a case against a major corporation. These people give a voice and a day in court to people who would not otherwise have that day in court."

London-based legal research firm Chambers and Partners ranks Podhurst Orseck as one of the three top tier general litigation firms in the state, the other two being Miami-based firms Greenberg Traurig LLP and Kenny Nachwalter PA. Chambers also ranks Podhurst and longtime law partners Robert C. Josefsberg and Victor M. Diaz as three of the top general commercial litigators in Florida. Joel D. Eaton, a former Navy fighter pilot who heads up the firm's appellate division, is considered by Chambers to be one of the best in the region at his practice.

Podhurst says the concentration of top talent at his firm makes it "very competitive with the large firms" in terms of revenue, but he would not disclose how much it actually rakes in.

Unlike many other law firms, Podhurst Orseck largely draws its revenue from contingency fees, meaning all of the money needed for a case is spent up front and profitability rests on winning. Podhurst says such a system drives attorneys to work much harder, and 38 years of operating that way — and repeated victories in the courtroom — have paved the way to larger, more lucrative jury awards and settlements.

Jury or court awards, for cases that Podhurst Orseck typically accepts, range from a few million dollars up to nearly \$200 million. Podhurst says the firm usually charges clients a 30 percent to 40 percent contingency fee to represent them.

"Our revenue per lawyer and profitability is as good or better than any law firm in South Florida," he boasts.

Podhurst law partner Diaz describes it this way: "I think it is safe to say that this firm has been more profitable each year for the past [several] years. There may be one or two years that are aberrations where ... it goes up and then it goes down a bit, but the general trend has been it goes up, up, up."

LOOKS CAN BE DECEIVING

At first glance, Podhurst Orseck hardly looks like a firm that rakes in millions of dollars each year in jury awards and settlements. The firm boasts fewer than 50 employees overall — 13 of them attorneys. The practice's eighth floor office in downtown Miami does not have a bird's eye view of Biscayne Bay, but rather of a torn-up section of Miami's West Flagler Street bustling with noisy traffic and tourists. It is safe to say the office looks about like it did when it was renovated 20 years ago, right down to the lobby's 1970s-era leather couches.

Law partner Diaz says unless the state and federal courthouses move from their current locations a few blocks away, he doubts the firm will ever relocate. Expansive offices with breathtaking waterfront, he says, are meant to wow clients but can often turn off potential clients who feel like they would be paying for elegant offices instead of legal expertise. Expensive offices also cut into profits, the partners are quick to point out.

Décor notwithstanding, area legal experts, and those familiar with the organization, say Podhurst Orseck is a formidable firm whose disciplined management has allowed it to stay relevant over the years while retaining its top talent.

“From where I sit, they’re one of the top two or three firms in terms of attorney compensation,” says Stuart Z. Grossman, whose Miami-based firm Grossman and Roth PA specializes in medical malpractice litigation and is similar in size to Podhurst Orseck. “The trial firms, such as ours, tend to have the highest revenue streams of all law firms. It’s the nature of the cases, and they work them [hard].”

Last August, attorney Joel Perwin left Podhurst Orseck’s appellate division after 23 years to start his own firm in downtown Miami. He says Podhurst Orseck’s inventory of cases has always been “incomparable,” allowing money from settlements and jury awards to keep flowing in while other cases remain pending. The fact that his former employer typically takes the most difficult — and most lucrative — cases and wins them also is a boon, Perwin says.

“When you have such a substantial inventory of cases, and similar cases are always coming in, you know at some point a substantial percentage of them will favorably turn over, and the fees of those cases will come in,” Perwin says. “It’s not ever a question of a given 12-month period. It’s about working hard on cases and knowing they will turn over, if not this year then next year.”

Working in the shadow of larger area law firms such as Greenberg Traurig and Holland & Knight LLP, which have pursued aggressive growth strategies in recent years, has not nudged Podhurst Orseck to expand more quickly, say the firm’s principals.

Indeed, Podhurst law partner Diaz says one of the advantages to remaining a boutique firm is the steady flow of referrals from larger competitors eager to avoid conflicts of interest when handling appeals, for example. Other times, cases are referred because they may be too complex or in a field where the larger firm has little expertise. Diaz says his firm relies on attorney referrals and word of mouth to attract new business instead of media advertising, which law firms are restricted in using to promote themselves.

“Big law firms don’t want to refer [cases] to another big firm that can take the client away from them,” Diaz says. “They know that by referring the litigation to us, that client is coming right back to them because we can’t service all their other needs and have no intent of growing to service all their needs.”

“Highly specialized, highly concentrated, highly expert areas of the law – that’s our strength,” he adds. “That’s what attracts people to associate with us and enables us to stay small but be extremely profitable.”

STAYING SMALL PAYS BIG

Not that the pressure to grow has not been abundant.

Podhurst says he and the late Mel Greenberg, co-founder of Greenberg Traurig, were great friends. As Podhurst Orseck grew during the late 1970s and early 1980s, Podhurst says he spurned several overtures by Greenberg and other larger firms to merge.

“We always wanted to stay small and do our own thing,” Podhurst says. “We wanted to have a small boutique firm.”

Diaz compares the consolidation the legal services industry has undergone during the past several years to Darwinism: as specialty firms are gobbled up by larger ones, the field of competition for Podhurst Orseck lessens, resulting in more client referrals.

But it was evolution of another sort that has spurred Podhurst Orseck to diversify its casework in a bid to stay current and profitable.

When the Florida Legislature, in 2003, set a \$500,000 per physician cap on pain and suffering damages in medical malpractice liability cases, it sent a chill through the industry. Fearing that it would be pigeonholed as a firm whose most lucrative specialty was personal injury and wrongful death cases, Podhurst Orseck accelerated its ongoing efforts to build off of its experience in those cases and apply it to product liability and other areas.

Diaz, for example, recently served as co-lead counsel with Coral Gables-based Colson Hicks Eidson in a bevy of lawsuits against Ford Motor Co. and Bridgestone/ Firestone North American Tire LLC. The suits

stemmed from tire blowouts on Ford sport-utility vehicles that resulted in numerous injuries and deaths in the United States and overseas.

In 2003, Diaz told the *Daily Business Review* that he estimated total potential damages at about \$750 million. Many of the cases were settled, however, and the actual settlement amounts were never disclosed. Nonetheless, working on those cases allowed Podhurst Orseck to build off of its core competencies while making a name for itself in new areas of the law.

“We can respond very quickly to changes in market forces,” says Diaz. “If one area of law is starting to become less profitable, like medical malpractice because of all the reforms, we have the ability to move very quickly.”

Ervin A. Gonzalez, a civil litigation attorney with Colson Hicks, has worked alongside Podhurst Orseck’s attorneys numerous times on both sides of the aisle. “They do their fair share of the work [as co-counsel],” Gonzalez says. “It’s not like other relationships where you have co-counsel but they wait for their fee and you do all the work.”

He locked horns with the firm when his client sued Miami-based Lennar Homes Inc. Gonzalez describes opposing Podhurst Orseck as hardly a mouth-watering experience.

“They don’t have a lot of lawyers,” he says. “If they need help, the help they’re going to get is another star on the bar. They’re not afraid of the courtroom. If you need a real trial lawyer to try a case in front of a judge, these lawyers can do that, and do it well.”

Podhurst Orseck’s appellate practice is not too shabby, either. Grossman, of Grossman and Roth, says his firm has entrusted Podhurst Orseck with its appeals for 30 years.

“We have had the wonderful good fortune of getting some enormous verdicts and they’ve never lost any of our verdicts on appeal,” Grossman says. “That kind of proven performance is why I keep going back to them.”

Podhurst, Perwin and legal observers say the firm’s legal talent is the primary driving force behind Podhurst Orseck’s success. Most of its attorneys have tenures of at least 20 years and have never worked at another firm. Several have graduated at the top of their respective classes from law schools such as Yale, Harvard, Columbia and Dartmouth. Three of them – Barry L. Meadow, Michael S. Olin and of-counsel Walter H. Beckham – are certified to try cases in front of the US Supreme Court.

Perwin says when a position does open, Podhurst likes to target young attorneys who are willing to assume a lot of responsibility early in their careers. He describes Podhurst as “frank” with job candidates about the intense workload, pressure and competition, but also reassures newcomers that they can rely on senior partners for help and mentoring. Podhurst himself is readily accessible to the attorneys, going so far as to have a direct extension from the office to the phone in his Aspen, Colo., vacation home.

“They are very selective in who they bring in as a new young associate,” says US District Judge James Lawrence King, whose former law clerk, Ricardo Martinez-Cid, now is an associate attorney at Podhurst Orseck.

Diaz says turnover at the firm occurs every 10 years or so, when the older attorneys decide they need to bring in a younger associate to help them do the legwork on cases. He and Podhurst say they want to perpetuate the firm by having lawyers in their 60s mentoring 40- and 20-year-old attorneys, something Diaz dubs a “generational passing of the torch.”

“Like any good CEO, he’s very good at cultivating young people and bringing them along and thinking of the day when he’s not around, and how will there be continuity,” Diaz says of Podhurst.

The firm sometimes runs into problems filling positions because turnover is low and the workload is taxing — a reason why Podhurst targets a particular type of attorney, Diaz says. Many bigger firms are mentoring first- and second-year law students with the expectation that they will be ready to jump into the legal fray when they get their law degrees. Podhurst Orseck relies instead on its reputation and the opportunity for young lawyers to earn lucrative salaries, assume more responsibility and try high-profile cases.

“It does make it more difficult when you want to identify legal talent because you’re not a regular repeat player in the legal recruiting market,” says Diaz, who has been looking for more than a year to fill an

associate lawyer position. “You’re competing with [firms] who have been wooing these people and going to their law schools for years.”

A DIFFERENT KIND OF STRUCTURE

The management structure is also fairly unorthodox. Podhurst, 69, is the president of the firm, but unlike most major law firms, Podhurst Orseck has no managing partner who oversees the business operations. He and the partners share all other administrative duties. For example, Olin is a good administrator and helps the office manager with everyday issues, people familiar with the firm say. Diaz is the de facto marketer and spokesman for the firm, usually handling media inquiries and helping design the firm’s brochures and Web site.

Podhurst Orseck lawyers also keep close tabs on their colleagues’ work.

Unlike large law firms with hundreds of employees, attorneys at Podhurst Orseck do not have their performance tracked by the number of hours billed, Diaz says. Instead, the firm remains small enough for Podhurst to take a personal interest in each of the lawyers’ casework.

“We don’t have to rely on artificial objective means of ... judging your performance,” Diaz says. “We all go to lunch together every day. You know how hard other lawyers are working. You know when they’re making money and you know when they’re not making money. It’s a much more humane kind of business model.”

The formula seems to be working for Podhurst. He, Diaz, Perwin and others say turnover is so low at the firm and job opportunities are so rare that even staff positions are hard to come by. Carole Hrebik, for instance, has served as Podhurst’s office manager since 1971.

That is not to say that working at Podhurst Orseck is a cakewalk. It is not unusual for the firm’s lawyers to hop on a 6 a.m. flight to another state in order to take a 10 a.m. deposition, only to fly back to Miami by midnight because the deposition is needed the following day. In many bigger firms, experts say, a junior associate will look at a deposition and call or email the details into the office and up the chain of command to the litigator handling the case.

That hands-on work pays off in the end, Diaz says.

“It’s not fun when you’re doing it,” he says. “But when you’re doing everything in the case, [you remember] what the witness said in the deposition and then know that this document that you just looked at contradicts what he said two weeks ago when you were in that deposition.”

A FIRM TAKES FLIGHT

That acumen has built up over years, starting in earnest after the first fatal 1972 Eastern Airlines crash Podhurst Orseck was involved in litigation over.

Lawyers all over the country, including Podhurst, who was representing the families of those on board, filed dozens of lawsuits against Eastern in state and federal court in Miami.

District judge King recalls, during one of the hearings, Podhurst suggesting to state and federal judges on the case that the lawsuits be combined into one class-action suit and that the judges jointly listen to all of the discovery presented during the hearings. The judges agreed. Podhurst was appointed lead counsel for the plaintiffs, and the case was eventually settled.

His law partner Diaz says, “Through that case, he got to know all of the prominent aviation lawyers in the United States. Like everything else in the legal profession, the best way to get business is to do a good job for your clients. They will refer you to other clients.”

The case started a chain reaction that saw the firm become associated with other plane crash litigation. King says Podhurst Orseck was a pioneer in suing American airline companies in Miami, state or federal court, regardless of whether a crash occurred in Florida, in other states or abroad. The firm successfully argued that companies could be held liable regardless of where an accident occurred.

Such was the case in the Silk Air matter. A Singapore attorney who represented some families who lost relatives in the crash contacted Podhurst Orseck because of its expertise in aviation disaster lawsuits. Marks

was assigned to case, and he represented 33 families against Ohio-based Parker Hannifin Corp. After discrediting defense witnesses at trial and presenting thousands of documents showing a device in the tail rudder made by the company had failed and caused the crash, Marks convinced a 12-member jury to vote unanimously in favor of three of his clients. The \$43.6 million jury award set the benchmark that led to confidential settlements for the rest of Marks' clients in the case.

"There was nothing but tears in the courtroom when the jury award was read," Marks recalls. "I even started to tear up. Our clients started to hug us. The jurors all took my name and said they were coming to Miami to see me. One gave me his juror badge as a reminder of what happened. It's still sitting on my desk."

Since the Eastern case, Podhurst Orseck has taken on various airplane-related cases, including the November 2001 crash of American Airlines Flight 587 in Queens, N.Y., and the Air France Concorde disaster just outside Paris in 2000. Between 1993 and 1998, the firm negotiated more than \$250 million in settlements, according to *The Miami Herald*.

"They have ... in last decade become the premier law firm in America specializing in representing people who have been killed or injured in airplane crashes," King says.

The success with airline crash litigation helped Podhurst Orseck earn a reputation for having hard-nosed attorneys not afraid to battle in a courtroom. King and Gonzalez, of Colson Hicks Eidson, say it is that attitude that prompts opposing counsel to settle.

"Generally speaking, those firms in Miami who are always willing and have a reputation to be willing to try the case seem to get a much higher number of settlements than do other firms whose reputations are such that they do not want to go to court," King says.

POLITICS AS USUAL

Podhurst encourages his attorneys to get involved in the community and civic organizations as a way to do good and also to drum up business by getting the firm's name better recognized. He is a past president of the Greater Miami Jewish Federation and is an active Democratic Party fund-raiser, for example.

His political participation began during the 1960s when he struck up a friendship with former neighbor and longtime Florida political icon Robert "Bob" Graham. Podhurst served as Graham's campaign manager in Graham's early political days, and Podhurst Orseck partner Robert Josefsberg was Graham's general counsel when the politician was Florida's governor in 1980.

More recently, Podhurst was involved in the divisive case of a Cuban rafter who came ashore after his mother and several others died at sea as their boat drifted closer to Florida's shores.

Podhurst served as a mediator between the federal government and the Miami relatives of Cuban émigré Elian Gonzalez, who was just a child when he attempted the deadly Florida Straits crossing. Podhurst was a longtime friend of then-Attorney General Janet Reno and had developed ties to the Cuban exile community through his non-profit work and his involvement in the Brothers to the Rescue case.

In April 2000, he was on the telephone with Reno trying to negotiate a peaceful handover of the boy, who was to be sent back to Cuba at his father's request. During the call, federal agents stormed the Little Havana home where Elian had been staying and seized him. An angry Podhurst, who was unaware of the raid until after it had occurred, said at the time that he was surprised and embarrassed by the action.

Podhurst says it is important for his firm's attorneys to be active in the community because they can learn how to better relate to potential jurors and they will know what issues are affecting people. The exposure to high-profile businessmen also does not hurt.

"The more you're out there, the more people will know you and like you and the more business you will attract," he says. "I think being a person who's connected gives you access to people who control business. If you're a very good and hard-working lawyer, people will want to send you business."