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## Under the Radar

**By Don J. DeBenedictis**

Daily Journal Staff Writer

IRVINE - Scott J. Ferrell seems like the sort of lawyer who would hope most of his cases go to mediation.

Lean, with refined features, Ferrell speaks slowly and carefully with only a little emotion. Over salad at his daughter's favorite restaurant, a midpriced steak house where cloth napkins come with buttonholes sewn in, he talks about how 4½-year-old Aurora likes to sneak-attach his napkin to his collar button. He's surprised every time, he said.

In fact, Ferrell, 34, went from associate to name partner at a midsized Newport Beach litigation boutique in three years because he takes, or prepares to take, all of his cases on through to trial, especially cases many other lawyers would settle. Ferrell settles less than 20 percent, he said.

By regularly slamming down "nuisance-case" plaintiffs and by driving through wins in "bet-the-company" cases, he now bills just over \$10 million a year from a client list that includes Dell Inc., Del Taco, Cingular Wireless, BCBG Max Azria Group Inc. and Public Storage Inc. His business is growing at 35 percent a year, he said.

"Scott slides in under the radar," said Michael L. Annis, the former general counsel of Del Taco in Lake Forest. "He's very controlled, very low-key, not bombastic at all."

"Sometimes, I want to finish his sentences for him," added the fast-talking Annis.

Yet, this year alone, Ferrell, along with Call, Jensen & Ferrell partner David R. Sugden, won a record-setting \$47.4 million punitive-damages award from a San Diego federal jury. The victory was all the more remarkable because it was based on a \$6,000 compensatory-damages award for copyright infringement, a claim that rarely allows for punitives. The case has since settled. *Nortel Networks Ltd. v. Platinum Networks*, 04-cv-1968 (S.D. Cal., filed Sept. 29, 2004).

A month later, Ferrell won a rare defense verdict in a suit under the Americans with Disabilities Act. In a written decision, U.S. District Judge Cormac J. Carney lambasted the defeated wheelchair-bound plaintiff as a "professional plaintiff" who "denigrate[s] the important purpose behind the ADA." *Doran v. Del Taco Inc.*, 04-cv-046 (C.D. Cal., filed Jan. 15, 2004).

Two years ago, Ferrell clobbered a plaintiff and law-firm pair who regularly bring Proposition 65 toxic-chemical cases. The case settled part-way through trial, with the plaintiff admitting it had brought suit "without substantial justification." *Consumer Defense v. Braddock & Logan*, C03-00127 (Contra Costa Super Ct.).

"We try to position ourselves as a firm who'll take to trial and win cases that most firms would rather settle," Ferrell said.

Trial victories "in cases where the facts and the law are against us have led to more clients and bigger cases," he said.

And he does win.

"I have never been trial counsel in a case tried to verdict ... where we did not win," Ferrell said in his usual considered manner.

He specializes in defending consumer class actions, ADA and Proposition 65 cases for fast-food and retail companies and in prosecuting intellectual property and trade-secrets cases for high-tech companies.

When he pitches companies for litigation work, he said, he shows the general counsel that he wins at trial, that he staffs his cases leanly, that his co-counsel are good and that his billing rates are 25 percent lower than those at large firms.

He also can show that "professional plaintiffs" and their lawyers are reluctant to take him on. Ferrell said the Proposition 65 plaintiffs' team he defeated in 2004 has voluntarily dismissed nine lawsuits in a row after discovering he would be opposing counsel.

"The work seems to follow," Ferrell said.

And Ferrell does pitch for business. "Scott approached me," Annis recalled.

Ferrell's cold call arrived just as Annis was pondering how to deal with repetitive lawsuits claiming Del Taco restaurants were violating ADA standards for handicapped access and accommodation. The two agreed that paying a few thousand dollars to resolve every suit only brought more.

The company was "feeding pigeons," Annis said Ferrell told him.

Litigating the cases to settlement cost \$8,000 to \$15,000 each, while preparing them for trial, as Ferrell did, cost \$30,000.

But the shift was cost-effective, because the number of ADA lawsuits plummeted "from about 25 to two this year," Annis said.

Robert Wilson, the general counsel of L.A. Fitness in Irvine, recalls Ferrell approaching him when Wilson was general counsel for the Carl's Jr. restaurants. Carl's Jr. had been trying to "creatively resolve" ADA suits, but Ferrell recommended trial.

"He's a very nice young man, very articulate, very respectful," Wilson said.

The chain gave Ferrell a case, and he "did a fabulous job."

Wilson liked the cost, too.

"He doesn't stack his files [with too many lawyers and paralegals], and he's also creative in terms of billing," the general counsel said.

He offered the company "a fairly aggressive discount" to his hourly rates, and he has continued that discounted rate ever since, Wilson added.

"Getting our business was very important to him," he said.

Ferrell was born and raised in Montana, where his father worked for an insurance company. He didn't enjoy hunting, football or camping in the snow, so he didn't fit in with his peers.

The family moved to Riverside when he was 16, where he saw palm trees and orange groves.

"I thought we'd come to the Promised Land," he said.

He went to college at California State University, San Diego, and law school at Georgetown University Law Center, graduating in 1996. For three years, he worked at Baker Botts in Dallas.

"I wanted to do business development, and their response was, 'You don't really start doing business development till you're 40,'" Ferrell said.

So in 1999, he came back to Southern California and joined Call & Jensen.

That year, he took his first local case to trial, a partnership dispute, which he won after 16 months of litigation. *CampusStation v. Vanetik*, 814-720 (Orange Super. Ct., filed Sept. 21, 1999).

"Those clients referred me to new clients," he said. "Small cases became medium cases became big cases."

"He's very precocious," said senior partner Wayne W. Call, a former Gibson, Dunn & Crutcher lawyer.

"He's way beyond his years in terms of business development, relating to clients, recruiting. ... And he's not afraid to go to trial."

Call, Jensen & Ferrell has 20 lawyers now, Call said, but it's growing fast.

"We just can't keep up," he said.

Ferrell said he has 40 open files at any time and brings in 25 to 50 new matters a year. He takes about five through trial every year.

Outside work, he runs marathons and tries to collect American muscle and other classic cars, although he has none now. Divorced, he has date night once a week with Aurora and spends many weekends with her at Legoland.

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