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The Natural

Litigator E. Powell Miller loves the national pastime and has one of his own: winning multimillion-dollar cases

BY RJ SMITH

PHOTOGRAPHY BY SCOTT STEWART

FOR MONTHS AT THE BEGINNING OF 2014, a team of 12 lawyers from The Miller Law Firm, based near Detroit, were living in downtown St. Paul, Minn., spending their days walking the skyway between their temporary apartments and the courthouse.

They were working on a massive federal class action suit against Wells Fargo Bank on behalf of the City of Farmington Hills Employees Retirement System—over 100 institutional investors who alleged that Wells Fargo had neglected its fiduciary responsibilities by investing in risky securities through its securities lending program. (The program has since been shut down.)

Six weeks before a jury was to begin hearing the trial, 25 mock jurors gathered in a conference room, coffee and pads of paper before them. E. Powell Miller, co-lead counsel for the plaintiffs and CEO of The Miller Law Firm, was doing a dry run of the opening statement he was scheduled to deliver in April.

The presentation starts slowly, and builds block by block over about 90 minutes. Miller never forgets that he's talking to folks with only a basic understanding of the complicated world of securities, and who might see the group of plaintiffs as an abstract mass of

humanity. But Miller is able to give that mass individual faces; he breaks down their grievance in a way that is instructional and never condescending.

"The amount of preparation necessary to do a trial the right way is extraordinary," he says. "In preparing the Wells Fargo case I worked 12 to 18 hours a day every day for four months. It involves knowing the record inside and out, the exhibits inside and out, finding out which of all of them are really important—it's often just five or six out of thousands that are truly important. But you have to know them all first to find the few."

Miller relies on the 24 lawyers in his firm to have the same intense preparatory habits. "It's like putting together a blockbuster movie," Miller says. "To do a trial right, when you run the credits at the end, there are a lot of names listed."

The Wells Fargo case turned out to be a short rather than a feature film. The credits ran the day before the trial was supposed to start—the plaintiffs and Wells Fargo reached a \$62.5 million settlement, pending approval hearings.

The Miller Law Firm has become a go-to firm in the Detroit area for auto supply chain disputes and shareholder rights cases. "[Miller] is someone who

can analytically and critically look at issues and be very aggressive," says Rob Kurnick, the president of transportation services company Penske Corporation and president of Penske Automotive Group. "If we have a complex problem and we want to win, Powell is the one we call."

According to a *Michigan Lawyers Weekly* report, the firm earned two of the five top class action settlements in Michigan in 2013. Miller himself has a winning streak of 11 consecutive trials.

He sees similar success in the future for Detroit. "We're on the upswing," Miller says. "I really believe that. We hit bottom with Kwame Kilpatrick's indictment and the bankruptcy, but this will be looked at in future years as the turning point. We're definitely on the rise, and it's exciting for the community."

"There's no reason to leave Michigan."

MILLER'S END CREDITS REFERENCE
is unusual: His metaphors tend to come from a different pastime.

"Powell is an avid baseball fan—and he likes to use baseball analogies," says Keefe A. Brooks, who has faced Miller in the courtroom more than once. "Once, he was opposing an early request for an injunction,

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E. POWELL MILLER

- CEO, THE MILLER LAW FIRM; ROCHESTER
- BUSINESS LITIGATION; CLASS ACTION/MASS TORTS
- MICHIGAN SUPER LAWYERS: 2006–2014; TOP 10: 2009–2014; TOP 100: 2006–2014

and he opened his remarks by saying, "Judge, we're only in the first inning here."

The baseball references come faster than a Verlander fastball. People describe Miller's office as looking as much like a baseball card shop as a law firm. Whole walls are given over to his collection, which starts with rare cards from the beginning of the last century to the Tigers of today.

Of particular interest is the 1919 Chicago White Sox, famously known as the Black Sox, who, after being upset in the World Series by the Cincinnati Reds, were charged with colluding with gamblers to fix the Series. In 1920, eight players, including star "Shoeless" Joe Jackson, were banned for life from Major League Baseball. Miller owns a bat used in a Series game, a ticket stub from the opener and a letter to Jackson from his lawyer.

Miller gets downright emotional about Shoeless Joe. Asked to tell an imaginary jury why Jackson's ban from the Baseball Hall of Fame should be lifted, Miller would say that it hasn't been conclusively proved that Jackson took any money, and his stellar play in the World Series empirically makes the case that he did not try to lose. "Maybe he should be suspended for a while," Miller says in closing, "but not given the death sentence."

Miller also keeps an unassuming box containing a treasury of historic documents. These aren't baseball-related; they're papers that inspire him. They include a November 1776 letter from George Washington to Colonel Daniel Hitchcock requesting that new regiments be formed for the Revolutionary fight; a note signed by Abraham Lincoln giving a Confederate diplomat safe passage through Union lines; and a letter from boxer Rocky Marciano to a sports writer warning the young Muhammad Ali to watch out for a guy named Joe Frazier.

"I've kind of turned my office into a political and sports memorabilia museum," says Miller. "Let's have a little bit of these people rub off on us."

Those people include his father, Bruce A. Miller. Hearing his father talk about representing workers and unions at the dinner table entranced a young Powell. Bruce, 86, was recently named the general counsel for the Metro Detroit AFL-CIO, and still has an active labor law practice at Miller Cohen.

"I remember when he used to practice debate when he went to University of

Detroit high school," Bruce says of his son. "He had such command of subject matter and without notes he could effectively and cogently reel off the information. It made me think his forensic talents were already in play. I'm enormously proud of him."

"U of D is a Jesuit school, and Jesuits are very big on debating—they deal with the eternal problem of how many angels stand on the head of a pin," Bruce adds. "At U of D they have a trophy case [for debaters], and most of the trophies have his name on it."

Miller is Michigan through and through; the longest he's ever been away from the state was when he attended Georgetown University, where he furthered his reputation as an orator. Miller won the top prize at the Harvard University National Debate Tournament as a freshman, and represented Georgetown in a battle against a crew from Northwestern University.

Eventually Miller returned to Detroit and earned a degree in 1986 from Wayne State University Law School. That year he joined Honigman Miller Schwartz and Cohn. (Miller is not related to that firm's legendary founder, Milton J. Miller. "But when I was a young associate there, he said, 'Powell, people will think you are my grandson,'" Miller recalls. "I responded, 'But wait until I have my first son. I'll name him Honigman.'")

In the early 1990s, very few Michigan firms were handling class action suits and Miller saw that as a market opportunity. He left Honigman to establish his own firm. First, he consulted his father, who told him, "You're crazy. Be prepared to starve, but I love you and will help any way I can," Miller remembers with a laugh.

Others, he recalls, told him the same thing. They had a point. Miller had to sell his car and downsize his house to raise the \$35,000 for his startup.

But he got going quickly. In the firm's first year, 1996, he filed the following: the first class action in the country against Intel Corporation over faulty Pentium chips; a suit against Michigan Consolidated Gas Co., which charged that energy-efficient gas furnaces it was promoting created a potential risk of carbon monoxide backdraft that could cause property damage or injury; and a suit against cellular providers AirTouch Communications Inc.

He built a local reputation. But nationally? "It took about 12 years of hard

work to establish credibility and a name in securities fraud cases," he says. That's because Wall Street assumes that only the locals are up to the task. Or, as Miller puts it: "They'd like us all to think that only the New York Yankees can play in the World Series."

He's currently playing a key role in one of the largest antitrust cases in U.S. history, involving price fixing among automobile parts suppliers. He also has a client among those in a suit against General Motors Co. involving faulty ignition switches.

In the years since he sold his car to finance his firm, the playing field has changed substantially. "It's a great way to go broke if you don't know what you're doing. It's an absolute myth that you get rich just by filing a class action—you're going to be up against many of the top defense lawyers in the United States," Miller says. You couldn't do it now with \$35,000 in the bank; you have to be ready to put seven figures into the case. "And if the defense smells any kind of weakness? Goodbye."

"Class action cases have become much different in recent years," he continues. "A proliferation of poor quality cases has lead to hostility to class actions from both the left and the right, which is unfortunate."

"As tort reform took hold, more lawyers moved into the class action space and not always bringing the highest quality cases with them. Now you have a judicial backlash, which is very unfortunate. I'm starting to see the baby getting thrown out with the bathwater. I'm hoping that over time what happens is that the meritorious ones are rewarded and the ones that aren't are quickly disposed of and as a result—plaintiff's lawyers use better judgment as to which ones to bring and to prosecute."

Miller wants his firm's lawyers to have strong courtroom skills. "I believe it gives us a huge competitive advantage," he says. "There are so many so-called litigators who rarely try a case. We have the ability to try the case."

After anyone's first trial, Miller calls an office meeting and win, lose or draw, the initiate gets a standing ovation from everybody in the firm. "It's getting in the arena that counts. If you don't have fear you ought not be a trial lawyer," he says. "But you can't let that fear control you." ■