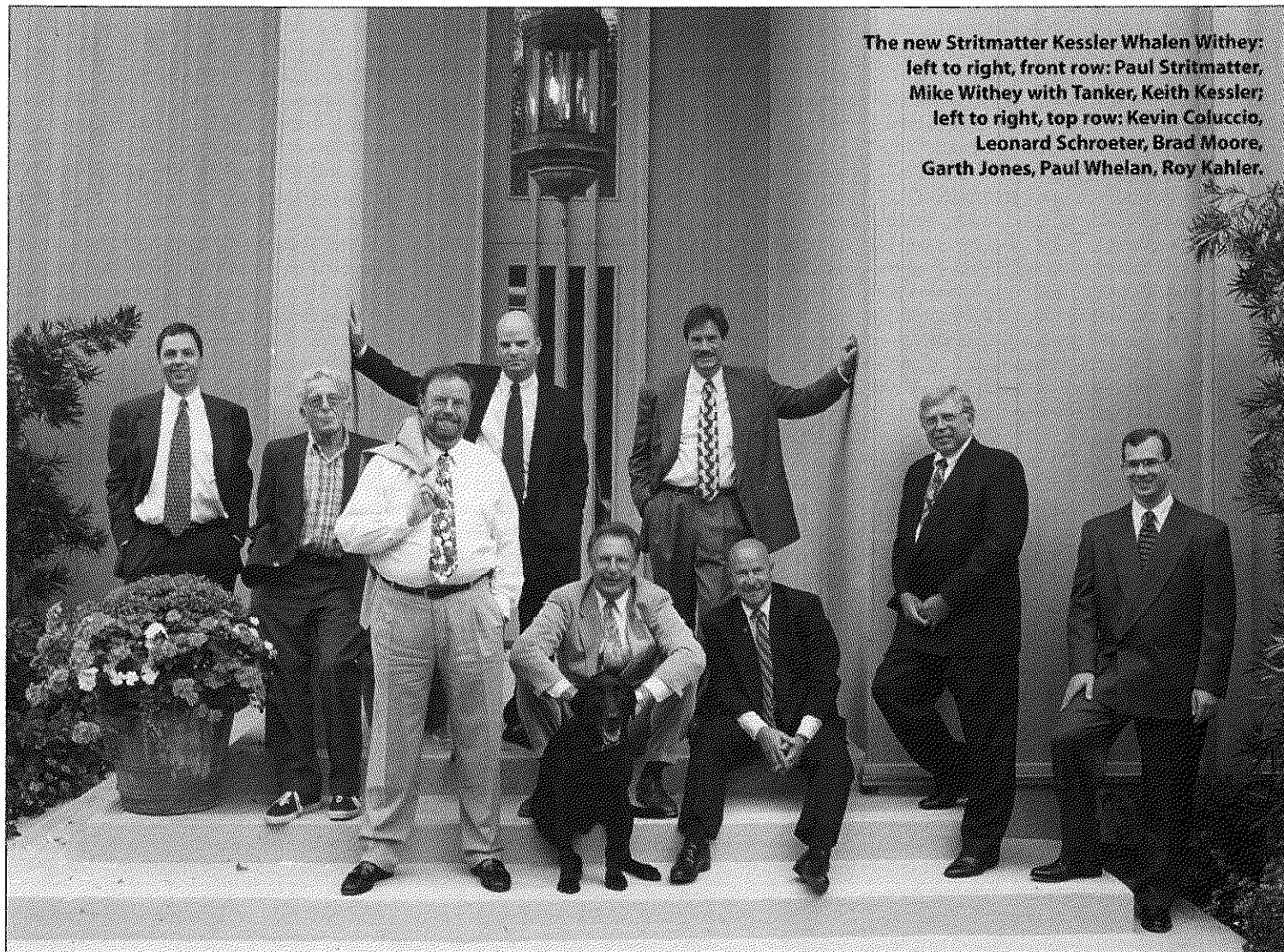


# The Rise and Fall and Rise Again of Schroeter Goldmark & Bender

## In the Process, Stritmatter Kessler Gains Weight

BY RUTH LEVINE

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The new Stritmatter Kessler Whelan Withey: left to right, front row: Paul Stritmatter, Mike Withey with Tanker, Keith Kessler; left to right, top row: Kevin Coluccio, Leonard Schroeter, Brad Moore, Garth Jones, Paul Whelan, Roy Kahler.

PHOTOGRAPH BY LARRY MARCUS

This spring Schroeter Goldmark & Bender, for years Washington's largest personal injury firm, hit a volatile impasse and imploded. Founded in 1968, Schroeter Goldmark was known for ground-breaking litigation, including early asbestos and silicone breast implant cases, and a willingness to take on risky work and the big corporations.

Schroeter Goldmark also had a reputation for an almost socialist political stance in an era of brash, corporate culture. Within the firm, founding partner Leonard Schroeter tried to cultivate an egalitarian milieu. Attorneys were given equal compensation and associates were moved into shareholder status on a fast track. Law was approached with a sense of progressive political thinking and legal activism.

Schroeter, the only named partner still

living, retired in 1989 and assumed an of counsel status. Whatever culture developed in Schroeter's absence proved to be too fragile to hold the firm together. A significantly slimmed down Schroeter Goldmark has emerged from the rubble, along with two new firms.

"We are not dead. We have not dissolved. We have not gone away," says Jeff Robinson, a partner at Schroeter Goldmark. "Ask the Taco Bell defendants." This spring, Schroeter Goldmark attorney Becky Roe successfully represented seven employees in a labor law case that may potentially affect a work force of over 12,000 current and former Taco Bell employees.

The firm's breakup is seen in both a positive and a negative light, depending on who's doing the seeing. Lawyers remaining with Schroeter

Goldmark describe the breakup as a revival of the original values that made the firm so distinctive. They say that during the past year alliances have been tightened, lawyers feel closer to one another and a new firm philosophy has coalesced. The like-minded aggressively sought each other out, they say.

Both lawyers who stayed with the firm and those who left speak of each other respectfully and politely. But law firm breakups are like divorce—even in the best of circumstances there are hurt feelings, anger and the discomfort of change. Finding out the real reasons behind the breakup is difficult, because almost everyone involved is too cautious to speak about the conflicts. Personal differences are only alluded to, while the less revealing philosophical differences are more easily discussed.

Out of the ashes of the old Schroeter Goldmark has come a powerhouse of a new personal injury firm: Stritmatter Kessler Whelan Withey. The Hoquiam-based firm of Paul Stritmatter and Keith Kessler has expanded and added a Seattle branch that includes several of Schroeter's biggest hitters. The office will be staffed by former Schroeter Goldmark attorneys Michael Withey, famous for his successful and arduous case against former Philippine ruler Ferdinand Marcos; Paul Whelan, who has taken on General Motors Corp.; and Kevin Coluccio, a maritime and railroads expert. Brad Moore, Kessler's son, has also moved from the Hoquiam office to the new Seattle location that hovers 12 stories over the Pike Place Market. Reading the long list of regional and national awards the partners share makes them look like a Who's Who of the Washington legal scene.

A second new firm has also formed: Judy Massong and Matt Knopp, former Schroeter Goldmark partners who specialize in medical malpractice and catastrophic injury cases, have started their own two-person firm in downtown Seattle. Massong declined to talk about what happened at Schroeter Goldmark.

### The History

More than most firms, Schroeter Goldmark was the vision and creation of its founder, Leonard Schroeter.

Schroeter has an extraordinary background. He worked with the late Justice Thurgood Marshall on the landmark *Brown v. Board of Education* case; served as the principal legal assistant to the attorney general of the government of Israel; and volunteered to represent Soviet *samizdat* (underground) writers and human right activists, including Andrei Sakharov.

He is a frequent lecturer and writer on civil justice, and on the destructive role corporations play in individual rights and a democratic society. He is the author of "The Last Exodus," a history of the Soviet Jewish emigration movement, and a frequent contributor to legal journals on a number of issues. Presently he is working on two books about the practice of law in America.

But Schroeter is not only known for his concern with justice — he has been an extraordinarily successful attorney. Schroeter's CV is long and rich with legal distinctions and memberships in select associations, such as the Inner Circle of Advocates, a group of the top 100 personal injury trial lawyers in the country. The Martindale-Hubbell Law Directory awards the firm the highest rating possible.

"My perception of law was a sense of mission," Schroeter says. "This was a calling. Law is how you help create a livable society."

He took his personal ideas of justice and brought them to his practice of the law. At the firm, Schroeter believed in taking on worker's compensation and social security cases, and helping people across the board. He often took

cases that other law firms avoided as too risky. His attitude stemmed from his belief in putting service ahead of business, and doing the right thing even if it wasn't economically prudent.

"I can't tell you how many millions of dollars we lost because of things I wanted to do," Schroeter says.

But, of course, losing money is quite the opposite of what the firm as a whole tended to do. Though it often took socially responsible cases, it nevertheless was successful with them — Schroeter Goldmark lawyers became known as winning lawyers. As their reputation grew, more and more clients began streaming in.

Even with an increased clientele, the lawyers at the firm did not necessarily reap any immediate financial benefits. Because work was done on contingency fees, there was often no predictable income. In the asbestos cases they litigated, for example, it took over a decade before any money began rolling back into the firm. Though times were tough in the beginning, the firm grew increasingly stronger financially. By 1969, Schroeter says, they were strong enough so that he never needed to take a case that he didn't believe in.

"It's a wonderful luxury to feel you are always doing the right thing," he says.

By the mid-1980s, the firm had grown to about 90 employees. With the increased number of attorneys and staff, decisions about management and administration were delegated out. A middle-management layer developed. Bigness became a necessity: They needed the size and resources to sustain the breadth of cases they handled, everything from complex product liability and medical malpractice cases to workplace injuries and public interest cases. But the growth wore on the cohesiveness and culture of the place.

In the '80s, Schroeter argued with the firm's attorneys to take on Hanford radiation cases and tobacco litigation. On both counts, he failed to convince them. Taking risky cases had been the "ethos" of the firm, he says. The very glue of the company began to break down.

Schroeter uses a biblical reference when he says the key breaking point was when "many people came in who knew not Joseph," by which he means lawyers who didn't have the culture. Still, he says, "It is a very good firm with very good people doing good things."

Schroeter says that after his retirement in August 1989, he no longer participated in management or attended shareholder meetings. He was aware that there was "significant discontent" within the firm, but didn't know about the strife earlier this spring. That strife, unsurprisingly, was largely related to how lawyers were paid. The compensation issue, which Lindsay Thompson, a partner at Seattle's Junker & Thompson and a former editor of the *Washington State Bar News*, calls the "eternal burning issue" in every law firm, had turned into a troublesome bed of coals.

In 1992, shareholders cut another major lifeline with old company values, over-

throwing the idea of equal compensation. In a 8-7 vote, they decided to use a system of variable or differential compensation in which attorneys would be paid according to a complex set of criteria measuring each individual's performance. Jim Hailey, one of two vice presidents and an architect of the firm's variable compensation system, initially thought it would add fairness. But, five years later, he and others became disillusioned by it and the discordant role variable compensation played in the firm. People were rarely satisfied and it was difficult to decide on the criteria used for evaluation, he says.

There were too many intangibles that couldn't be easily measured, Hailey says. "How do you compensate if a brilliant legal mind in asbestos changes the whole settlement process, or how do you decrease compensation because someone has problems with staff?" he asks.

Even the notion of rainmaking is a complex one, defined in a much more communal tone at Schroeter Goldmark than the traditional use of the word. "If you bring in a big case, there is a natural tendency to forget how much the firm contributes," Hailey says. More important than the lawyer's fee column in which the work has been recorded, says Hailey, is the lawyers who actually have been working hard on the case.

Schroeter Goldmark spent an increasing amount of time on the compensation issue and managing conflict within the firm, rather than practicing law. The variable compensation became a "wedge," Hailey says, changing the system of incentives and moving against the idea of recognizing teamwork.

By the beginning of 1997, Hailey says, it was clear the firm would switch back to the concept of equal contribution and equal sharing of profits among shareholders.

By now the chaos within the firm, and its changing values, had several of its most influential partners thinking about a change. Three of the lawyers who eventually ended up at the new Stritmatter Kessler firm began to see the writing on the wall.

Paul Whelan, a close friend of Schroeter, had been with Schroeter Goldmark almost since the beginning. There were initially five attorneys, he says. "It was small and dynamic and aggressive. For a young, hungry attorney, it offered an incredible opportunity to work on major cases — and to make a living as well."

Unlike some of the others in the firm, Whelan thinks that the system of variable compensation was working "well within tolerable limits." For him, there were other issues at stake. "Law firms should have a mission statement that is reflective of societal goals and professional performance," Whelan says. He says he was unsure of what the vision was at Schroeter Goldmark, although, with a younger set of attorneys, it seemed directed more inward than outward.

Whelan says that some of the later problems at the firm resulted from growth — an infusion of new people with new interests —

and with problems in communication. The type of litigation Schroeter Goldmark was doing had also evolved, and Whelan wasn't interested in the new directions. "I didn't want to have anything to do with the wage and hour cases," he says.

Even some of the firm rules rankled Whelan, who describes himself as a staff-heavy attorney. With his personal injury practice, he wanted three or four legal assistants, who would have assistants of their own. The firm, however, was on its way to reducing staff. At the heat of the spring debate, adding to Whelan's anxiety about what would happen, his youngest child was born.

Kevin Coluccio says that lawyers at Schroeter Goldmark seemed unable to arrive at a shared vision of the firm. A supporter of the variable compensation system, Coluccio says the lack of a shared vision and the cliques within the firm contributed to the friction. Worse, he says, some people within the firm would say one thing in a meeting and something quite different behind closed doors.

Mike Withey identifies three broad categories of differences: compensation, case selection and office management. At the end of April, a memo announced that there would be a "dramatic" restructuring of the firm. A group of six or seven attorneys who had worked closely together within Schroeter Goldmark, and had similar feelings about equal pay/equal work and how the work load should be shared, had taken the reins. The remaining attorneys, including Whelan, Withey and Coluccio, were left to decide whether to stay or go.

Whelan, Withey and Coluccio left the firm after months of discussion with Schroeter Goldmark and a six-hour mediation session led by Seattle attorney Eugene Moen. Whelan describes the separation as a "reasonably amicable" parting.

While those at the firm talked about a sense of relief after the separation, for Leonard Schroeter the firm's fracturing was news, and not good news. He was "horrified" by what had happened at his namesake firm. "It was like a death in the family," Schroeter says. "Am I disappointed it broke up? Yes, I am. Sad...mostly sad, more than critical."

In the fracturing, Schroeter himself became vulnerable. The firm gave no clear indication that it was going to continue his of counsel status. One of his two oldest friends at Schroeter Goldmark, Croil Anderson, stayed with the firm. The other, Whelan, left.

Schroeter says the firm didn't decide until the end of July that he should be continued and keep the office, staff and financial support that allowed him to teach around the country, continue his public interest work and sit on five national boards. In the meantime, though, Stritmatter Kessler approached him and assured him they would support his public interest work. Schroeter moved to of counsel with the newly expanded Stritmatter Kessler firm. "He is the conscience, the guardian angel

conscience, of the legal system, on a national basis," Stritmatter says. "We collectively want to support what he does."

Schroeter says that it was angst that pushed him to finally make a decision — the three months of not knowing what would happen. Kris Houser, a vice president at Schroeter Goldmark, says the firm never came to a clear decision about Schroeter's of counsel status. They knew they wanted to be smaller and leaner, she says.

### **A New Powerhouse Is Created**

Once Withey realized his future would not be in the downtown Central Building where Schroeter Goldmark has had its office for almost 30 years, he started thinking about who he would like to practice law with. He had been close to Paul Stritmatter and Keith Kessler for years — they are all on the Damages Attorney Round Table — and he admired their work.

Withey explained to Stritmatter what was going on, and brought up the idea of Whelan, Coluccio and himself joining Stritmatter's firm. A few days later Stritmatter called to say that he was so excited by the idea that he only got an hour and a half of sleep the previous night.

If Withey was looking for a powerful firm, he could not have done better than Stritmatter Kessler. The firm has the highest rating possible in The Martindale-Hubbell Law Directory and a national reputation. Both partners have served as president of the Washington State Trial Lawyers Association, won the Washington State Trial Lawyer of the Year Award and are listed in The Best Lawyers in America. Kessler serves as the Washington chapter president of the American Board of Trial Advocates; Stritmatter is chair of the state's Access to Justice Board; and both are involved with Trial Lawyers for Public Justice. Stritmatter also was president of the Washington State Bar Association from 1993 to 1994. The firm has been wildly successful, winning numerous multimillion-dollar verdicts in personal-injury cases.

The firm's offices are housed in an unremarkable but friendly wooden building in (unremarkable but friendly) downtown Hoquiam. Stritmatter, Kessler, Garth Jones and Ray Kahler will remain there. Moore will move up to the Seattle branch to work with the three former Schroeter Goldmark partners.

### **Back in the U.S.S.R.**

Stritmatter and Kessler first met on the tarmac of an airport in the former Soviet Union while on an exchange with the Moscow Bar Association in 1979. Kessler says they fashioned a football out of a plastic bag to pass the time, running up and down the tarmac, and spent many evenings that week talking about law. Kessler, whose background had been in criminal defense work in Seattle, joined Stritmatter's practice a few months later. The firm slowly grew to include five attorneys.

Like Stritmatter, Kessler had homes in

Seattle and Hoquiam, although both considered the small logging town their home base. Kessler says when he had previously thought about expanding the firm, he had decided "absolutely not." He liked the firm's smallness. Even with this new firm he was cautious about the idea of expansion, although he says he was excited about the "strength of the combination" of the newly proposed members.

Stritmatter and Kessler deliberated for more than three months, considering the financial ramifications and projecting budgets. When they finally decided to go forward with the new firm, they began many days of discussion with their new partners. With Whelan, Withey and Coluccio, they discussed criteria for taking cases, funding, what types of expert witnesses to hire, staffing and their roles in the legal community. They consulted with a lawyer about retirement plans. Agendas at their meetings ran for pages, Stritmatter says. Twice, the five men and their spouses met to see if everyone felt comfortable together.

With the legal experience the newest members add, Stritmatter says, the firm will be able to take on medical negligence cases and more toxic torts. "This is a juggernaut, a powerful association of very talented people," Kessler says. That is no exaggeration. Each of the new — and original — members of the firm brings with him big talents and big reputations — not to mention a track record of big multimillion dollar settlements.

In 1996, Mike Withey was president of the Trial Lawyers for Public Justice and a member of the American Board of Trial Advocates with Paul Whelan. Withey shares many of the same legal distinctions as Stritmatter and Kessler, and both he and Whelan have the highest individual ratings in the Martindale-Hubbell Law Directory. Whelan has a national reputation in crashworthiness cases. Just this year, he and Oregon attorney Larry Baron reached an important out-of-court settlement with General Motors Corp. in the Anne Kirkwood case. (Kirkwood hit a GM pickup with a side-mounted gas tank. The tank caught fire, badly burning Kirkwood and a grandchild and killing another grandchild.) Coluccio, an "incredible rainmaker," says Withey, has extensive contacts in the labor arena and is one of five attorneys nationwide to handle Federal Employers' Liability Act claims. Coluccio is not just a visitor to the labor world — he worked his way through law school selling (and tossing) fish at the Pike Place Market.

Though they have not all worked together, each of the lawyers has been well aware of the others. Not infrequently they have been in friendly competition.

For many years, for example, Schroeter had the highest personal injury verdict awarded in Washington state — \$6.4 million in a case in which he represented a high-school athlete, who, through an injury, had become paraplegic. In 1983, Stritmatter took the crown from him by winning a \$10-million verdict in a product liability case against Yamaha. But

when Withey won a wrongful death suit against Ferdinand Marcos for \$15 million in 1989, the award for the biggest jury verdict in the state was handed over.

At that time, Stritmatter sent Withey the following note: "The king is dead. Long live the king. However, I do think there should be an asterisk behind your verdict since it was against the leader of a foreign nation for a murder."

The expanded Stritmatter Kessler will allow each of the new partners to do the kind of work that he considers significant, not least of all because it will have the resources and legal experience to take on enormously complicated and expensive cases. For Whelan, who is committed to battling GM, it is a particularly good fit. Automobile manufacturers look at the firm's strength and professional toughness, he says. For the last several years, he has been focused on the GM pickup collision fires, and he plans to continue those fights.

Stritmatter and Withey will continue their work on a federal class-action lawsuit against tobacco companies, representing unions' multi-employer health and welfare plans. Seattle attorneys Lembhard Howell and George Kargianis are working with them on the tobacco litigation in the Seattle office, Kessler says.

One of the differences at Schroeter Goldmark concerned this kind of tobacco litigation, Withey says. He has been investigating the tobacco cases since early this year. When the dispute developed in the firm, he says, he "got the message that most of the people in the firm didn't want to be involved" with the litigation. Instead, he worked on it alone in the mornings and weekends, joining forces with Stritmatter and Kargianis.

All members of the new firm are enthusiastic about Schroeter's relationship with the firm. "Schroeter is the epitome of my

concept of access to justice," Stritmatter says. He says his three heroes are his father, Ralph Nader and Schroeter.

For his part, Schroeter says, he will push Stritmatter Kessler to take on dignitary interest cases, such as sexual discrimination, Americans with Disabilities Act cases, civil rights, gay rights and age discrimination. "I just may help them take on a little more risk. Or get into new fields," Schroeter says.

All the lawyers are enthusiastic about the small size of the firm, the easiness of discussion and the frequent meetings. Withey summarizes the feelings of the entire group: "I'm as happy as could be. This kind of creative synergistic energy is so exciting. I've been in practice for 25 years, but this is what you go to law school for."

### Schroeter Goldmark

Meanwhile, back at the Central Building, the new Schroeter Goldmark is planning its place in the world — and trying to figure out what happened. Hailey characterizes what happened at Schroeter Goldmark as a metamorphosis, a result of several changes occurring at once. The firm has returned to equal sharing of profits for equal contributions of work among shareholders. Teamwork will be emphasized.

For example, Croil Anderson, the president of Schroeter Goldmark and an expert in social security disability hearings, has never tried an asbestos case, but helps when possible with the depositions and strategy sessions. Of those at the firm, he has probably one of the longest institutional memories of Schroeter Goldmark and a deep affection for all of its founders. "With a team concept, it is difficult for any single lawyer to say 'I'm responsible for this entire approach,'" Anderson says.

For now, attorneys at Schroeter Goldmark say, they are keeping the name — despite Schroeter's departure — and remaining in the

**"My perception of the law was a sense of mission. It is how you help create a better society."**

—Leonard Schroeter

Central Building, where they have a lease until 1999. The focus of the firm is changing, though. Most worker's compensation and small automobile cases will be referred out. The emphasis will instead be on more complex cases, such as large class-action and wrongful-death lawsuits. With the slimming down of the firm, it is now the second-largest personal-injury law firm in the Northwest, with 40 to 45 employees.

Still, the firm is on the same path that it's been on for the past 14 years, Houser says. "It is a stopping place for a lot of bright, progressive, committed people." The philosophy hasn't changed too much, either, says Bill Rutzick, who came to the firm in 1983. Since then, more than 50 percent of his work has been on asbestos cases. "People are trying to do good and do well," Rutzick says.

Schroeter Goldmark will try to balance economic-driven decisions with a commitment to taking on important but risky cases. "We have to decide where to take risks, and how big they can be," Hailey says. Like Stritmatter Kessler, the firm wants to remain small and focused. "It is difficult for a personal-injury firm to function as a really large entity," Hailey says. Attorneys and staff have been meeting weekly to discuss cases, and they report that in this new atmosphere people are able to respond more readily to each other.

"It's a renewal of an attitude," Hailey says. "It offers me more vitality as a litigator. We don't

have the distractions."

One of the main public-relations problems with which the new Schroeter Goldmark must grapple is the perception that the firm has lost its heaviest hitters.

The firm's leaders strongly deny any negative effect on the firm with the departure of Whelan, Withey and Coluccio. "We're doing incredibly well," Houser says. "This is a good year for this to happen." Anderson says there will be little effect on the bottom line, and that the loss of profit or revenue from those who have left is not a problem. As to holes in the practice left by the five attorneys, Houser says Schroeter Goldmark's litigation record speaks for itself in terms of the number of cases tried and won by those remaining at the firm.

Even Paul Whelan seems to agree with this assessment. "There is no secret we (Whelan, Withey and Coluccio) were substantial contributors," Whelan says, "historically and recently." However, with the restructuring of Schroeter Goldmark — the reduced overhead and streamlining of staff — Whelan says he envisions "no adverse impact" on Schroeter Goldmark.

Though it seems clear that both Stritmatter Kessler and Schroeter Goldmark will continue to thrive, and that lawyers in both firms are happy about the break-up, still there is an underlayer of pain to the thing, a feeling not unlike watching friends divorce.

Tom Chambers, past president of the Washington State Bar Association, sums things up best. He says Stritmatter Kessler will be a "powerful law firm," but, professionally, he doesn't see any changes in store for the personal-injury field in Seattle. Of the changes at Schroeter Goldmark, and his friendships with the attorneys there, he says "I feel a personal loss. They are all friends. They have been unique in the community." **L&P**

STRITMATTER KESSLER



WHELAN WITHEY

### HOQUIAM OFFICE

407 8th Street  
Hoquiam, WA 98550  
(360) 533-2710  
Fax (360) 532-8032

### SEATTLE OFFICE

1200 Market Place Tower  
2025 First Avenue  
Seattle, WA 98121  
(206) 448-1777  
Fax (206) 728-2131