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Vanguard Of A Fee Revolt

Fred Bartlit's new litigation boutique is betting the house on how it charges for its work.

BY RANDALL SAMBORN

Fred H. Bartlit Jr.-ex-Army Ranger, titan-trial lawyer-is a man with a mission. At 61, he and two dozen colleagues who launched a new firm last year want to do away with hourly billing and, as a result, are inciting revolution in the legal profession.

Although alternative billing practices are in vogue at many firms today, the experiments are, in most cases, loss-leaders for lawyers willing to cut their fees without changing their hourly ways. But Mr. Bartlit's new boutique-Bartlit Beck Herman Palenchar & Scott-has staked its very existence on ending time-based fees without losing money in the process.

And after 33 years at the more than 400-lawyer Kirkland & Ellis-where he was the highest-paid litigator at what is arguably Chicago's most profitable large firm-Mr. Bartlit says he feels invigorated by the risks involved in starting a new firm.

His position at Kirkland, he says, in American law was sort of the pinnacle; my ego would say, Stay. At the same time, he adds, I couldn't wind down in a cocoon at Kirkland. It's too easy; I need a challenge.

Bartlit Beck's 24 entrepreneurial lawyers here and in Denver, who spun off from Kirkland five months ago, believe that, by squeezing out waste, alternative billing will result in both savings for their clients and higher profits for themselves.

Leaving behind Kirkland's opulent, marble-lined halls and wood-paneled offices in a skyscraper overlooking Lake Michigan, the Chicago corps gathered for its first day of business last October at makeshift quarters-a few floors above its soon-to-be-completed offices in the 19th century, former Cook County Criminal Courts building, where another legal maverick, Clarence Darrow, once argued. It is, perhaps, no more than a mile away from Kirkland, and yet it is far removed from what for all of them had been their only previous law firm. (NLJ, 10-11-93.)

Managing partner Sidney N. (Skip) Herman spoke at the gathering of the firm's zeal to move away from the law-firm-pyramid model and hourly billing practices.

We don't want to make money on our hours. We want to make money on our results and efficiency, he recalls, adding that capitalizing on computer technology and partner experience will help make the firm profitable.

But, he told the assembly, if they fail, he has plan B in mind. He held up a stack of StreetWise, a newspaper sold by the city's homeless. It would beat panhandling outside their old offices.

SUCCESSFUL INGREDIENTS

Despite all of the ingredients for success-self-confident, well-heeled lawyers with winning track records and an opening day roster of blue-chip clients-both supporters and skeptics wonder whether Bartlit Beck can accomplish its mission: to change the way corporate America hires and compensates outside law firms.

And such other firms as Dallas' Bickel & Brewer; San Francisco's Preuss, Walker & Shanagher; Menlo Park, Calif.'s Venture Law Group; Chicago's Hedlund, Hanley & John and scores of other boutiques are in the same spotlight as a growing number of high-profile lawyers appear to be forsaking larger firms to try new business of law innovations.

His friends will call it vision; his detractors will call it an ego trip,' says Max Wildman, who was one of Mr. Bartlit's mentors at Kirkland before he left 27 years ago to start one of its many successful spin-offs, Chicago's Wildman, Harrold, Allen & Dixon.

After five months, about 20 percent of Bartlit Beck's work is being done on an alternative-fee basis, and the rest at an hourly rate. Mr. Herman says the proportion should be reversed in several years, as it is already for about 70 percent of the firm's corporate work, which generates fixed fees.

Mr. Bartlit, whose percentage of alternative billing is about 40 percent, would like to have every matter billed on a nonhourly basis: The law business ought to be the best way in the world to make a living, he says, adding that, instead, it is the most inefficient industry in the country.

ALLIES WITH DEEP POCKETS

Among several Fortune 500 clients, Bartlit Beck has some influential, deep-pocketed allies, including Harry J. Pearce, general counsel of General Motors Corp.; S. Allen Lackey, general counsel of Shell Oil Co.; and J. Landis Martin and Dave Garten, both former Kirkland partners and the chief executive officer and general counsel, respectively, of Houston-based

NL Industries Inc. Each of them is an advocate for controlling outside counsel costs and value billing.

As a client, I felt that we would get higher quality service with fixed fees, says Mr. Martin, and have an opportunity to design billing procedures that fit our needs more than the hourly system does.

And the arrangement benefits NL's in-house lawyers, who know they can seek advice without running up a big bill, he says, adding that it also fosters a much greater sense of openness and dealing with problems at an early stage.

Bartlit Beck represents NL in all of the chemical company's corporate and securities matters for a fixed fee. All routine matters are handled for one flat fee annually, while a separate fixed fee is negotiated for each non-routine matter, according to Denver partner James L. Palenchar and Mr. Martin.

Fred Bartlit is on the point of the alternative-billing brigade, says GM senior attorney James Durkin, referring to Mr. Bartlit's West Point and Army Ranger background. The automaker's relationship with Kirkland and Bartlit Beck is excellent, says Mr. Durkin, denying any repercussions from Mr. Bartlit's well-publicized trial loss last year involving a GM pick-up truck with sidesaddle gas tanks that resulted in a $105 million verdict against the company. (NLJ, Jan. 17.)

GM is definitely supportive of the types of change that Fred Bartlit is exploring in his new business venture, says Mr. Durkin, a close aide to Mr. Pearce.

Shell's Mr. Lackey also is supporting Bartlit Beck's efforts to be more efficient. The firm is representing Shell for a flat monthly fee in an insurance coverage case involving products liability claims. Hourly billing isn't going to disappear entirely, says Mr. Lackey, but the problem with the hourly fee is it's an incentive not to be efficient.

SKEPTICAL OF STRATEGY

Emily Nicklin, a former Chicago deputy corporation counsel and a protege of Mr. Bartlit who remained at Kirkland, is skeptical of some of the spinoff's strategy. I'm not sure that it's going to work, she says, expressing uncertainty about Bartlit Beck's lean staffing and intention to affiliate with other firms in areas in which it lacks expertise.

Some of the new concepts lead to a level of micro-managing costs at the expense of larger goals, says Ms. Nicklin. It's important to retain flexibility and focus.

Another maverick, high-powered litigator Stephen D. Susman of 42-lawyer Susman Godfrey in Houston, who long ago eschewed a large firm to build an innovative boutique, asks rhetorically why Mr. Bartlit even needs a law firm; why not just move to his home in Vail, Colo., and make himself available to try one big case each year for $1 million?

I've done the arithmetic, and I could do great that way, says Mr. Bartlit, but I wouldn't accomplish what I want to do to change the profession. Alone, he wouldn't have the credibility that he says is needed, and he likes and needs the people who have joined him in his pursuit.

The challenge, says Mr. Susman, whose firm does about 60 percent plaintiffs' work, is whether Mr. Bartlit can make fixed and contingent fees work on the defense side. It's not very easy, he says, because the client is rarely willing to give you as much money as you need to try a case to protect yourself to the bitter end.

Yet, Mr. Susman says, There will always be a market for people like Fred, but I don't know whether there will always be a market for a law firm.

Even Mr. Bartlit, a dashing, imposing figure whose voice commands attention as he barnstorms the nation to promote his ideas, concedes that he has encountered more resistance to his futuristic vision than he had anticipated. At first, I thought these ideas would carry the day by themselves, but some of these things are more difficult, he says, explaining that many corporate counsel either are comfortable with hourly rates or face financial disincentives to experiment.

But, says name partner Philip S. Beck, even if only 20 percent of corporations are interested, there's tremendous opportunity.

HISTORICAL SHIFT?

Mr. Bartlit says, however, that his decision to leave Kirkland after first flirting with the idea seriously in early 1992 was one of the hardest he ever made. The nine partners and 11 associates who left with him have risked their comfort and security and likely will earn less money initially, and all five name partners are in jeopardy of losing substantial retirement funds from Kirkland, with Mr. Bartlit having the most at stake.

Nonetheless, Mr. Bartlit says that Kirkland is the best big firm in America and that it will continue to be successful, even though he believes that an historical shift away from time-based billing and the erosion of the law firm pyramid have begun.

It's easier to change things and innovate in a small, elite organization than a large institution, he says. Mr. Bartlit and his followers were persuaded to stay at Kirkland in 1992 after being assured that they would have latitude to experiment with alternative fees.

What happened was, they didn't really let us do what we wanted to do, says Mr. Herman, who was at Kirkland 15 years and head of recruiting for five years. The problem, he adds, is that it's hard to predict revenues based on alternative fees.

The challenges at my old firm were all political, says Mr. Herman. Now the challenges are professional and economic.

Jeffrey S. Davidson of Kirkland's Los Angeles office, a member of the firm committee, says he believes that Mr. Bartlit's thinking about alternative fees evolved to a point where he wanted to be essentially devoted to that approach as opposed to experiment.

And Kirkland, partly at Mr. Bartlit's urging, has had some success with alternative fees. After NL Industries' unsuccessful proxy bid for control of Lockheed Corp. in 1990, Mr. Davidson won a $30 million verdict for NL in a 1992 securities fraud trial on a contingent fee. The case settled Feb. 24 when Lockheed dropped its appeal and agreed to pay NL $27 million.

As in that case, lawyers at Kirkland and Bartlit Beck say they expect to work together in the future. But Kirkland in March asked a judge in Chicago to disqualify Bartlit Beck from representing a party that is being sued bya Kirkland client, alleging a conflict of interest. *Prudential Plaza Associates v. Turner Construction Co.*, 90L17732 (Cir. Ct., Cook Co.).

JUST DUMB

Aside from being cutting-edge in billing practices, Bartlit Beck's efficiency drive has put it at the vanguardof computer technology. At a cost of about $60,000 per lawyer, it has the latest computer hardware, software and office equipment. Each attorney can network with colleagues and clients, process documents, retrieve internal precedents and search depositions or data bases with a high-powered portable laptop computer from any location.

Two years ago, Messrs. Bartlit and Beck didn't even know how to turn on a computer, says their associate David P. Berten. Now both are computer techies and lecture about their experience at legal technology seminars.

I used to think it was sissy if trial lawyers used the technology [that was available]. I was just dumb, says Mr. Bartlit. In '92, I did not appreciate the impact of the technology, and it's 50 percent or more of what we're able to do.

Mr. Beck says, It became apparent to us immediately that these were tools that, if we exploited them, we could make dramatic gains in productivity. What they didn't realize until later, he adds, is that it helped improve their work product as well.

Kirkland had entered the computer age, says Mr. Beck, but the biggest advantage for a start-up firm is that it can invest in state-of-the-art equipment instead of updating obsolete systems. The two firms do have a different technology culture, says Karen L. Chapman, a Bartlit Beck Denver partner. Kirkland certainly has a lot of computer resources available to those who seek them out, but at Bartlit Beck everybody is focused on it.

REWARDS OFFERED

Bartlit Beck's practice is divided into corporate and litigation departments. All 12 attorneys in Chicago are in litigation, and the dozen lawyers in Denver are split evenly between the two groups. The firm is adding three new associates in the fall but intends to remain at less than 50 lawyers.

The partnership is composed of six share and four non-share partners, and the 14 associates are mostly from the classes of '88 through '91. All but three of the associates also were at Kirkland. Five of the lawyers are women, including two non-share partners.

One non-share partner, Lindley J. Brenza, 31, who clerked for Chief Justice William H. Rehnquist and was associate deputy attorney general in 1991-'92, was just named a non-share partner at Kirkland last Oct. 1, the same day Bartlit Beck's formation was announced.

I wasn't going to play it safe and miss my chance to do something new and different and build a firm from the ground up, says Mr. Brenza, who majored in computer science in college.

Bartlit Beck employs a staff of two dozen non-lawyers, including law clerks, legal assistants and only seven secretaries. An unusual profit-sharing plan will reward every employee, says Mr. Herman. If everyone has a stake in the firm's profitability, adds Mr. Bartlit, there is increased incentive to reduce waste.

The lawyers' hourly rates range from $100 to $200 for associates and $240 to $335 for partners, except Mr. Bartlit, who charges $465 an hour.

FIRM AT A GLANCE

- **YEAR FOUNDED:** 1993
- **MAIN OFFICE:** Chicago
- **NUMBER OF LAWYERS:** 24
- **MISSION:** Litigation boutique that aims to reform the profession's billing practices, and, perhaps, the profession itself. Has instituted fixed-fee billing system that now accounts for 20 percent of revenue.
- **CLIENTS:** General Motors Corp.; Shell Oil Co.; NL Industries Inc. and others.

The rest of us are very fortunate that we have Fred at the head of the firm, says Mr. Beck. While the partners are confident that they would do well on their own, they say that Mr. Bartlit's presence, and his reputation, have helped attract more quality cases than they can handle.

ON THE DOCKET

Mr. Bartlit and Denver partner Donald E. Scott represent tycoon William I. Koch, the winning skipper in the 1992 America's Cup yacht race, and are preparing for trial, possibly later this year, in his $1 billion fraud suit against members of his family involving the 1983 transfer ofa controlling interest in Koch Industries Inc., the nation's largest privately held oil company. The lawyers just opposed summary judgment in the internecine dispute. *Koch v. Koch Industries Inc.*, 85-1636C (D. Kan.).

The firm has about 25 active cases on its docket, including litigation for Shell, General Motors and United Technologies Corp. Mr. Scott is representing NL in several lead paint cases, and the firm also is NL's trial counsel in a large insurance coverage case and a $100 million class action in Philadelphia involving personal injury and property damage allegedly caused by lead emissions.

NL's Mr. Martin, who spearheaded Kirkland's Denver office with Mr. Bartlit in the early 1980s, says he is interested in possibly converting some of Bartlit Beck's NL litigation to alternative fees as well. NL's outside counsel budget of $10 million annually now is about evenly divided between Kirkland and Bartlit Beck, he adds.

The incremental shift toward alternative billing is similar to the advent of cellular communications a decade ago, says Mr. Martin., I think this is the beginning ofa sea change, he says. I think they'll have great success, in part because they're definitely on the leading edge.

Part of Bartlit Beck's leading-edge approach is not worrying about every rusty nail in a case. We don't like discovery for four years, says Mr. Herman. We do like trials in three months.