

# THE NATIONAL LAW JOURNAL

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NEWS FOR THE PROFESSION

MONDAY, SEPTEMBER 1, 2008

An incisivemedia publication

## LAW FIRMS

# Midsized firm finds flat fee design a good fit

## Bartlit Beck gets to 'cherry pick' defense, transactional work.

By Lynne Marek

STAFF REPORTER

CHICAGO—When attorneys Sidney “Skip” Herman and Phil Beck left Kirkland & Ellis with colleagues in 1993 to form a law firm that set flat fees for high-end litigation, they figured they had a three-year head start on rivals that would flock to the same business model.

But the crowd never showed up.

“Here we are, 15 years later, pretty much alone in this high-end space,” said Herman, who is the managing partner of the firm.

Bartlit Beck Herman Palenchar & Scott tends to attract and take cases in which the outcome could have a critical impact on a client’s financial well-being, cases in which more than \$50 million is typically at stake.

For instance, it acted as defense counsel for Merck & Co. Inc. in lawsuits over deaths allegedly tied to the company’s painkiller Vioxx. The firm also handles midsize transactional work from its Denver office, such as the \$120 million sale last year of Stratos International Inc. to Emerson Electric Co.

Bartlit Beck, a Chicago-based firm with 65 lawyers, is pulling in major corporate defense work and spurning about half the client requests it gets. It may be one of the few firms that can keep cherry-picking what Beck calls “fun and interesting” cases even in an economic downturn.

The lawyers took work for E.I. du Pont de Nemours & Co. and Bayer A.G. with them from Kirkland, but have added clients such as Merck, Ernst & Young Global Ltd. and Federal Signal Corp., while turning away others such as General Electric Co. The firm steadily built acceptance of flat fees until, by

the fifth year, it was generating 90% of its revenue in that way.

The firm is now “100% off the hour.” It negotiates a fee based on an optimal case outcome with each client. Then it receives a portion of the fee while the case is pending and may reap a multiple of the portion held back if the litigation is resolved favorably, or nothing if the outcome is poor.

When the 19 Kirkland lawyers started the firm, they hoped for comparable pay without the drudgery of reporting hours, said Herman, 55. The results exceeded their expectations, he said. During the past 10 years, the firm’s revenue has climbed 18% annually while its lawyer head count rose 4%, said Herman, who declined to comment on profitability.

“They pay at the top of the market,” said Frank Kimball, a Chicago legal recruiter and consultant. “Their bonuses, I’m told, are extremely high.”

### Not many associates

Unlike traditional firms, Bartlit doesn’t depend on an army of revenue-generating associates. It has 47 partners, including 41 litigators and six corporate attorneys, plus 18 associates. Attrition is low, with 15 of the original 19 lawyers still on board and an average annual departure rate of one or two lawyers. In addition, the firm has gained recruiting clout, building a firm where 20% of litigators are former U.S. Supreme Court clerks, partly because of the flexibility allowed by the nonhourly model.

“There’s no time you have to be in the office just for the sake of being in the office,” said Herman, from his home in Montana.

Another draw is trial experience. Half the

firm’s lawyers argue at trial each year in a firm schedule that includes an average 135 days annually in court, in addition to pro bono work. If a client approves, junior attorneys may argue a case even though senior partners are available. At any given time, the firm has about 40 cases, with a bit more than half typically in federal court. The caseload is about 75% defense work, including many patent and pharmaceutical cases.

In representing Federal Signal, a Bartlit Beck team this year won dismissal in New York state court of firefighter claims that the company’s emergency vehicle warning sirens led to hearing loss. In April, the firm persuaded an Illinois state court jury to deny similar claims from 27 Chicago firefighters. Another trial on the issue is slated for January.

Bartlit Beck’s singularly styled success relies mainly on the reputation and record of its top attorneys, said Joel Henning, a consultant at Hildebrandt International in Chicago.

“A lot of clients want Bartlit Beck and they’ll pay whatever way Bartlit Beck proposes,” Henning said. “It’s a tough model to achieve to recruit absolutely superb lawyers and pay them enough and have the big cases to afford that pay.” 

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