



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 781 7100 | Fax: +1 646 781 7161 | customerservice@portfoliomedia.com

Boutique Biz Model Puts Associates In Driver's Seat

By **Jacqueline Bell**

Law360, New York (December 10, 2009) -- One recent October morning, Bryan Leach, an associate at the litigation boutique Bartlit Beck Herman Palenchar & Scott LLP, got a chance to do something most young associates at a larger law firm could only dream of doing: rack up a big win on a \$100 million trademark case he had argued this fall before the U.S. Court of Appeals for the Seventh Circuit.

While it may be rare for an associate like Leach, who has logged just two years at the law firm, to get an opportunity to argue before a federal appeals court, Bartlit Beck has created a business model where it's hardly out of the question.

Chances are great, but results matter most, as the 31-year-old Leach knows firsthand, recalling the day he found the decision posted to the Seventh Circuit's Web site.

"I had already checked the docket a few times that day," Leach said. "And suddenly there it was. Right away, I scrolled down to the bottom of the opinion and saw the three words I was hoping to see: vacated and remanded."

Leach and Mark Ouweleen, the senior partner on the case, had convinced the Seventh Circuit panel that a three-year-old judgment against Japan's Sunstar should be tossed out. The judgment of the lower court, had it been upheld, would have blocked the Japanese company from using a VO5 trademark on a \$100 million line of popular hair care products.

The drive to get young associates ready for big assignments, and big wins, early on in their careers comes principally from the firm's approach to billing. Bartlit Beck touts itself as a firm that does not charge by the hour. Instead, fee arrangements are structured with an eye toward rewarding the firm's success and efficiency, and usually the fee is based in some way on the outcome of the case.

“We don't do any work by the hour. We work on a fixed fee, with a bonus for success,” said Sidney N. Herman, managing partner at Bartlit Beck. “You pay for hours, you get hours. You pay for results, you get results.”

That approach encourages the boutique litigation firm to put a “small, highly trained, SWAT team” on every case, Herman said, instead of a phalanx of attorneys.

The typical case Bartlit Beck takes on is handled by one senior partner, supported by as many as three younger lawyers, or as few as one. That approach naturally provides associates more opportunities to develop skills, and encourages senior partners to get young associates up to speed quickly.

“The invisible 'Adam Smith' hand can benefit the young associate,” Herman said.

Patrick J. Lamb, publisher of the law firm management blog, In Search of Perfect Client Service, and founding member of Valorem Law Group, a Chicago litigation firm, said when a law firm has “skin in the game,” it changes how the firm views the potential of its young associates.

Lamb's own firm has switched to a billing model similar to the one used by Bartlit Beck, and Lamb said the difference is dramatic.

“The incentive to train people, to get them to race along that experience curve, is enormous. You look for opportunities to get people through that curve, so they are able to take on work themselves,” Lamb said. “It is a wholly different model than what big firms do.”

At large U.S. firms, associates have long been viewed as engines of profit. The more associates on a case, the more hours a client can be billed. But at firms like Bartlit Beck, that model is being challenged.

There, every task attorneys must accomplish, from the relatively simple, to the most complex, is done by attorneys who have been exposed to all the various stages of a lawsuit.

Take document review, for example, a task often given to associates just starting out at a large law firm. Digging through archives is a job done better, and faster, by someone with broad experience, who knows exactly what's important, Lamb argues.

“I believe the results are much better when you have an experience-driven model. That's one of the reasons I think Bartlit Beck is so successful,” Lamb said. “If you started from scratch, and tried to think of it from the perspective of what provides the greatest value to a client, their model certainly comes much closer to capturing that.”

And when law firms have a vested financial interest in the outcome, clients are more likely to be comfortable with a firm's suggestion that a talented associate should take on an important oral argument.

"It shifts to us to pick the best people for the job. We've got a lot at stake here, too," Herman said.

The SWAT team approach also means that associates aren't strangers to clients. Still, the firm's clients certainly do weigh in when it comes to making a decision about putting an associate into the driver's seat.

"Different clients have different levels of tolerance. At the end of the day, it's the client's case, and we respect that," Ouweleen said.

Bartlit Beck's expectation that associates will quickly take on big responsibilities also influences the way the firm hires new attorneys.

The firm makes no lateral hires, only taking associates straight out of school or a clerkship. Each associate is expected to make partner, and only a few are hired each year, with an eye towards picking attorneys who will be able to rapidly master high-level legal skills.

But it's not all about casting. Bartlit Beck senior partners spend significant amounts of time and resources intensively training young associates.

"Our whole model is built on the notion that experienced partners will do most of the work. In order to do that, you need experienced partners. We only hire a handful of the very best associates, and then immediately start turning them into partners," Ouweleen said.

Ouweleen, the senior partner on the Sunstar case, said he conducted days and days of mock trials with Leach, making sure the argument they had crafted was ready to face a Seventh Circuit panel.

And Ouweleen wasn't the only partner working to hone Leach's oral argument. Many were involved in mock trials, both in the firm's offices in Denver and in the firm's Chicago headquarters, where the firm has a full-scale model of a courtroom built for just this type of exercise.

Leach also benefited from the experiences of a newly hired associate who had just completed a clerkship at the Seventh Circuit. And one of the firm's founding partners, Donald E. Scott, took a day to read the briefs, and helped grill Leach on the details of the argument, to ensure he was ready for anything.

"That's a significant expenditure of resources, on our nickel," Herman said. "He was armed to the teeth."

That type of intensive training and mentoring also doesn't hurt the firm when it comes to luring top talent. At least 50 percent of the lawyers at Bartlit Beck have spent time as federal judicial clerks, and 20 percent have clerked for the U.S. Supreme Court.

“This is a very different environment than a big New York law firm. It's an environment where people will take the time to invest in your development,” said Leach, who came to Bartlit Beck straight from a clerkship with the former Supreme Court Justice David Souter.

Toni Whittier of Whittier Legal Consulting said hands-on training of associates by a senior partner, and significant time spent mentoring is a common feature of boutique law firms, as is an expectation that associates hired today will be partners tomorrow.

While many top clients still instinctively trust larger law firms to handle their most pressing legal issues, that's slowly changing, Whittier said. For boutique firms with good results, companies are increasingly willing to go to them with tough cases.

That, coupled with the recent upheaval in the legal job market, has made more and more top young attorneys willing to join a smaller firm, abandoning a long-held belief that taking a first job as an associate at a large firm is a sure bet, and a good way to protect future job prospects.

“Historically, lawyers have believed that it's far easier to move from a bigger firm to a smaller firm, rather than vice versa,” Whittier said. “Now there's significantly greater mobility in the marketplace, and an increasing number of candidates headed to smaller firms.”