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ALM

LITIGATION

Boutique
of the Year

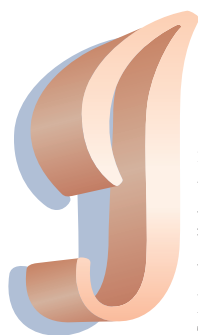
For our *finalists*,
it's not the *size* that
matters, it's the *skill*.
Also the joy of *success*.



Finalist

BARTLIT BECK

Small Is Beautiful



IN AN ERA WHEN LAW FIRMS feel an almost biological imperative to grow larger, there is still one practice area where some of the best clients send some of their best work to some of the smallest law firms: big-stakes litigation.

This is a high-profile anomaly, one that brings intense interest, competition, and even a bit of envy from colleagues working in firms that are now the size of villages.

But who is doing the best work? Who is playing at the highest level, in the cases with the biggest impact, for clients who can afford to hire anyone? To find out, we decided to hold our first Litigation Boutique of the Year contest, a competition open to firms who were not members of The Am Law 200.

We invited the firms to report on their litigation records between January 1, 2003, and June 30, 2004. Specifically we asked for up to five examples of “significant achievements” in a broad range of litigation activities. In addition, we asked for client references, names of opposing counsel, and a list of firm partners who tried cases to verdict during that time period.

We winnowed the candidates and supplemented their submissions with reporting. We developed a shortlist of five finalists and then visited each of them, offering these master advocates the chance to make their case.

The contest was very close. One caveat: We were judging a specific 18-month time period, not a law firm’s oeuvre. Our special report features the winning firm, the runner-up, and the other three finalists, plus three microfirms whose

work and approach seemed particularly interesting.

These firms manage to combine cutting-edge technologies, palpable tastes for risk, and an old-fashioned sense of partnership. The rewards are obvious: Their clients are stellar, and so are their profits. The partners are more than names on a Web site: They don’t need name tags at summer outings. That’s not an accident: Many fled large firms to rid themselves of conflicts or anonymous alienation. Some just wanted the pleasure of uncertainty. And, best of all for those with the metabolism of gunfighters, they often get to try their cases, not just litigate them.

They say they’re determined to stay small. And their very scale drives—and changes—almost everything. They don’t have to hire platoons of young lawyers for pretrial trench warfare. They are content to cede the document churn to their megafirm cocounsel. They add lawyers as needed, by ones and twos, typically bringing on federal court clerks they hope will grow into partners. Think how different a firm’s atmosphere would be if associates were not regarded as fungible but as the future.

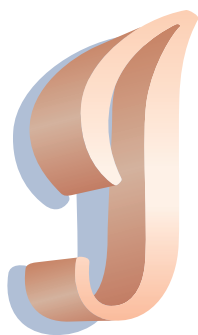
Because they’re small and focused, their clients tend to come only with important problems. And, because they’re small and don’t aspire to a full-service menu, they get referrals, especially from lawyers who don’t have enough Xanax on hand to face a trial judge.

One more thing. We can’t say these firms are sharper or more loyal or harder-working than the average Am Law 200 outfit. But after a month’s worth of interviews, we’ve never met a group of litigators who seem happier. —ARIC PRESS

Bartlit Beck likes to
call the tune and put its
own skin *in the game*.

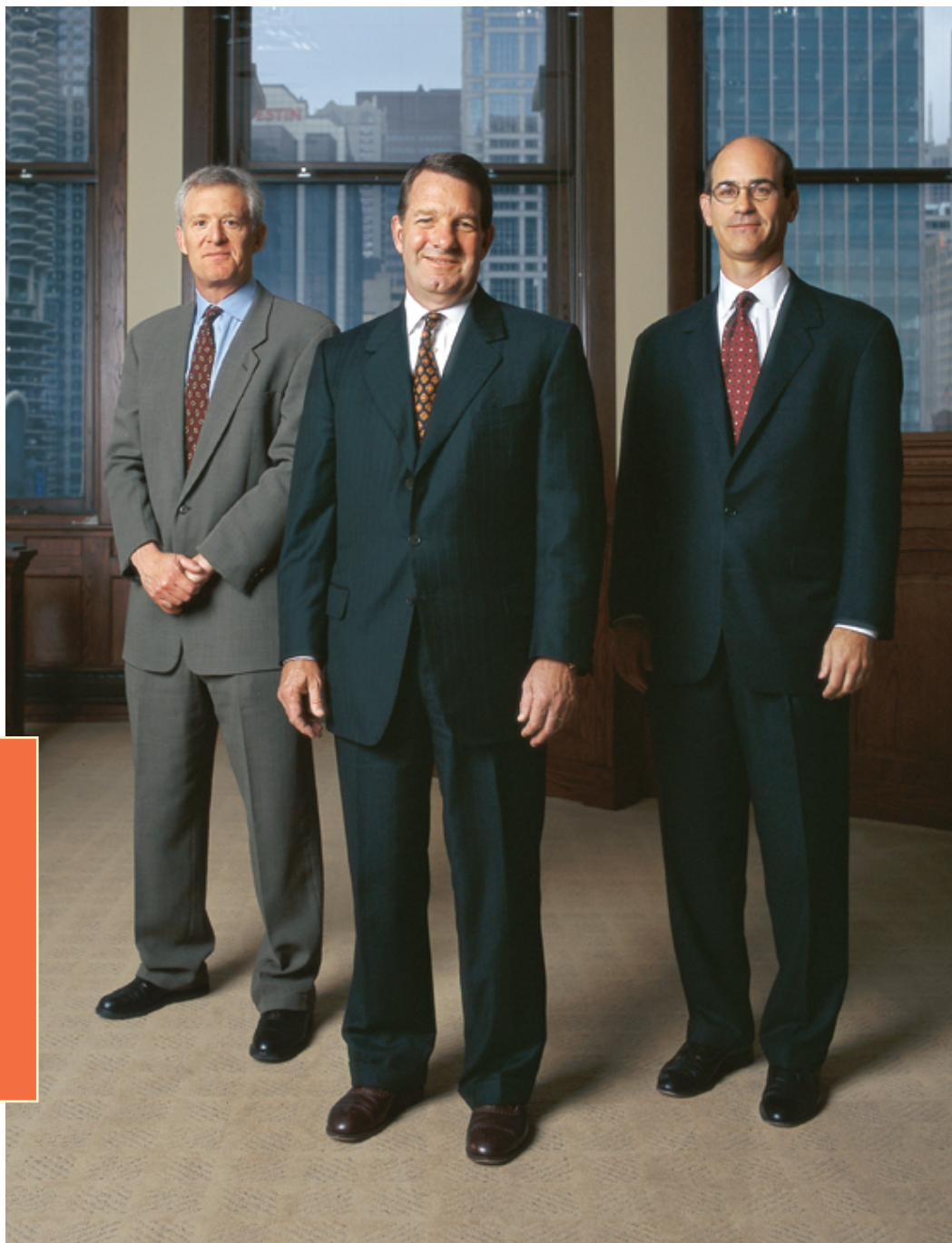
First Fiddle

BY PAUL BRAVERMAN



IN THE BEST-SELLER *Moneyball*, author Michael Lewis tells how Billy Beane, the 42-year-old general manager of the Oakland A's, tried to revolutionize Major League baseball. Forced to operate with a fraction of the budget available to teams like the New York Yankees, Beane decided that he had to be smarter and more efficient by, for example, emphasizing how often players got on base rather than how fast they ran to first base. Since he was hired in 1997, the A's have compiled one of the best records in baseball.

He didn't know it, but Billy Beane was trying to do in baseball what Fred Bartlit, Jr., had already done in law. In the late 1980s, while a partner at Chicago's Kirkland & Ellis, Bartlit had two flashes of insight: Billing by the hour is inevitably inefficient. Quality disintegrates with size. He thought he knew a better way to run a law firm, so in 1992, at an age—60—when many lawyers are thinking about retirement, Bartlit founded



BARTLIT BECK

SIZE 31 partners, 15 associates, 2 of counsel

FOUNDED 1992

FIRM ORIGIN Spun off from Kirkland & Ellis.

UP NEXT Defending Tyco Healthcare Group in a medical device patent suit; representing Real Networks in an antitrust case against Microsoft over media-playing software.



Finalist

BARTLIT BECK

Bartlit Beck Herman Palenchar & Scott.

A little more than a decade has passed, Bartlit is now 72, and his law firm has collected more trophies than Billy Beane. The founding partners say that they surpassed their earnings at Kirkland only a few years after leaving, and they've done so in most years since. The initial group of 18 has grown—carefully—to 48. The firm doesn't have a formal recruiting program, but there's no shortage of gaudy credentials and U.S. Supreme Court clerkships among its associates.

In keeping with Bartlit's vision, the firm handles almost all of its cases on a nonhourly basis. Fee arrangements are tailored for each case, usually after negotiations between the client and managing partner Sidney "Skip" Herman. Typically, the firm charges a flat fee, payable in monthly installments; the client holds back a percentage. If Bartlit Beck is successful, the client pays the holdback, or even some multiple of it. If not, the client keeps the money.

Bartlit Beck's biggest win of the survey period was the defense of Bayer Corporation in the Baycol product liability litigation. Baycol is an anticholesterol drug that caused a potentially fatal muscle disorder in some users. The first Baycol case went to trial in plaintiff-friendly Corpus Christi, where name partner Philip Beck faced off against hometown heavyweight Mikal Watts. The case became ugly, as Beck and Watts traded personal attacks and fought over the meaning of a Bayer memo that said, "Dig, throw the corpse, cover with sand." The phrase "bet the company" is widely overused, but it probably applies to that litigation. After the jury returned its verdict, Bayer's stock rose almost 40 percent.

There are 14,000 Baycol claims to go, and Bartlit Beck can't handle all of them. George Lykos, chief legal officer for Bayer, describes Bartlit Beck as the "strategic director" of a legal team, which includes Sidley Austin Brown & Wood, Williams & Connolly, and Shook, Hardy & Bacon.

Bartlit Beck is used to taking the lead. Other firms aren't always used to taking direction. The awkwardness this creates usually doesn't last, according to Herman: "That's how those firms make money. They're selling time. We're selling something different."

Bartlit handled the firm's other notable trial of the last two years, defending Forstmann Little & Co. in a case in which the state of Connecticut claimed that the buyout firm wrongfully invested the state's pension fund. The jury awarded no damages, even though it found Forstmann to have been grossly negligent. At press time Bartlit was in the middle of a three-month trial in Dayton, defending United Technologies Corporation in a case brought by the U.S. government concerning the price of Pratt & Whitney jet engines.

That case is scheduled to end in December; he's on trial again in March, representing a subsidiary of Tyco Healthcare Group in a patent suit about medical device used in laparoscopic surgery. The biggest hardship produced by the seemingly grueling trial calendar? The apparently ageless Bartlit has to awaken at 4 A.M. for his daily two-and-a-half-hour workout.

Besides nontraditional billing, technology is the other key difference between Bartlit Beck and many of its competitors. In Bartlit's original vision, technology would let a few people manage a sophisticated practice. The lawyers themselves, not their staff, deploy it in court. Two anecdotes stand out:

- Beck is on trial, representing a subsidiary of General Motors Acceptance Corporation. Opposing counsel is Stephen Susman of Houston's Susman Godfrey [see "Risky Business," page 84]. Susman calls a witness, whose testimony raises a flag with Beck. His laptop allows him to search every deposition taken in the case, and if the deposition was videotaped, the transcript is linked to the video. Within minutes, Beck locates the conflicting testimony, and by the time Susman completes his direct examination, Beck has the impeaching video ready to play.

- Bartlit is negotiating a settlement for Nicor Inc., a natural gas company based in Illinois. The other side makes an argument, which Bartlit relays to the firm via e-mail. Before the opposition is done speaking, Bartlit displays a document that refutes the argument. Bartlit was able to move so quickly because, in his late fifties, he taught himself to type using Mavis Beacon's software, testing himself by racing his secretary. Now "he's the most technically savvy lawyer I've ever seen," says Paul Gracey, Jr., general counsel of Nicor.

A few years after Bartlit Beck launched, Bartlit predicted in this magazine that the billable hour was doomed, that his way was the wave of the future ["Diamonds Are This Firm's Best Friend," December 1995]. "I was wrong about that," says Bartlit. Of course, he sees an upside: In years to come, Bartlit Beck and a few other firms will have a near monopoly on lawyers with trial experience.

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