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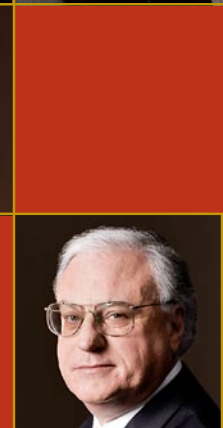
**SPECIAL
ISSUE**



LITIGATION *Boutique* OF THE YEAR



WINNER • BARTLIT BECK





WINNER • BARTLIT BECK

BARTLIT BECK

BARTLIT BECK'S CLIENTS SAY

"It was like this firm just dropped from heaven," says DuPont General Counsel Thomas Sager.

Unique Model, Unmatched Results

No hourly fees, no leverage, no laterals.

The firm's model is unique—and its results are, too.

By David Bario

THE LAWYERS AT CHICAGO'S BARTLIT BECK

Herman Palenchar & Scott call it simply "The Letter." The language varies, but the basics stay the same: After years on a case—but just months or weeks before trial is scheduled to begin—the big-firm partner overseeing the litigation writes to the client's general counsel. Time to settle, the letter warns. The risks of going to trial are just too great.

That's when the general counsel picks up the phone and calls Bartlit Beck.

"It's amazing how many big-name guys don't ever try jury cases," says Fred Bartlit, Jr., who founded Bartlit Beck in 1992 with 18 other Kirkland & Ellis defectors. (The firm now has 69 lawyers.) "I tell clients, 'Hire us, and you'll never get The Letter.'"

Of course, those letters are Bartlit Beck's bread and butter, delivering a steady flow of clients counting on the firm's veteran trial lawyers to make their case to a jury. Along with a roster of institutional clients like Bayer AG, E.I. du Pont de Nemours and Company, Ernst & Young, and Tyco

International Ltd., they keep the firm's lawyers where they want to be: in court.

More than any of the other litigation boutiques we considered, Bartlit Beck stood out for the sheer breadth and magnitude of its trial work. In the last two years, its attorneys tried more than 15 cases to verdict in at least ten states—and they prevailed in all but three. In areas as diverse as mass torts, securities, antitrust, and intellectual property, the firm's wins reverberated throughout the industries involved. For NL Industries, Inc., Bartlit Beck scored landmark wins in lead paint cases brought by the state of Rhode Island and the city of Milwaukee. For Merck & Co., the firm showed that Vioxx cases could be won at trial. Bartlit Beck's trial and appellate victories for Bayer and Covidien AG saved those companies potentially billions in losses and damages. These accomplishments, combined with the firm's innovative style, helped distinguish Bartlit Beck as this year's Best Litigation Boutique.

Over the 16 years of its existence, Bartlit Beck has stayed true to its founding tenets: disdain for the billable hour, unabashed reliance on technology, inverted leverage, and a commitment to home-grown talent so deep that the firm refuses to hire laterals. Bartlit Beck is so busy, and can afford to be so selective, that managing partner Sidney "Skip" Herman estimates the firm turns down a third of the potential cases that come its way.

BARTLIT BECK

SIZE OF FIRM

Partners52
Associates17

OFFICES

Chicago
Denver

REPRESENTATIVE CLIENTS

Bayer AG
E.I. du Pont de Nemours and Company
Ernst & Young
Merck & Co.
Tyco International Ltd.

BARTLIT BECK

BARTLIT BECK WON'T BILL BY THE HOUR.

Sometimes clients report that other firms offer different assessments of their cases. "I say, yeah, but they're billing you by the hour," says Phil Beck.

BARTLIT BECK

BARTLIT BECK STANDS APART

"Bartlit Beck stood out for the sheer breadth and magnitude of its trial work."

BARTLIT BECK'S DEEP BENCH

"Even the rookies at Bartlit Beck...are heavy hitters."

And always, at Bartlit Beck the prevailing motivation is a hunger to try cases. "Clients know we're perfectly prepared to go to trial," says Philip Beck, who grew up on Chicago's South Side, near Fred Bartlit's old neighborhood. "If you're afraid to lose, because you haven't won enough and you haven't lost enough, that's going to distort the advice you give clients. For lack of a better way to describe it, we're unafraid to try cases."

Fear might have paralyzed partner Donald Scott, who in 2006 saw the end of a 20-year winning streak in cases against lead paint makers. After a jury in Rhode Island found Scott's client, NL Industries, and two other defendants liable for the "public nuisance" created by lead paint in the state, NL faced billions of dollars in abatement costs. The Rhode Island verdict was the first-ever plaintiffs win in such a case—and a potential game-changer for individual and governmental plaintiffs with public nuisance claims pending around the country.

But Scott was undaunted. Focusing on flaws in the plaintiffs' theory of the case—issues that wouldn't have been considered if NL had settled before trial—Scott took the lead role this summer in the paint manufacturers' appeal to the Rhode Island Supreme Court. When the court ruled, NL and the other defendants won a complete reversal of the jury's verdict, helping to close the door on future big awards for plaintiffs in lead paint cases.

Fred Bartlit, who has inspired the firm's fearlessness, has had a particularly good couple of years, beginning with his defense of Covidien, a subsidiary of

United States Surgical Corporation, in a long-running patent dispute. U.S. Surgical suffered trial losses in 1997 and 2004 defending claims by Applied Medical Resources Corporation that it infringed patents on tube-like devices used by surgeons. (Bartlit was brought in shortly before the 2004 trial.) In early 2008, with Covidien facing an estimated \$400 million in financial exposure, Bartlit and local counsel from Paul Hastings Janofsky & Walker defended the company in a five-week jury trial in U.S. district court in California. The result: a defense verdict of noninfringement for Covidien.

In August a federal judge in Dayton handed Bartlit another victory. The judge rejected more than \$620 million in government claims against Pratt & Whitney, which the U.S. Department of Justice accused of inflating prices in sales of jet engines. And in October the U.S. Court of Appeals for the Federal Circuit affirmed a lower court ruling that Bayer's settlement of patent litigation—with a company seeking to manufacture a generic version of its blockbuster antibiotic Ciprofloxacin—did not violate antitrust laws. "I've never had three wins like that in one year in my life," says the 76-year-old Bartlit, whom the firm credited as lead lawyer in each case.

LAST SUMMER, ACCORDING TO BARTLIT, A DEEP-

pocketed potential client offered him an eye-popping \$5,000 an hour for the firm to handle a plaintiffs-side matter. He turned down the job. The reason? For one thing, Bartlit thought it was a lousy case. But even more importantly, the client had a policy against awarding contin-

gency fees, and Bartlit Beck lawyers refuse to bill by the hour. According to Skip Herman, the firm's lawyers haven't submitted a traditional hourly bill to a client in years. Partner Phil Beck says the firm has turned down "very significant cases from really big clients," because the clients were wedded to hourly-rate billing.

Bartlit Beck's unique fee structure is both a matter of principle and a basic tenet of the firm's high-risk/high-reward business model. The firm negotiates its compensation individually with each client, but typically clients pay a flat monthly fee, holding back a percentage ranging from 20 to 40 percent. If the case goes awry, the client pockets the holdback. If the client wins, the firm receives a bonus that can amount to five times the holdback or more. The system forces the firm to choose its cases carefully, which, the firm insists, means that clients receive a frank assessment of their chances. "We've had cases where we told clients their case wasn't very good, and they came back and said the other firms they're talking to didn't tell them that," says Beck. "I say, yeah, but they're billing you by the hour."

That fee structure, combined with a lean approach to staffing cases, was what attracted client DuPont to Bartlit Beck in the early nineties, when the company was winnowing its stable of outside firms to improve efficiency and cut costs. Bartlit Beck, then just opening its doors, became a DuPont favorite because of its willingness to share the risk involved in trying important cases, says general counsel Thomas Sager.

In 2005 Phil Beck won the firm's most

FROM LEFT: PARTNERS
ADAM HOEFLICH,
PHILIP BECK, AND
SEAN GALLAGHER



WINNER • BARTLIT BECK

significant case for DuPont, a six-week trial in Miami over the company's Benlate fungicide. Beck and others at the firm are now representing DuPont in a national consolidated class action over its Teflon coatings for cookware, and in other environmental litigation in West Virginia. Despite a \$55 million loss in the West Virginia case last year, Sager is effusive about Bartlit Beck. "It was like this firm just dropped from heaven," he says.

Before he became a lawyer, Fred Bartlit was, as he puts it, "a military guy": West Point graduate, former Army ranger, and Green Beret. Some of that background seems to have rubbed off on the firm. During trials, lawyers working with Bartlit are expected to wake at four A.M., and attorneys throughout the firm seem to relish the discipline imposed by a punishing trial schedule. Even the oldest partners seem unusually fit, as though they might casually drop to the floor for a quick set of push-ups.

Young lawyers at the firm quickly learn the Bartlit Beck way, which eschews rigid hierarchy and loads attorneys with responsibility. There is no management committee at Bartlit Beck. Final decisions about compensation, new matters, and work assignments rest with managing partner Herman. The firm doesn't have billing partners who receive credit for bringing in work, and junior lawyers are encouraged to maintain the firm's most important client relationships. With a ra-

tio of 17 associates to 52 partners, the firm can't afford to have its youngest lawyers doing grunt work—particularly because even the rookies at Bartlit Beck, where 20 percent of the lawyers clerked for U.S. Supreme Court justices, are heavy hitters.

In fact, some of the firm's youngest partners—Shayna Cook, Sean Gallagher, Tarek Ismail, Chris Lind—took lead roles in its most important cases in 2007 and 2008, including DuPont's Teflon litigation, the defense of a Hamilton Sundstrand patent, and the dismissal of a billion-dollar suit against the CEO of Citadel Investment Group L.L.C., Kenneth Griffin. James Grasty, Merck's general counsel, says Bartlit Beck cultivates its next generation better than any firm he's seen. "Each time they bring a new lawyer out, you think, 'My goodness, this guy is just as good as the last guy,'" says Grasty.

Clients also cite Bartlit Beck's use of technology and its multimedia courtroom demonstrations as top selling points. New lawyers at the firm are given a copy of Edward Tufte's *Envisioning Information*, and are expected to absorb its lessons on effective visual displays. This spring after Phil Beck successfully defended Federal Signal Corporation against charges that the company's sirens caused hearing loss in firefighters, a juror told him that the case was over when the jury saw his demonstration—a graphic that his opposing counsel had derided as a "dumb cartoon."

Along with billing by the hour, there

are a few things that Bartlit Beck doesn't do, and a few areas where the firm doesn't stand out. It has no white-collar criminal defense practice, preferring the deep pockets of corporate clients to the messy business of representing individuals in criminal cases. The firm also prefers not to have a formal appellate practice, although its partners frequently argue their own appeals.

Only three of the 25 partners who tried a case to verdict in 2007 and 2008 were women (overall, a third of the firm's associates and 15 percent of its partners are women). In addition, for a firm whose lawyers spend so much time in court, Bartlit Beck does not have a particularly impressive pro bono record. Beck worries that a formal pro bono program might be a big-firm-style imposition on a shop that prides itself on its independence. "As a general proposition, I like the idea that individual lawyers make up their own minds on things," says Beck.

But for paying clients, the firm's formula seems to be working just fine. With no debt, no huge classes of associates to look after, and a business model built on leanness and flexibility, Bartlit Beck's platoon of trial lawyers can expect to stay busy even in tough times. "We focus on one thing," says partner Adam Hoeflich. "Winning. That's it."

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