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Sky High

How Marc Kasowitz built the feisty firm that tops our partner profit charts.

Kasowitz, Benson, Torres & Friedman LLP

THE HAPPY MAN ON our cover only appears to be standing on a mountain of cash. Actually Marc Kasowitz is on the roof of one of Donald Trump's ostentatious Manhattan towers, eye level with King Kong (that's the Empire State Building in the background), peering down at his scrambling competitors. This is Kasowitz's alpha moment, and buried within his triumph on our profits per partner charts are some lessons worth stating.

Lesson #1: There is room at the top. Reading our charts can sometimes be an exercise in rounding up the usual suspects. The leading firms haven't changed much over the past 25 years: Skadden, Wachtell, Cravath, etc. Kasowitz, Benson, Torres & Friedman, however, is only 11 years old. Along with a handful of other feisty, young firms on the Am Law Second Hundred—Quinn Emanuel Urquhart Oliver & Hedges and Boies, Schiller & Flexner to cite two—Kasowitz, Benson proves that firms can still make their way into the financial first tier (see "Playing Catch-Up," page 84).

Lesson #2: Risk has its rewards. KB made it to the top, thanks to a \$55 million contingency fee award. (Even without it, profits per partner would have exceeded \$1 million.) Other Am Law 200 firms dabble in plaintiffs work. Even within this risk-averse community, there are ways to improve the odds (see "Evening the Odds," page 94).

Lesson #3: It's the clients. KB started as a spin-off from Mayer, Brown & Platt. Kasowitz took a small group of high-margin clients with him and served them with fierce loyalty. So fierce and sharply focused that some of his colleagues at the defense bar speak of KB in the furious, sneering language they reserve for the plaintiffs bar. Of course, they have to raise their voices to be heard as Kasowitz climbs further up the profit ladder (see "Fast Rise to the Top," page 88).

Sometimes a little secret sauce helps too. Star power is hard to teach and good to have. Marc Kasowitz, John Quinn, and David Boies are business magnets. As lawyers, they're all good at what they do; but if that were all that



was required, our cover this month would have many more faces on it. These leaders bring something extra to the table, or so their clients think. It's not ineffable; we're not talking Brando here. So make Lesson #4: If you have to ask if you're special, don't bother.

The obvious question for KB is whether the firm can repeat its success. Probably not immediately, but with contingency cases in the pipeline, it might be back at the peak in a couple years. By then the firm may suffer for its riches—not because of its profits, but because of its partner compensation system. Which is, in brief: Kasowitz with a yellow pad alone in a room. For now his partners seem content to let him divide the pie. Sustaining that system will be harder than winning new fees.

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Sustaining our newsroom is the local challenge. Last month we announced sadly the departure of Mark Obbie. This month I'm pleased to describe our new lineup. The editor of *IP Law & Business*, Mark Voorhees, is our new executive editor. Voorhees is a veteran of American Lawyer Media, his distinguished work dating back to *The Manhattan Lawyer*, a grand failed idea celebrated only in legend. Another superb Am Law veteran, Amy Singer, becomes deputy editor and, with Mark and Jim Schroeder, will work on our features, special issues, and supplements. Our national editor, Dirk Olin, becomes czar of the front of the book, managing everything from Bar Talk through the columns. Rosemarie Clancy, our veteran *Corporate Counsel* research editor, takes over the editorial research operation.

This is a very strong group. Next month they will tackle our annual pro bono report and second American Lawyer A-List. A preliminary count shows some new firms reaching that rarefied status. We'll let you know on September 1.



FAST RISE TO THE TOP

THE AM LAW 200

Fueled in part by a rich contingency award, 11-year-old Kasowitz, Benson's profits per partner nudged the \$3 million mark in 2003.

By Elizabeth Amon

In many ways, Kasowitz, Benson, Torres & Friedman looks like a traditional defense firm. Its midtown Manhattan office is decorated in subdued colors and conservative art.

Ivy league pedigrees, and the firm's practice is built on defending a chemical corporation and a cigarette maker. But beneath the surface, Kasowitz, Benson is radically unlike its peers. Founded 11 years ago and run under the autocratic hand of a single partner, the firm has no committees and issues no monthly reports. Its 160 lawyers do only litigation. Last year the firm's \$173 million in revenue put it among the bottom half of the nation's 200 top-grossing firms. But its success in a toxic tort case—acting as plaintiffs lawyers in a key area of its defense practice—boosted the firm's average profits per partner to \$2.9 million, the highest among the nation's top-grossing firms.

The firm is dominated by name partner Marc Kasowitz, 52, who started it in 1993, when he defected from Mayer, Brown & Platt (now Mayer, Brown, Rowe & Maw). He took with him 18 lawyers and two main clients: the chemical company Celanese Corporation (now Celanese AG) and Jack Parker Corporation, a real estate company. Right from the start, Kasowitz, Benson was enmeshed in thousands of suits alleging that a Celanese compound used in fitting plastic pipes was faulty and thereby responsible for damage to homes caused by leaking pipes.

But it wasn't until 1996 that the firm gained the public spotlight, with the stunning defection of client Liggett Group Inc. from a joint defense of the cigarette industry. Liggett's decision to turn over secret business documents as part of a settlement with plaintiffs lawyers and state attorneys general saved Liggett millions of dollars and gave Kasowitz, Benson a reputation for fierce loyalty to its clients. But it also fostered a view among fellow defense lawyers that Kasowitz, Benson attorneys were untrustworthy, a sentiment that remains.

Since then, the firm's client list has

grown, and it has scrambled to keep up by steadily adding to its stable of lawyers. While the firm has its fingers in several noteworthy cases, many lawyers still view it as a minor player. Yet clients give the firm glowing reviews. Oddly, so do many plaintiffs lawyers.

Real estate mogul Donald Trump, who says he rarely speaks well of lawyers, praises Kasowitz, Benson. "[They] are not good lawyers, they're phenomenal lawyers," he says, singling out Kasowitz and bankruptcy head David Friedman, who most recently has been advising Trump on his Atlantic City casinos. "They're highly talented with great insight into the future."

Plaintiffs attorney Perry Weitz of New York's Weitz & Luxenberg—who has faced the firm in asbestos and tobacco cases—calls the firm a "powerhouse." Says Weitz: "I tend to be more concerned about going up against Kasowitz, Benson [than other top defense firms] because not only are they good lawyers, but in my opinion more savvy."

Pushing Kasowitz, Benson to new heights last year was its \$300 million settlement on behalf of 3,500 Alabama residents who were allegedly poisoned by seepage from a Monsanto Company plant manufacturing PCBs. That garnered the firm \$55 million in fees. But it was only part of the firm's impressive list of clients and cases. In 2003 Kasowitz, Benson litigators beat claims against chemical company Celanese relating to a computer microchip manufactured in International Business Machines Corporation plants. Lawyers also worked on asbestos suits filed against Celanese and auto parts supplier ArvinMeritor, Inc. They succeeded in overturning a \$790 million Florida jury verdict against cigarette maker Liggett—a punitive damages award that would have bankrupted its parent company, Vector Group Ltd.

Meanwhile, the firm's bankruptcy and

restructuring practice, known for its work for bondholders suing commercial banks, was involved in last year's four biggest bankruptcy cases: WorldCom, Inc.; Adelphia Communications Corporation; Enron Corp.; and Global Crossing Ltd. (through subsidiary Asia Global Crossing Ltd.). And the firm's matrimonial practice has one

THE BRIEF ON KASOWITZ, BENSON

Founded in 1993 by 18 defectors from Mayer, Brown & Platt.

Current head count of 160 lawyers, 44 of whom are partners.

Headquartered in New York, with offices in Atlanta, Houston, Newark, and San Francisco.

Practice specialties include product liability defense, especially in toxic tort cases; bondholder representations in bankruptcy work; high-end matrimonial work.

Clients include Celanese AG; ArvinMeritor, Inc.; Liggett Group Inc.; and Donald Trump.

of the best reputations in New York: Kasowitz, Benson lawyers have represented such celebrities as Mia Farrow, Robert DeNiro, and Donna Hanover, the ex-wife of former New York mayor Rudolph Giuliani. Clearly, in just a decade, Kasowitz, Benson has established a national presence, and its lawyers have proven themselves to be smart, aggressive players.

MARC KASOWITZ GREW up in a middle-class family in New Haven, where his father owned a scrap-metal business. He decided to become a lawyer as a child and went to Yale University, then Cornell Law School. After graduating in 1977, he joined New York's Rosenman & Colin (which has since merged into Katten Muchin Zavis Rosenman). In 1988 he moved to Mayer, Brown, taking several lawyers with him, despite having made partner at Rosenman two years before. Kasowitz says he decided

to leave Mayer, Brown and start his own firm five years later because he was convinced he could make more money and be more efficient on his own.

Kasowitz had three other partners in the new firm. Hector Torres and W. Bruce Hoff, Jr., had come with him from Mayer, Brown. Daniel Benson, who knew Kasowitz from Rosenman, left an investment firm to help start the fledgling law office. Benson, the partner who headed the Alabama PCB litigation, is the strategic thinker to Kasowitz's gregarious front man; he's the firm's number two lawyer.

In the beginning Kasowitz brought a team of about 25 contract lawyers over from Mayer, Brown, where they had already been working on the Celanese pipe litigation. They were made staff attorneys, on a nonpartnership track, although some went on to become associates and partners. Less than a year after the firm's start, Friedman left New York's now-defunct Mudge Rose Guthrie Alexander & Ferdon and joined the firm with several other lawyers to form Kasowitz, Benson's bankruptcy practice.

The firm began taking on associates as laterals and further expanded its range with the addition of a couple of practice groups. Eric Wallach, a former Mayer, Brown partner, came over in 1996 with three lawyers to form the employment group. The following year Rosenman partner Eleanor Alter and several attorneys joined the firm to establish the matrimonial practice. The addition of the laterals and the practice groups occurred naturally, rather than as a product of consultants or a strategic plan—a system the firm intends to continue to follow. "There are two things we look at when people join us," says Kasowitz. "Are they really smart with a good practice, and do they have good personalities—good characteristics and values?"



Other Kasowitz, Benson stars include bankruptcy head David Friedman (left), who sued more than 450 banks in the Adelphia bankruptcy, and litigator Aaron Marks, who conducted a pivotal cross-examination in the firm's defense of longtime client Liggett in Florida's Engel case.

As the firm grew, it expanded outside New York. About six months after it started, the firm opened a Houston office, principally to handle Celanese litigation in Texas. With 24 lawyers, that office remains the second-largest (after New York's 121 lawyers) and has expanded to handle employment work and litigation for the tobacco industry and Southern Union Company, a utility and energy giant. In 1997 the firm opened a New Jersey office to service local litigation and matrimonial clients. The firm opened in Atlanta in 2001 after hiring Michael Hutchins, a product liability and toxic tort litigator whom the firm wooed from Hawkins & Parnell because of his extensive trial work. Last year the firm opened a San Francisco office. The firm already had a fair amount of product liability, tobacco, and asbestos cases in California, but with the demise of Brobeck, Phleger &

Harrison, Kasowitz, Benson sought out Robert Rich, an experienced asbestos litigator. His hiring prompted the creation of the new office.

Kasowitz says he expects the firm to grow, perhaps to 250 lawyers (currently the firm has 160 lawyers, 44 of whom are partners). The firm has no plans for future offices or diversification into other practice areas, although it has considered expanding its small intellectual property practice. Kasowitz, Benson has been approached about mergers, but Kasowitz says he's not interested.

Although Kasowitz principally generated the firm's work in the past, that is no longer true. Several other partners, such as department heads Friedman (bankruptcy), Wallach (employment), and Alter (matrimonial), as well as partners Helene Brezinsky (matrimonial), Daniel Goldman (litigation), Eric Herschmann (litigation),

and David Rosner (bankruptcy), have become rainmakers in their own right. And other partners have taken on some of Kasowitz's previous management responsibilities—partner Aaron Marks, for example, now handles recruitment and associate personnel matters.

But Kasowitz still keeps a tight grip on

the firm's affairs, a practice that apparently few object to. There are no partner votes on whether to take on burdensome cases or on other matters—Kasowitz decides that. And come compensation time, Kasowitz locks himself in a room to divvy up who gets what. "We want people to focus on the practice and not focus so

much on structure," he says.

People inside and outside the firm describe Kasowitz as a sharp businessman and lawyer—a dynamic leader who is also very loyal. Former and current employees say that Kasowitz can be mercurial, but many cite examples of his compassion when they have had family problems.

A BOON IN ALABAMA

FOR NEARLY 40 YEARS, THE MOSTLY POOR African American residents of west Anniston, Alabama, lived in the shadow of a PCB factory. The children swam in nearby streams and played in yards while their parents fished and worked their gardens. Over the years, many suffered from neurological problems, liver ailments, skin disorders, thyroid trouble, learning disabilities, and cancer. They didn't know—until their lawyers uncovered the documents—that company studies dating back to 1938 indicated that PCBs caused

partner Daniel Benson to Alabama lawyer Donald Stewart, who was working with an allegedly contaminated church near the Monsanto plant. Benson says they were impressed with Stewart and the case, so the firm joined him, first representing the church and then 3,500 Anniston residents, many of whom were children, in a class action in state court.

Stewart, a solo practitioner, says he was initially looking for cocounsel who could provide deep pockets and do paperwork, but the relationship quickly evolved. As Kasowitz, Benson's lawyers grew personally closer to Stewart, they became more intricately involved in the case, working on discovery, briefs, pretrial motions, and trial argument.

Originally, Benson says, the firm expected to spend hundreds of thousands of dollars financing the case. But over the course of seven years, Kasowitz, Benson went on to log \$15 million in expenses, not including lawyer time. Kasowitz says the firm managed to absorb the unexpected costs and did so without taking out a loan. Dozens of Kasowitz, Benson lawyers, paralegals, and contract lawyers worked on the suit over seven years, although a core group of about 15 lawyers and paralegals were principally responsible. The case was hard-fought—going to the Alabama Supreme Court on a writ of mandamus four times, once on claims that the trial judge was prejudiced, an allegation that the court rejected in an 87-page opinion.

While Anniston resident Stewart was the public face of the case, he says that he spoke to Benson sometimes two or three times a day and that Benson's perception and grasp of the facts were critical to the development of the case strategy. For example, Stewart gives Benson credit for the injunctive relief litigation, which sought to force the company to clean up the plant property and nearby streams. It put added pressure on the defendants by opening up litigation on an additional front.

While the Abernathy lawyers battled the pretrial motions up to the Alabama Supreme Court and down and then up again, a community group, concerned that thousands more injured residents wouldn't be compensated, tried to recruit attorneys to help the unrepresented. In June 2001 Johnnie Cochran, Jr., along with several Alabama firms, signed up more than 18,000 residents in a federal class action, *Tolbert v. Monsanto*.

Seven months later, the Abernathy suit started its first phase of the trial. In February 2002, after a seven-week jury trial, the plaintiffs prevailed on their damages claims. By August, after 525 individual hearings, the same jury had awarded \$104 million in individual property damages and had yet to hear the personal injury allegations or punitive damages arguments.

In the middle of the Abernathy litigation, a month before the Tolbert case was to go to trial, U.S. district court judge U.W. Clemon ordered all parties to talk settlement. After several months, with the threat of the Abernathy personal injury trials on the horizon, the defendants offered \$600 million for a global settlement. Then came a battle over dividing that pot between the two groups of plaintiffs. Kasowitz, Benson lawyers found themselves in the familiar position of having an antagonistic relationship with other lawyers. The Tolbert lawyers suggested that all the victims be combined and paid based on a grid detailing the seriousness of their injuries. But the Abernathy plaintiffs balked. They felt that would dilute the claims of their clients, who they believed were the ones most seriously injured and who had already won substantially at trial. They were also worried that the numbers of plaintiffs in the federal suit, most of whom had not yet been evaluated for injuries, would slow down the payment of damages to their clients. They prevailed: The money was split equally between the Abernathy class and the larger Tolbert class and paid out separately. As a result, the Abernathy suit paid plaintiffs \$48,900, on average, while the Tolbert plaintiffs received an average of \$7,725.

Jere Beasley of Montgomery's Beasley, Allen, Crow, Methvin, Portis & Miles, one of the firms that represented the Tolbert plaintiffs, agreed that the Abernathy plaintiffs were in the stronger bargaining position and that an even split would not have worked. "The plaintiffs in the state court case had been in longer, and their people were in closer proximity to the plant site," says Beasley. He says the Tolbert lawyers, fearing that Solutia might go bankrupt and leave them with nothing, agreed to split the \$600 million pot. (An additional sum of about \$100 million went for medical and educational programs.)

In its defense work, Kasowitz, Benson prides itself on refusing to settle frivolous plaintiffs suits, even if that means going to trial. As plaintiffs lawyers, the firm took a similar approach, doggedly pressing to go to trial to get the Anniston residents an award that it considered fair and refusing to compromise on settlements it felt were inadequate. Stewart recalls that over the years, there were times when "we got into rough spots, and someone said, 'We'll give you this and you'll get a big fee.'" Benson, he says, "never had problems in communicating that that kind of thought wasn't acceptable." Benson describes early settlement offers by the defendants, represented by Lightfoot, Franklin & White in Birmingham, as absurdly low, and Kasowitz says that "had the defendants been moderately reasonable in dealing with our clients in '99, the settlement would have been for a relatively small fraction of the total amount." —E.A.



BENSON: A LONG FIGHT PAYS OFF.

liver damage and tumors. Or that in 1966, a company-sponsored study showed that fish submerged in a nearby creek went belly-up after ten seconds. In two separate class actions, the residents alleged that PCB seepage from the Monsanto factory into the air, water, and soil in Anniston caused health and property damage. Although Monsanto (and its corporate mutations into Solutia Inc., Pharmacia Corporation, and Pfizer Inc.) denied liability for any health or property damage caused by its factory, the company settled the two suits for about \$700 million last August, the largest toxic tort settlement in U.S. history.

Driving that settlement were the jury victories of one group, the plaintiffs in *Abernathy v. Monsanto*, who racked up \$73.3 million in individual property damage awards through June, when the settlement negotiations started. The Abernathy team of lawyers included New York's Kasowitz, Benson, Torres & Friedman, a litigation firm rarely thought of as the white knights of the poor. More often the firm defends toxic tort cases.

As is often the case at the firm, its plaintiffs work was a result not of strategic planning, but of an opportunity that Kasowitz, Benson lawyers recognized and seized. In 1996 a plaintiffs lawyer who had been an adversary in tobacco and toxic tort litigation introduced Kasowitz, Benson

John Quinn, name partner of Los Angeles's Quinn Emanuel Urquhart Oliver & Hedges, met Kasowitz 18 months ago and became friendly with him. He's impressed with his management skills. Says Quinn: "He's very, very conscientious and deliberate about allocation of his firm's resources—how people are assigned to cases and utilized so as to maximize utilization."

UNTIL THREE YEARS AGO, the firm only acquired attorneys laterally, but it now recruits at eight East Coast law schools. As is the case at most big firms in New York, associates at Kasowitz, Benson work hard and are well compensated. Unlike their peers at most big firms, associates there say they have the chance to do substantive work on sophisticated cases. They also say that the firm fosters a feeling of teamwork, rather than competition, among lawyers. Kasowitz, Benson lawyers tend to be younger than average. Some say there is a drinking culture, with New York-based lawyers gathering frequently at the nearby Palm West restaurant and bar. Others note that lawyers with young children go home to their families after work, many taking advantage of a policy that permits observant Jews to leave early on Fridays for Shabbat.

Despite firm lawyers' insistence that Kasowitz, Benson has a diverse culture, its numbers of minority lawyers and women partners is less than first-tier. It has two minority partners and 14 minority associates. There have been six women partners in the firm's 11-year history: Currently there are four, and only three of the six were promoted from the associate ranks. However, a half-dozen women partners and associates say they are or were treated equitably at the firm. One says that the firm's flexibility about part-time schedules enables parents to juggle family and work. Matrimonial head Alter says that despite the statistics, Kasowitz, Benson is a good place for women. She recalls participating in a recent Columbia Law School

discussion on women at law firms. "I was shocked at some of the things women said happened in their law firms," Alter says. "If someone complained of it here, heads would roll."

While there are a handful of defense firms that also take on plaintiffs work, few switch sides so dramatically in a practice area that provides such a large chunk of its business. The firm's plaintiffs-side work began in 1996, when John "Don" Barrett, a Kasowitz adversary in the cigarette litigation and in pipe suits involving Celanese, introduced Benson to Alabama lawyer Donald Stewart. The firm wasn't looking for plaintiffs work, but when Benson and Kasowitz met Stewart, they immediately liked him and thought his clients' grievances sounded compelling. "We thought it was a clear case of wrongdoing," says Benson.

Kasowitz says he has little difficulty philosophically juggling work on both sides of the bar: "I've been representing large corporate defendants for over 25 years now, and my clients don't engage in conduct like that [alleged in the PCB case.]" But they also checked with Celanese before taking on the case. Paul Zoeller, who is now a partner at Kasowitz, Benson, was the assistant general counsel at Celanese who oversaw the litigation. He says the firm didn't object to its primary counsel's switch-hitting: "We didn't make that product, that type of conduct wasn't anything that applied to Celanese, and Celanese didn't see it relating in any way." Zoeller adds that Kasowitz and Benson were vigilant about keeping the company informed of developments, and the company trusted the firm to keep its interests in mind.

Mike Ugarte, the associate general counsel who currently oversees the company's litigation, joined Celanese only a few months before the August 2003 PCB settlement, but says he too wasn't bothered by Kasowitz, Benson's plaintiffs-side work: "To me, a good lawyer is a good lawyer, whether plaintiffs or defense."

Vernon Baker II, the general counsel at auto parts maker ArvinMeritor, for whom Kasowitz, Benson handles thousands of asbestos claims, was also untroubled. He'd known and liked Kasowitz when he was a midlevel lawyer at Celanese and hired him after he became general counsel five years ago. Says Baker: "It lets me know that they have the insight as to how the other side thinks."

While dexterity seems to make Kasowitz, Benson's clients happy, so too does the firm's independence. Kasowitz, Benson's antagonistic relationship toward codefendants, which continues to the present day, may have boiled over in the Liggett case, but it had its roots in earlier Celanese litigation. In the early nineties, Kasowitz took over the pipe litigation from Houston's Susman Godfrey and switched litigation tactics to persuade juries that codefendant Shell Oil Company was principally responsible for the leaking pipes.

SHADOWING KASOWITZ, Benson's identity as aggressive, independent litigators, though, is the suggestion by lawyers—both in the plaintiffs and defense bar—that the firm inflates its victories. Celanese litigation provides a case in point. Much of Kasowitz, Benson's work for Celanese last year involved allegations by IBM workers that a Celanese product, ethylene glycol monoethyl ether acetate, used in manufacturing computer chips at IBM plants, caused cancer and birth defects. Kasowitz maintains that through the end of last year, Celanese had not paid a nickel in settlements, while other codefendants have paid substantially to avoid trial. "Since the inception of these cases, we have had Celanese dismissed out of 90 [cases] on a variety of summary judgment and other motions," says Kasowitz. "Our approach has always been, if you have a viable defense, you aggressively defend and not fuel litigation against your clients."

Other lawyers involved in the litigation have varied assessments of the

skills of lawyers at the firm, which recently became liaison counsel for the chemical manufacturer defendants. Steven Phillips of New York's Levy Phillips & Konigsberg, the plaintiffs lawyer in the New York cases, compliments Kasowitz, Benson's capabilities but says that the firm exaggerates both its accomplishments and its importance in the litigation. He says many of the cases were routine dismissals, a result of either being time-barred or product op-outs, not aggressive litigation, a point on which one codefendant agreed.

Phillips says he's been obligated to file suits against all the chemical companies until discovery can reveal which firm's chemicals were in use at the time and place when the individual plaintiff was injured. He says he's consented to dismissals when it's clear that one defendant's product wasn't in use.

Phillips says that the total number of cases dismissed was half of Kasowitz's figure, somewhere in the forties. Adds Phillips, who says he's bound by confidentiality agreements and can't comment on Celanese's settlement record: "If they're giving you the impression they've had big success, that they've been achieving fabulous results—that's nonsense, that's just silly." Kasowitz disagrees, noting that the cases have been vigorously

HOW KASOWITZ, BENSON STACKS UP

Thanks in large part to \$55 million in fees from contingency work in Alabama, Kasowitz, Benson's 2003 results compare favorably to other litigation-oriented Second Hundred firms.

Firm	Gross Revenue	Revenue Per Lawyer	Profits Per Partner
Kasowitz, Benson	\$173,000,000	\$1,165,000	\$2,925,000
Williams & Connolly	\$169,000,000	\$795,000	\$855,000
Robins, Kaplan	\$166,000,000	\$705,000	\$825,000
Boies, Schiller	\$150,000,000	\$880,000	\$2,290,000
Quinn Emmanuel	\$128,000,000	\$640,000	\$1,370,000

litigated, with plaintiff withdrawals coming only in cases in which Kasowitz, Benson lawyers proved that their product wasn't present, some with a judge backing them up.

Among the defense lawyers involved in the litigation, one gives Kasowitz, Benson credit for handling its share of the motions and doing them well. That lawyer said that there was initially an element of distrust of Kasowitz, Benson lawyers among the codefendants, but that it proved to be unmerited. However, another lawyer involved in the litigation said that mistrust of the firm was impossible to overcome: "On a long list of law firms about whose word you'd accept in a matter of any significance, they'd be at the bottom of my list."

Codefendants also give the firm mixed reviews on a case last year that it proudly cites as among its major accomplishments. Last May, Florida's District Court of Appeals—Third District overturned a \$145 billion jury verdict against tobacco companies that were defendants in a Florida state class action brought on behalf of about 700,000 smokers. The jury in the case, *Liggett v. Engle*, gave Liggett a \$1 billion discount on its liability, but still ruled in 2000 that the company owed \$790 million in punitive damages, twice its annual gross revenue and ten times its assets.

Kasowitz, Benson had local counsel who principally litigated the suit. Kelly Anne Luther of Miami's Clarke, Silverglate, Campbell, Williams &

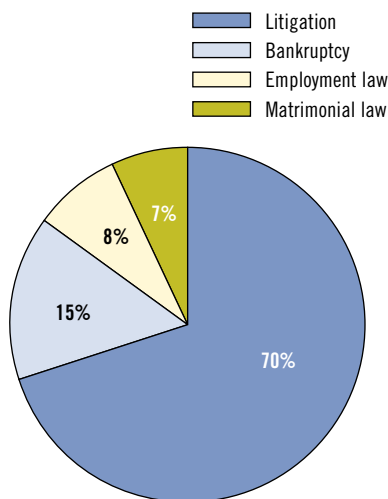
Montgomery handled the trial, while Alvin Davis of Miami's Steel Hector & Davis handled the appeal. But in its ruling, the appellate court referred to evidence brought forth in the trial by Kasowitz, Benson's Marks, who was the partner in charge of the case. During the trial, Marks cross-examined the plaintiffs' experts, five of whom said positive things about Liggett during the cross. "I was able during trial to get most of these witnesses to say that Liggett was distinct—that, to the extent that there could be something like a good tobacco role, they were it," says Marks.

The judges overturned the jury verdict on the basis of improper conduct of counsel, a faulty trial plan, and the fact that the award would be bankrupting under Florida law. In several pages devoted to Liggett (and Brooke Group Holding Inc., the indirect parent company of Liggett), they noted the industry praise for the cigarette company and, in a special section, singled out the treatment of Liggett as particularly baseless, characterizing the jury as having run amok. Wrote the judges: "The patent impropriety of the verdict against Liggett/Brooke demonstrates the prejudicial impact of the errors at trial." Combined with the other factors, they concluded, that "compels reversal as to all the defendants."

While the reversal of the \$790 million verdict made Kasowitz, Benson's clients happy, some codefendants noted that it was only a small piece of the \$145 billion pie. Many declined to comment on the

SEE THEM IN COURT

Kasowitz, Benson lawyers devoted far more of their time to general litigation last year than to any other practice area:



skills of the firm's lawyers, saying they said they rarely saw them perform, though they gave credit to the local counsel.

Others, however, were not shy about voicing their criticisms. Michael York of Reston, Virginia's Wehner & York, who represented Philip Morris USA Inc., noted that plaintiffs lawyer Stanley Rosenblatt, a Miami solo practitioner, made Marks's job easy. "Stanley said a number of times in the trial that Liggett is different," York says. (Rosenblatt declined to comment on the litigation or the firm.)

Partner James Johnson of Jones Day, which represented R.J. Reynolds Tobacco Holdings, Inc., in the Florida litigation, says that Kasowitz's strategy was uninspired—basically following a pattern of filing a "me-too" brief concurring with the other defendants and a separate brief saying how different they were. Johnson says of the appellate case: "Quite frankly, the people that really deserve the credit in my mind for the comprehensive *Engle* opinion are the guys who did the argument for the rest of the industry—[Greenberg Traurig's] Elliot Scherker, my partner Bob Klonoff, and Stuart Altschuler at Winston & Strawn. They are the guys who tried the case, who deserve the credit. The Liggett effort did result in a couple of important pages, important to Liggett."

But Howard Lorber, president of the Vector Group, says that Kasowitz, Benson's commitment to Liggett has been making him happy since 1995, when the company switched from Latham & Watkins. "We know with Kasowitz that their allegiance is to us," says Lorber. "They're not afraid of the wrath of a big firm."

In the bankruptcy world, the cloud of distrust left by the 1996 Liggett settlement seems further removed than it does in other types of litigation. Friedman has built a practice representing bondholders against banks that fits with the firm's

In-house counsel at the firm's biggest defense clients say they don't object to its work for plaintiffs. "It lets me know that they have insight into what the other side thinks," says one. Another adds, "A good lawyer is a good lawyer, whether plaintiffs or defense."

aggressive style, but his colleagues at the big defense firms speak more kindly of him. However, some also see the firm's role in the bigger picture as fringe—a niche representation that the firm is able to maintain because it doesn't do corporate work representing banks.

In the Adelpia case, Kasowitz, Benson is counsel to the official creditors committee, a group of institutional creditors and bondholders. The bankruptcy proceedings involve members of the Rigas family, which controlled Adelpia; two of them were convicted of looting billions of dollars through loans for private use that hold the company liable. The bondholders, seeking damages of more than \$5 billion, claim that the banks made fraudulent loans to the family, which they then sold to other banks in small pieces. Consequently, last July, Friedman filed a suit against more than 450 banks, including all the syndicates to whom the banks had sold chunks of the loan. Friedman's response to the motion to dismiss was 400 pages long.

James Sprayregen, head of the restructuring, insolvency, workout, and bankruptcy practice at Kirkland & Ellis, represents about 75 of the institutions Friedman sued in the Adelpia case. He gives Friedman high marks as an opponent, though he is ambivalent about his methods. "He is very smart and capable and highly aggressive," says Sprayregen. "While I don't always agree with his approach to a particular matter, he is highly effective and a worthy adversary."

CAN KASOWITZ, BENSON maintain its sky-high profits? Even without its plaintiffs-side fees, the firm's numbers are impressive. Its gross revenue for 2002 was \$82.3 million, and its profits per partner \$1.2 million, less than half its 2003 result—but not a bad average draw. In 2004 Kasowitz says he expects the firm to surpass its 2003 nonplaintiffs revenue of \$118 million. "The firm's bigger, we have more lawyers, more clients, and we do have some big contingency situations that could come through in 2004," he says.

Those "situations" include both partial contingency arrangements with corporate clients and another toxic tort case with Stewart. In it, Benson and Stewart are representing 2,500 miners in Alabama and West Virginia who were allegedly injured after they were exposed to chemicals used to clean the walls of the mines. But the trial, which names several defendants, including The Dow Chemical Company and BASF Corporation, has been postponed until at least February 2005. So Kasowitz, Benson could have the chance to someday repeat its profitability feat—if not in 2004, then sometime down the road.

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