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IN THE LAW FIRMS

Kasowitz Holds Power Close As He Grows Firm, Lures Business

BY NATE RAYMOND

WHEN Robin Cohen sat down for lunch two summers ago with Marc Kasowitz, she did not expect an on-the-spot job offer.

The 2008 lunch kicked off a courtship by Mr. Kasowitz to lure Ms. Cohen's insurance coverage team from Dickstein Shapiro. Completed in January 2010, the deal robbed Dickstein Shapiro of 13 lawyers, including Ms. Cohen, the firm's New York managing partner.

"It says a lot about Marc that he's focused, he's intense, and when he wants something he knows how to go after it," she said.

It also says a lot about Kasowitz, Benson, Torres & Friedman. The acquisition of Ms. Cohen's team and her nearly \$20 million book of business was the largest lateral hire in Kasowitz Benson's 17-year history and capped a year-long growth spurt at the 350-lawyer firm. While other law firms laid off lawyers or slowed expansion during the recession, Kasowitz Benson took a different route.

"Every prediction that I've made about how big we would be has been too low," Mr. Kasowitz said. "I've been a very poor predictor about how big we would grow."

And grow the firm has. In January it also attracted Marcos Daniel Jiménez, the former U.S. attorney for the Southern District of Florida, who became managing partner of an 11-lawyer Miami office Kasowitz opened in April 2009. Meanwhile, Kasowitz hosted 18 second-year summer associates in New York, up from 14 last year, at a time when competitors reduced their hires. An additional floor the firm took on earlier this year in its Times Square space at 1633 Broadway is expected to fill up quickly.

The firm has been able to move aggressively in large part thanks to Mr. Kasowitz, 58, whose control over the law firm carrying his name draws few comparisons. Almost all governance has been vested in Mr. Kasowitz, the firm's chief rainmaker, who calls the shots on what are typically committee-driven decisions at other firms, particularly with compensation.

Mr. Kasowitz said that remaining a practicing lawyer in a litigation shop "helps me run the firm better." Yet no longer the litigation boutique it started as years ago, Mr. Kasowitz has increasingly brought in others to help manage the expanding firm.

But whether the solo-leader model will need to be revamped is a question for another day. Mr. Kasowitz claims his firm can continue to function under his management and he sees no reason to make changes in the near future.

Kasowitz Benson opened with 18 lawyers in 1993 as a spin-off from Chicago-based Mayer, Brown & Platt. Mr. Kasowitz said by the time he left Mayer Brown he

probably had been the largest business generator in New York with \$20 million to \$30 million in fees annually. Two partners, Hector Torres and W. Bruce Hoff Jr., joined at the start, as did Daniel Benson, a former colleague of Mr. Kasowitz's from his days at Rosenman & Colin.

With clients including Celanese Chemicals Inc., Fortress Investment Group, MBIA Inc. and Fairfax Financial Holdings Limited, Mr. Kasowitz continues to lay claim to the firm's largest book of business. A source estimated his clients' billings were consistently north of \$75 million, though Mr. Kasowitz declined to comment on the size of his business. Gross revenue at the firm overall last year was \$226 million, up 2.2 percent.

The firm made its mark during the tobacco wars beginning in 1996 by representing the Liggett Group Inc., a subsidiary of Vector Group Ltd., which is a longtime client of partner David Friedman. Liggett continues to funnel billables to Kasowitz Benson, which opened the Miami office last year in part to deal with a wave of tobacco litigation Liggett and other cigarette manufacturers face there.

While the firm at first focused on product liability litigation, it has since broadened its portfolio.

"The way I see it is that our work is based much more on how important the case is to the company and less where the [practice] area is," Mr. Kasowitz said.

Mr. Kasowitz is representing MBIA Inc. in Manhattan Supreme Court in a suit brought by 19 financial institutions challenging the bond insurer's restructuring. Mr. Friedman meanwhile is representing Adelpia Recovery Trust in a \$5.4 billion case against banks including Bank of America Corporation, Citigroup Inc., Wachovia and Bank of Montreal.

While the firm's heart remains in New York, where it houses about 300 attorneys, Kasowitz Benson has gradually been growing outside Manhattan. In 2007, the firm expanded what is today an 18-lawyer San Francisco outpost through a merger with white-collar boutique Topel & Goodman, which had seven lawyers, including partners Marcus Topel and William Goodman. Last October, the office added employment litigation partner Brendan Dolan from Morgan Lewis & Bockius.

The Miami office that opened last year came through with the addition of the three name partners from an Akerman Senterfitt spin-off, Silverman Cosgrove & Sammataro, including Lawrence D. Silverman, the former head of Akerman's litigation department in Miami. Another two Miami lawyers, Kelly Luther and Maria Ruiz, joined from Clarke Silverglate & Campbell, which had been the local counsel on Liggett's Florida litigation.

The growth has been costly. Mr. Kasowitz said a 6.2 percent drop in profits per partner last year had more to do with the cost of hiring laterals and opening the Miami office than with the recession. Even with the dip, equity



NYLJ/RICK KOPSTEIN

Marc Kasowitz

partners on average could count on profits of \$2.08 million in 2009, ranking No. 18 on the Am Law 200.

Take No Prisoners

If one word describes the firm's lawyers, clients and adversaries agree it would be "aggressive." David Brooks, general counsel for Fortress Investment Group, said "when there's a tough, call it rough-and-tumble kind of litigation, those are the guys I would go to."

"They're not afraid to get their hands dirty," he said.

At times, its aggressive posture has gotten the firm in hot water. In 2007, Southern District Judge Richard Owen found Kasowitz client Biovail Corp. violated a protective order by using documents obtained in a federal suit to support a separate New Jersey state action. Biovail subsequently dismissed Kasowitz Benson, though it later rehired the firm. Kasowitz Benson denied wrongdoing throughout, saying it never knew about the protective order.

John Quinn, the head of competitor Quinn Emanuel Urquhart & Sullivan, said he sees nothing wrong with the way Kasowitz Benson pursues litigation, adding he would hire the firm if his shop were ever in trouble. Any complaints stem from Kasowitz Benson's approach of not following "the conventional rules of how it's thought law firms ought to behave," he said.

"There's a lot that goes on among major law firms that can only be explained, I think, by gentlemen being gentlemen, if you will," Mr. Quinn said. "You scratch my back, I'll scratch yours. I don't mean to suggest there isn't a role for that, I think there is, but those guys [at Kasowitz] are prepared to do what's best for their clients, even if it means getting some other people's noses in the bar out of joint."

Bureaucracy Light

Kasowitz Benson is different from many law firms in other respects, particularly in having a stream-lined

management structure with a practicing litigator on top. The firm has no hiring committee, no diversity committee, no compensation committee.

Its executive committee is just three partners, Messrs. Kasowitz, Benson and Torres. Mr. Kasowitz said the firm adopted the structure early on after breaking with the giant, and bureaucratic, Mayer Brown.

"Our philosophy is this: We want to put lawyers in a position where they focus on their cases and building their clients and their business," Mr. Kasowitz said. "We prefer that they not be focused on internal organizational matters and the like. So as a rule we're not very bureaucratic."

Only a handful of partners other than Mr. Kasowitz receive monthly reports on revenues and profits. Mr. Kasowitz provides a financial report to the rest of the partnership once a year at their annual meeting.

Mr. Kasowitz alone once a year also decides how much each equity partner will earn. For their first two to three years, partners earn a predictable and scaled amount, Mr. Kasowitz said. After that, "it's very much a merit-based system." He said his decisions are based on a number of factors, not just business generation but also success in court.

"I don't know if it would work with someone else," said Mr. Benson, who has since the beginning been Mr. Kasowitz's right-hand man. "But I think the view of people here is the best system is a benevolent dictator."

As the firm has grown, Mr. Kasowitz has delegated some of the administration to other partners. Aaron Marks, who was the firm's first associate, focuses on recruiting, while Michael Shuster is involved in marketing. In August, Kasowitz Benson hired David A. Lewis from Proskauer Rose to become its general counsel.

Yet even as the firm grows, Mr. Marks said Kasowitz Benson sees no need to deviate from having the strong, small management structure it maintains today.

"In Marc's case he has certain people he trusts with good judgment to make decisions on some of these issues," Mr. Marks said. "But we're not delegating things to large committee structures."

Mr. Kasowitz said his large caseload is a benefit rather than a curse when it comes to managing. He does not have to read reports on lawyer utilization, for example, since he is in the trenches with them.

Only a few partners have left over the last decade, a sign of the trust they have in Mr. Kasowitz's management. Mr. Shuster, who joined Kasowitz Benson in 2006 from White & Case, said Mr. Kasowitz sets the tone for the rest of the firm by managing it while also maintaining his "juggernaut" practice. While Mr. Kasowitz is the "ultimate decision maker," he rules by consensus.

"Where there are issues that will affect large numbers of partners, he will consult with them informally," Mr. Shuster said.

Just as crucial are the lawyers Kasowitz Benson recruits, Mr. Kasowitz said. The firm has sought to recruit people who would fit with the culture of low conflict and no infighting it has tried to nurture through a lack of committees and a focus on the practice.

"As long as we continue to choose people in this way I think that will enable us to continue to run the place the same way," Mr. Kasowitz said.

Building IP Stumbles

While the firm has grown substantially, not all its ventures have proved successful. Intellectual property in particular has been a struggle for the firm, and at least three partners have left or been forced out by Mr. Kasowitz since the firm launched the practice in 2005.

Kasowitz Benson entered the field by recruiting Salem M. Katsh, the founder of IP groups at both Weil, Gotshal

& Manges and Shearman & Sterling. Mr. Katsh got to work recruiting, and the firm in 2006 added two more partners, Jeremy Pitcock, a senior associate at Simpson Thacher & Bartlett, and Lawrence B. Goodwin, a former Chadbourne & Parke partner.

Yet a year after joining, Mr. Katsh was gone. A suit by Mr. Pitcock over his own departure claimed the firm "pushed out" Mr. Katsh because it apparently believed "he had already served his purpose." Mr. Katsh said Mr. Pitcock's complaint was "all innuendo" and said he left the firm on good terms.

"It wasn't the right place for me," said Mr. Katsh, who joined Schnader Harrison Segal & Lewis last year.

Mr. Pitcock took over as head of the practice, but in December 2007 Kasowitz Benson fired him. When the now-defunct Morgan & Finnegan announced a month later it had hired Mr. Pitcock, Kasowitz Benson took the unusual step of putting out a press release saying it had fired him for "extremely inappropriate personal conduct."

Mr. Pitcock sued for defamation, and claimed the firm wrongly fired him to get control of his clients. Kasowitz Benson then filed its own suit that claimed Mr. Pitcock was fired after sexually harassing 12 women at the firm, seven in one night at a 2007 holiday party.

Both suits were dismissed. An Appellate Division, First Department, panel in June said Kasowitz Benson's "alleged defamatory remarks were substantially true." Mr. Pitcock's other claims were dismissed for failing to state a claim or insufficient pleading. The court meanwhile dismissed Kasowitz Benson's complaint, citing its "vague, boilerplate allegations of damages."

Mr. Pitcock's lawyer, John G. Balestriere at Balestriere Fariello, said Mr. Pitcock continues to deny Kasowitz Benson's allegations. And Mr. Balestriere said he disagreed with the First Department's holding that Mr. Pitcock did not adequately plead a defamation claim.

Beyond revealing aspects of Mr. Kasowitz's control over the firm—Mr. Pitcock claimed he "had the authority to hire or fire anyone"—the suit hinted at the broader struggle Kasowitz Benson has had in the intellectual property arena.

Today, Kasowitz Benson's Web site lists seven partners and 11 associates in the IP group, headed by Mr. Goodwin. Some of those, such as Mr. Benson and Mr. Marks, have more general practices. And in May the firm said goodbye to another IP partner, Peter J. Toren, who had joined in April 2007 from Sidley Austin. Mr. Toren, who has not joined another firm since leaving, did not respond to an e-mail seeking comment.

"Building an IP practice is not an easy thing," Mr. Katsh said.

Mr. Kasowitz said he is still looking for the right IP litigator.

"We're continuing to look for the really sort of star patent litigator to head up the practice and help us continue to expand the practice," he said.

Against the Grain

With Ms. Cohen on board, Mr. Kasowitz is no longer on the hunt for that type of star in insurance litigation. Mr. Kasowitz "identified this as a great practice for the firm a couple years ago and strategically went after it," Ms. Cohen said.

In a way, Ms. Cohen's insurance group would seem to fit with the against-the-grain character Mr. Kasowitz has cultivated. While New York's major law firms typically court the business of major insurance companies, Ms. Cohen's group represents policyholders.

Kasowitz Benson, meanwhile, has for some time shied away from representing the insurance companies and

banks to remain conflict-free for big suits against them. After the credit crunch and financial crisis hit, Kasowitz Benson was one of a handful of firms willing to represent major companies in lawsuits and arbitrations against Citigroup Inc., Goldman Sachs and Morgan Stanley.

"They saw that our practice was very synergistic with what they do," Ms. Cohen said.

Ms. Cohen's group brought with it the potential for major business. Her book of business, which a source estimated was \$15 million to \$20 million at the time of the move, includes Royal Philips Electronics N.V.; Barnes & Noble Inc.; and New York University, among others.

Ms. Cohen said her group has already expanded from 13 lawyers to 30. Her team is complemented in San Francisco by two insurance coverage litigators the firm picked up after the implosion of Heller Ehrman, Charles Freiberg and Brian Brosnahan. Ms. Cohen said by next year she hopes to build the group to 60 lawyers.

Kasowitz Benson faces competition from firms such as Covington & Burling and K&L Gates, both of whom have more than 100 lawyers nationwide in the area and that long ago staked out their places in policyholder litigation. But already Kasowitz Benson is gaining clients, Ms. Cohen said.

In August, Ms. Cohen filed a suit in New Jersey state court for the Port Authority of New York and New Jersey against the American Excess Insurance Association over its refusal to provide coverage in litigation related to the 1993 World Trade Center bombing. Mr. Kasowitz represented the Port Authority in a high-profile 2005 trial in Manhattan Supreme Court that resulted in a verdict finding the agency negligent in the bombing.

So far, Ms. Cohen said in August that she has landed assignments in each of the last three pitch interviews she had been on. Both the firm's name and Mr. Kasowitz's presence contributed to getting the work, she said.

"He brings to the table exactly what I thought he would, which is he has a lot of business and strategic sense," Ms. Cohen said. "He has a very strong reputation of thinking outside the box, but also being very aggressive and not being afraid of going to trial against the other side, which is all the kind of things we want to portray in our coverage practice."

Despite having been the managing partner of a law firm's New York office, Ms. Cohen said she does not mind ceding that control and responsibility. Law firms, she said, are typically "a lot of politics, a lot of bureaucracy, and you just don't have a lot of that noise at the Kasowitz firm," she said.

It is that attitude Mr. Kasowitz said will allow the system to work going forward. "We have had dramatic growth, but our growth has been very organic," he said. "As long as we continue to do that and grow organically I think I'm probably going to be able to practice and run the place the way we run it."

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