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Litigation Department OF THE Year



BOIES, SCHILLER
& FLEXNER

A Galaxy of **Bright Lights**

While David Boies is still the star, there's a lot more to **BOIES, SCHILLER**. Using alternative billing and eye-popping engagement fees, the firm posts big client wins by "reimagining" tough cases.

IF YOU SIMPLY LOOKED AT the recent achievements of David Boies, you'd have the makings of an impressive Litigation Department of the Year candidate.

He helped Oracle Corporation win a \$1.3 billion jury verdict against SAP AG (later reduced by the judge); he defeated at trial \$4.3 billion in

claims brought by American International Group, Inc., against client Starr International Company; he played a key role in winning the landmark gay marriage case in San Francisco federal district court; he argued and won a rare plaintiffs securities case victory before the U.S.

By
**SUSAN
BECK**

Supreme Court; he won a trial ruling for Jamie McCourt that she co-owned the Dodgers along with her husband, Frank; and he handed the National Football League owners an appellate victory that led to a deal with their players that kept the season intact.

BOIES, SCHILLER & FLEXNER LLP

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But our contest looks at departments, not individuals, so it was important for us to assess the strength of Boies, Schiller & Flexner as a firm. While Boies is still without a doubt the firm's biggest draw and most accomplished lawyer (and was listed as lead lawyer on nine of the 20 results that the firm submitted), there's a lot more to the firm than David Boies.

From corraling the litigation against Pfizer Inc. over the drug Neurontin, to defusing a \$22.5 billion battle between Bank of New York Mellon and Russian taxing authorities, to clearing hurdles for investors who lost more than \$5 billion in Bernard Madoff's Ponzi scheme, Boies's partners have taken the lead in a string of high-stakes matters.

Boies, for his part, stresses that he's involved in only 20 percent of the firm's work, and in many of those cases in just a minor way. The 70-year-old lawyer notes that while his 265-lawyer firm isn't as big as many competitors, when it comes to handling high-profile, game-changing cases, "we are far and away the best at what we do."

In the Neurontin litigation, for example, Pfizer hired partner William Ohlemeyer in May 2009 to help defend it against claims by 1,200 patients or their families that the off-label use of the epilepsy drug Neurontin led to suicidal thoughts and actions. At that point, Pfizer looked vulnerable: Warner-Lambert (which Pfizer acquired) had pled guilty to criminal charges for illegally promoting the drug, and Pfizer faced several trials on the near horizon, with plaintiffs lawyer W. Mark Lanier set to try the first two cases.

Pfizer, which was already using Skadden, Arps, Slate, Meagher & Flom as its national coordinating counsel, hired Ohlemeyer (a former associate general counsel of Altria Group, Inc.) to be the "architect" of its trial strategy, according to Pfizer chief litigation counsel Bradley Lerman. "Bill Ohlemeyer is an innovative lawyer," says Lerman. "He took litigation that had some age to it and reimagined it."

The first two cases that went to trial were quickly defused: One was dismissed with prejudice by the plaintiffs, and the other settled shortly into trial. Pfizer has reported that the second case settled for less than its remaining defense costs for that case. Lanier—who credits Ohlemeyer with giving a "really good opening statement"—says Pfizer paid "good money" to settle.

Since then, no other Neurontin cases have been set for trial, and hundreds have been settled or dismissed. "We faced a lot more active trial calendar before we brought Boies, Schiller in than we do now," says Pfizer's Lerman. "That's a testimony to their work."

Pfizer general counsel Amy Schulman agrees. "I've been very impressed with the team they've assembled," she says. "They're a good, easy firm to work with." Schulman also praises the ease of working with Boies, Schiller on alternative fees. "Not only have they worked with us [on a flat fee basis], but they've embraced it," she says.

In fact, more than half of the firm's revenue in 2010 came from alternative fees, according to Boies. "We will always, when given the choice, go with an alternative fee,"

he says. Boies, Schiller is also in the enviable position of having the clout to require that most new clients put down a substantial "engagement fee" just for the privilege of hiring the firm. These up-front payments (which are not credited toward work) can range from five figures for individuals, to more than \$10 million for big companies. "It eliminates people who just want us to write a letter," Boies explains.

Matthew Biben, the senior legal adviser at J.P. Morgan Chase, says the firm is particularly well suited for "unique sui generis" litigation. "In international disputes, they're as thoughtful and analytical at problem solving as any firm I can think of," he says. When Biben was deputy general counsel at Bank of New York Mellon, he used a Boies, Schiller team led by Jonathan Schiller for a potentially catastrophic RICO suit brought by the Federal Customs Service of the Russian Federation, which was seeking \$22.5 billion for unpaid taxes in a Russian court. (The case arose out of an illegal money transfer scheme by some Bank of New York employees in the 1990s.)

The company was at enormous risk, Biben says, and lost close to \$3 billion in market capitalization after the suit was filed in 2007. The case settled in October 2009, with Bank

Department Size	Partners: 87
	Associates: 105
	Counsel: 34
Department as Percent of Firm	90%
Percent of Firm Revenue 2010	80%



PHOTOGRAPHY BY MIKE MCGREGOR

of New York paying just \$14 million for the plaintiff's litigation costs. Persuading the Russian plaintiff to settle was a "massive strategic exercise" that had to be executed perfectly, Biben says.

Even when it comes to pro bono, the firm reaches high. Fort Lauderdale partner Stuart Singer is leading a massive class action seeking to force the state of Florida to provide adequate medical and dental care to 1.7 million children covered by Medicaid. The case is now in trial (it's been tried inter-

mittently since 2010) and the firm has committed more than 10,000 hours of time. "When I came to David with the case, he said this is exactly the kind of case we should be doing," says Singer. "We think it's the largest pro bono case in the country in terms of class size."

We asked Boies the one big question that hangs over the firm. What will happen to Boies, Schiller & Flexner when Boies decides that he's done with practicing law? Boies answers by

FROM LEFT:
*William Ohlemeyer,
Stuart Singer,
Alanna Rutherford,
Jonathan Schiller,
David Boies*

noting that people asked him a similar question 16 years ago, when he left Cravath, Swaine & Moore. That firm has done just fine without him, and he expects that the same will be true of the firm that carries his name.

For now, however, Boies remains the headline attraction for his firm. But at least it's more than a one-man show.

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Litigator
OF THE *Year* WINNER

DAVID BOIES

Boies, Schiller & Flexner

Zelig, Esq.

Just when you think David Boies's career has peaked, he rises to another level. As if we needed more proof, the founder of Boies, Schiller reminded us that he's one of the best trial lawyers of our time, with victories for Oracle, Barclays Capital, Jamie McCourt, and Hank Greenberg's Starr International. He made civil rights history by helping to overturn California's ban on gay marriage, and, in a virtuoso turn of versatility, won a rare U.S. Supreme Court ruling for plaintiffs in a securities case.