Electronically reprinted
from June 2015

OF COUNSEL

The Legal Practice and Management Report

Of Counsel *Interview* …

Michigan Litigator Tries Cases for Big-Name Clients and Wins and Wins and Wins…

It's no secret that for the past three decades, the number of jury trials has steadily decreased in both federal and state courts. Increasingly, lawyers seek settlement for their clients rather than take their cases into the courtroom. That's just a fact, and we all know it.

But, in this settlement-happy world, there are still some litigators who actually litigate before a jury, and seek out headed-to-trials cases and enjoy trying them. William Howard is one of them. And, he wins a vast majority of his trials. He's racked up a 300-4 won-loss record in major cases and hasn't lost a big trial in more than a decade. It's actually more than 300 wins but he and his colleagues at his Grand Rapids, MI-based law firm, The Howard Group, essentially stopped counting at 300, and they don't even include victories of many other smaller cases in that won-loss tally.

What's more, just because he and his five-attorney litigation boutique are centered in western Michigan, it doesn't mean they're local or even regional. Howard, his wife and law firm partner Jean Treece, and the other three lawyers in the firm serve clients across the United States. Howard takes on the most complicated, difficult cases for such big-name companies as AIG Claims Services, JC Penny, and international truck manufacturer Cottrell, Inc., among many others.

To place so many cases in the victory column, you'd think that Howard charms jurors with effervescence, guile, and wit. Not so much. While he's a very likeable person, those are not the traits that manifest in the courtroom. "Bill has a very practical, no-BS approach," says Ross Fishman, a Chicago-based consultant. "So then, what does he do that juries seem to love so much? Well, he's not a warm touchy-feely guy; he's a straight-forward, credible, come-right-at-you person who juries really respond to."

Recently, *Of Counsel* spoke to Howard about his career; his reasoning for setting up his own law firm in the first place, keeping it small, and rejecting merger offers by bigger firms; an 11-year-long, complex case he won last year; his opinion about what juries want these days; the satisfaction he gets in seeing justice delivered to his clients; and other topics. The following is that excerpted interview.

Of Counsel: What made you want to become a lawyer, Bill?

Bill Howard: I was pre-med, chemistry in college. I had a lot of core classes in those areas. In my junior year, I got a rotation in a hospital, and some of the doctors I met were not necessarily the regular fun guys I was going to undergraduate school with. So at that point in time, I figured they must give you a pill someplace in med school that made you [a jerk]. Later, in law school, I discovered they give you two of those pills. [laughter] So I did that rotation in the hospital and I said, "I don't want to be around people like this." And, I transferred over to law and picked up an economics degree.

OC: And then you went to Washington University School of Law, in St. Louis. What did you do when you got out of law school?

WH: I worked for the US Attorney's Office in St. Louis. It was a great office and I had great mentors, but they don't have [many] permanent positions. If you're a 10-year veteran in the office, you can get a full-time job in St. Louis, but it's one of the harder jobs to get.

Those lawyers had been in the Navy JAG corps and so I went ahead and did a brief tour with the JAG corps. They were going to start an interesting program that would've placed me in Milan, Italy with an international legal group. The admiral at the time was trying to change the system and he recruited about 20 young bright lawyers to be in this program. But he was never able to get it off the ground [for various reasons]. So I was in the United States Navy for about nine and a half months. But they called me up and said, "Bill, we don't know if we're ever going to get this program off the ground. So, if you want, we can release you from your command." I told him that's what I wanted to do and that's what I did.

Then I went on and worked as a trial attorney with a small litigation firm. We principally did insurance defense. I was given a lot of cases to try. In those days, lawyers didn't do discovery the way we do today. Files weren't papered for 14 years and we didn't have two-week trials. We had three-day trials. We had to pick a jury and be done in three days. And, we did it.

Getting to the Point

OC: What did that experience give you that you use today in your practice? Can you talk about that three-day, fast-paced schedule?

WH: You learn to be brief. You learn to get to *the* point of interest.

And, back in those days, large law firms really weren't doing much litigation. They were doing mergers and corporate advice. The smaller firms were doing the litigation. At some point in time, of course, the larger firms got involved, and then the practice of litigation significantly changed. A one-hour or two-hour deposition became one or two days. We learned about what the expert did in third grade before we would hear about what the expert's opinion was.

So, that changed. But because of my early experience I'm able to try a lot of cases today. I never had any aversion to trying cases or any fear of it because that's what we did.

OC: So, you were with this small litigation shop for a while. When did you strike out on your own and set up your own firm?

WH: Well, in 2004 I opened up the Grand Rapids office for a larger firm, Kreise Enderle, a good firm. They're good banking guys. But I was a litigator and after two years it was clear that litigators didn't really work with this firm, with the banking/CPA guys. We reached a mutual agreement and parted ways, parted as friends. In 2006, I started my own firm.

OC: Bill, why did you set up your own firm rather than joining an existing firm? And, maybe a corollary question to that is: What do you like about having your own small firm?

WH: I practiced law with my wife and we asked ourselves: Where do we feel most comfortable? What seemed to make the most sense? So, from a personal standpoint, a smaller shop where we were calling the shots seemed to make more sense financially, from a quality-of-life perspective, and really, from the quality of what we could present. We didn't have to worry about what dozens of other partners thought. We didn't have any other partners we had to please. We only had one goal to achieve and that was and continues to be to please our clients.

The other part of the equation was that I asked my clients: Where do you want to see me? Do you want me to join one of the mega firms? The universal response was, "No, we hire you." They lived by the old mantra, "We hire the lawyer, not the law firm."

The decision really became a no-brainer. And, since then, it's always been a no-brainer. We've had plenty of other firms come up to us and ask us to join them. We've turned them down, repeatedly, and we will continue to turn them down. We like what we do.

Now, I am working with another firm. We're creating another way of helping our clients. It's not joining another firm; it's just another vehicle, a hybrid firm.

A Stellar Record

OC: If I have this right, in big cases you have a record of 300 wins and four losses. Is that right?

WH: It's more than 300. We just stopped counting. I don't remember exactly how many wins it is—but I do remember those four losses. [laughter]

OC: How can a small firm like yours handle so many big trials? You've handled more trials than a lot of mega firms have. How do you do that?

WH: Clients come to us because they know they're going to try a case. We understand that from the very beginning. They understand it. We'll have cases referred to us because we go to trial. A case I tried last summer came from a firm in Wisconsin. It was going to go to trial and the client knew that their attorney wasn't going to be the type of attorney who could handle the litigation. So they came to us. We litigated the case and we just won that. We were the defendant and about $1.5 million was at stake. It made the front pages of the legal news, for the win. Now this client liked their attorney, but they just knew he wasn't the right attorney to do the job.

So, the cases that come to me are those that someone has decided are not going to settle. But there are times when the case does need to be settled. I tell my clients, "You're going to have to listen to me. If I tell you we're going to have to settle this case, we need to settle it." Two of those four losses were cases where I told the client we had to settle. The client didn't listen.

OC: Obviously, you've handled a lot of cases. But could you talk about one or two that come to mind that were particularly important or difficult or satisfying?

WH: Yes, one that we just did—and that we're still kind of in the finishing areas of it—we tried last year. I was involved in the litigation for more than a decade. The client was a company called Lidochem. The case had come to me because there was an allegation that this new, forward-thinking fertilizer company, a nutrition specialist, had put poison in its fertilizer. A competitor had said that, and that the net result was that there'd been crop damage to this particular farmer, who happened to be the largest farmer in the state of Michigan.

As you know, I have a chemistry background and when I looked at the case I thought that it made no sense. I thought that it just was not right. My client was very stressed. This was a company that was almost

put out of business. They were growing fast in the marketplace and then just got hit. So we defended the case for them. We had the plaintiff's expert who happened to be our competitor thrown out as an expert. The case was dismissed and the plaintiff, who eventually backed out of the case, agreed contractually to join with us in a plaintiff's suit [*LidoChem, Inc. v. Stoller Enterprises, Inc.*] under the Lanham Act for unfair business competition and fraud against our competitor [Stoller].

We tried that case last year and the jury came back at $12 million and [categorized it as] willful or wanton, which means under the Lanham Act you get treble damages. We're in the process of getting those motions in place for that to be finally entered. So it's an active case and I've been with it now for 11 years.

OC: So you won them $12 million.

WH: Currently, but that's going to be trebled with actual attorney's fees and penalty interest. That's going to be decided this June. That could potentially end up being a number somewhere between 40 and 50 million dollars.

That Look in Their Eyes

OC: Why did you choose that case to talk about, Bill?

WH: I guess because that was a case where I knew the people who are in the business and it was about survivability. It was about whether this corporation is going to be alive tomorrow. This other company had gone for the jugular trying to kill this corporation. In my mind they did it in an unethical fashion. And, the jury just recently agreed with me. So, it was important to me. I grew to really know the client.

You know, when the jury came back, the client hugged me and said, "Thank you for believing in me." And, that was it. I believed in him, he was right, and it meant something. We accomplished an important task. We survived the onslaught. Our competition hired one of the largest law firms in the country. They hired big guns. They hired the biggest law firm they could to try to intimidate and do what big corporations do. And we stood up to it. We prevailed. And after 11 years, justice was done.

OC: On your firm's Web site, there is a video of you talking about a certain look that you get from clients right after they discover they've won the case that you had litigated for them. You mentioned that that look was one of the reasons why you do what you do.

WH: Yes, when your client receives justice, finally after a hard-fought battle, there is a look in their eyes of satisfaction, of vindication, of the-world-is-right – because for a lot of these people, the world was wrong. It was upside down. So now the world is finally in the right place. And they give you this look. It's a smile but it's not. It's a happy face but it's not. It's a complete look from the eyes to the smile to the shrugging of the shoulders.

I told you that the client in the Lidochem case hugged me. He's a tough New Yorker. But he hung on for about a minute or two because he didn't want to show the jury what emotions he was going through at that time.

OC: Thank you for that answer.

Juries Want High-Tech Entertainment

OC: Let's shift gears a little bit. Do you get more satisfaction when you go up against big firms, those with deeper pockets, and win?

WH: Yes, but it's generally the case that we go up against big firms. We have tended to bring some lawsuits against more established, bigger firms. We are a five-lawyer firm from Grand Rapids, Michigan. Those firms bring seven blue suits in the courtroom and I'm sitting there alone at the table with my client. That can be a daunting task.

I think it's somewhat to our benefit because the opposition underestimates us because we are small.

OC: What do juries want these days, and do juries often connect with you more because you're just one person sitting there, as opposed to seven blue suits parading in?

WH: I always tell my client it does. In the old days that definitely was true. These days, the juries need to be entertained. They've watched trials on TV so much that, if you simply present them with that old boring [trial approach] that I probably used from 1996 to 2002, they're just going to sit back and fall asleep. So to be technologically equivalent to what their expectations are, we need to come with a few more people. We don't come with more lawyers. We come with more support staff. That's so that we can give the jury what they do expect, and what they truly do enjoy. And, quite frankly, I enjoy doing it. It's more enjoyable to present a case using a full media presentation that moves at a faster pace because the word and the picture are being presented appropriately. So I don't have to use the old three-times approach.

We still are going to have a smaller presence than the lawyers from the large firm, but we're still significantly smaller than the other side.

OC: As you look to the future, Bill, do you think that your litigation shop will continue to be a five-attorney firm?

WH: I see us staying at five and I see us developing relationships with others. And, we talked about this with the other law firm [with whom the Howard group is entering the hybrid arrangement]. I want to be a trial-horse team just like in the old days with the stagecoach team. I really don't need to supervise or mentor another team, for a lot of different reasons, mostly for quality-of-life. I'm busy enough as it is and I've got young children.

So we are going to stay at five and the best way we can help our clients is to combine our team with other similar-minded trial strategists, and then provide our clients with that form of team as a backup.

OC: Is there anything you want to add for our readers?

WH: Yes, litigation isn't dead. That is, to paraphrase Mark Twain, the reports of litigation's death have been greatly exaggerated. ■

– Steven T. Taylor