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## 'Be Afraid, Be Very Afraid'

By Susan McRae

LOS ANGELES - Turning opponents into clients is getting to be a habit with Valle Makoff, a 16-lawyer litigation boutique.

Several years ago, Valeant Pharmaceuticals International was heading for trial in a lawsuit brought by a distributor claiming wrongful termination of its contract. Eileen C. Pruette, former general counsel of Valeant, said she was certain of winning, even though the distributor was being represented by a top-tier, 1,600-lawyer firm.



From left, David S. Shukan, Susan L. Klein and Jeffrey B. Valle

"We were confident the jury was going to hate those guys," Pruette said. "From a legal-strategy standpoint, they were way overreaching."

The distributor must have had similar thoughts, because at the last minute it fired the firm. The next thing Pruette knew, it had substituted in a local litigator, Jeffrey B. Valle, of the then Valle & Associates, a firm less than half the size it is today.

Pruette learned Valle previously practiced at Skadden, Arps, Slate, Meagher & Flom, and she called the firm to check him out.

"They said, 'Be afraid,'" she recalled. "'Be very afraid.'"

The warning was well-founded. Valle narrowed the claim like a laser, went to trial and won the case.

The next time Valeant was sued, Pruette said, she told the company she wanted to bring in "this guy who dusted me in the other case."

She said Valle showed up with a high-quality, simple presentation. The competition came in, she said, and basically told her how lucky she'd be to have Valle's firm represent the company.

"It wasn't hard to figure out," she said of the decision to do just that.

The firm won a complete defense victory for Valeant in that case, a 16-plaintiff, \$30 million lawsuit related to Slobodan Milosevic's takeover of Valeant's Serbian subsidiary.

While most of Valle Makoff's practice relies on word-of-mouth referrals, the lawyers reel off example after example of cases similar to Valeant in which they were retained by the opposition after winning a case against it.

Also, as with the Valeant distributor, the lawyers often are asked to parachute in at the last minute and replace a much larger firm.

The Marietta Corp. of New York is an example. The private-equity group had retained a large, national firm in Los Angeles to represent it over a failed mergers-and-acquisitions deal here. A year and a half later, with two out of 40 depositions taken and 100 discovery motions pending, the group was out millions of dollars in legal fees, and no trial date had been set.

"The firm was charging an arm and a leg, and we were running out of limbs," Marietta Chief Financial Officer Perry Morgan said.

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A colleague recommended Morgan try the Valle firm. Eight months later, Valle resolved every motion, and settled the case through mediation. The firm charged \$600,000.

"He went to the heart of the matter," Morgan said of Valle. "He didn't waste time with mounds of paper."

When it was over, Morgan sent Valle an e-mail, saying, "You've restored my faith in the legal profession."

The firm has enjoyed a lot of successes by using this approach.

"Our model has appealed for a long time, especially as litigation costs have exploded, especially with electronic discovery," said Valle partner Susan Klein, who worked with Valle on the second Valeant case. "Companies are looking for a lower cost alternative to larger firms, which have a lot more overhead, higher expenses and can't or don't do the work as efficiently as we do it and at a cost as low as we do it."

Valle Makoff still uses the traditional hourly billing model in many cases. And though its hourly rates are lower than big firms - the partners bill \$400 to \$550, associates \$250 to \$350 - the real savings come from the increased efficiency. The firm also will enter into alternative-billing arrangements, such as a blended fee of contingency and hourly rates or a flat monthly fee.

Its practice areas include litigation in business and commercial, entertainment and media, intellectual property, trusts and estates as well as corporate-control and management disputes. The firm also handles appeals and labor-and-employment disputes. It recently began representing NBA player Brandon Jennings, its first foray into the sports world, stemming from another opposing firm referral.

Valle, 55, launched his practice in 2002, after an 18-year career at Skadden, the last 10 years as a partner. He wanted to try something entrepreneurial, and thought there was an alternative model to the big-law platform that could work in a small-firm environment.

In the beginning, it was just Valle and two other former Skadden lawyers, Katherine M. Balatbat and Steven M. Ragona. Over eight years, the firm grew, as Valle likes to say, "organically."

Then, in January, the head count jumped to 16 after the firm merged with the five-lawyer San Francisco boutique Makoff & Associates. The merger added offices in San Francisco and Walnut Creek.

Six of the seven partners, including Jeffrey T. Makoff, Ellen R. Fenichel and David S. Shukan, also are Skadden alumni. In addition, Klein frequently worked with a number of Skadden lawyers when she served as vice president-counsel in the litigation department of The Walt Disney Co. She joined the Valle firm in 2006.

Soon after the merger, Valle Makoff was chosen, in a highly competitive bidding process that included Quinn Emanuel Urquhart & Sullivan, as one of three firms to represent the unsecured creditors' committee in the ongoing Heller Ehrman bankruptcy. The other team members are the 13-lawyer McGrane Greenfield in San Francisco and Philadelphia's 180-lawyer Schnader Harrison Segal & Lewis.

The lawyers' long history together and the firm's small size make it easy to talk through legal strategy with one another. They often go to lunch as a group, sometimes five days a week.

"You never know when someone who's not been on the case will have a suggestion," said Shukan, who came to the firm in January after 20 years as an intellectual-property specialist, starting at Skadden and later moving to Kirkland & Ellis.

Valle said he finds it helpful to talk over an argument with a nonlawyer.

Valle points out another thing the lawyers do that may seem obvious but, they say, is rarely done: getting all the facts before drafting the arguments. When the firm handled a partnership dispute with a knitting manufacturer, for example, the first thing the lawyers did was visit the factory.

"It made sense, and it informed everything we did in the case because we understood the facts better," Valle said.

The most important approach, the lawyers agreed, is to narrow your arguments. If possible, they say, pick just one argument.

"We took over as plaintiff on a case recently that had 37 causes of action," Valle said. "I heard that, and immediately said, 'How does that work?'"

In that case, as in the other examples, the firm replaced a much larger firm. The lawyers quickly slashed the causes of action to six, and even dismissed a couple of parties.

The firm then reached a confidential settlement that was many times more than the defendant's offer, plus 10 percent interest for the time it took to reach a settlement.

"We try to streamline the case to be more efficient," Klein said. "We are always thinking about how to get the best result for the least cost."

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