



February 2012

A Local David In a World of Goliaths

SCV firm still gets the big cases the old-fashioned way: winning and referrals

A law practice is built one case at a time. But a successful law business is built upon victories, reputation and referrals.

When the Santa Clarita-based law firm Owen, Patterson & Owen took on pharmaceutical giant Merck & Company Inc., one of the largest pharmaceutical companies in the world, it became a saga of David and Goliath proportions.

“We were the first in the nation to file suit against Merck July 21, 2001,” said partner Richard Patterson.

Sure, the personal injury firm makes money, Patterson said. But when the firm takes a case, it’s not about the money it’s about “truth.” Owen, Patterson & Owen were first approached about the anti-inflammatory drug, Vioxx, when someone told them, “I can’t stand by. You have to hear what’s going on with this drug.”

What the law firm discovered through extensive research was that the drug company basically knew the drug it developed had dangerous side effects. Merck had essentially defrauded the U.S. Food and Drug Administration, Patterson said. The drug maker misrepresented the drug’s risk for causing cardiovascular attacks.

“We bring litigation where there has been a knowing, concentrated effort to hide the risks or not disclose the side effects,” Patterson said. But this was no ordinary case. The law firm had to go up against one of the most powerful, and well-funded, pharmaceutical companies in the world.

“It was like taking a sledge hammer and hitting the tail of a lion,” Patterson said. “We woke up a very angry animal.”

Merck spent \$1.95 billion defending the multiple cases before eventually coming to the

settlement table, he said.

The dilemma for Owen, Patterson & Owen, a boutique law firm, was how to take on a case that large.

Pooled resources

The battle against the giant drug maker by the local law firm is somewhat reminiscent of the environmental contamination case made famous in the movie “Erin Brockovich.” Attorney Edward Masry and Brockovich took on Pacific Gas and Electric in the early 1990s, but before they won the case, it threatened to bankrupt Masry’s firm.

Owen, Patterson & Owen needed to protect its firm’s health in order to be successful. Companies the size of Merck seek to bury law firms going up against them in discovery, litigation, pleadings and motions, Patterson said. The number of people who were prospective plaintiffs was staggering. Some 35,000 survived the effects of the drug, but not all were so lucky.

So, like building a house brick-by-brick, the firm built its case piece-by-piece. “At the time there were no experts to link Vioxx and the injuries to people so we hired doctors who studied the drug. They found causation,” said partner Greg Owen.

Once the firm had a link between ingestion of the medication and injurious results, it was able to create a strategy for bringing other law firms on board to help support and fund the case.

“There’s strength in numbers,” Patterson said. The case was so complex, however, it wasn’t possible to merely send an email out with information. So a little more than a decade ago Greg Owen got on one plane after another, flying state-to-state, personally educating lawyers at respected firms as to what the case was all about.

“I spent a year out of my practice until there was resolution,” he said.

Eventually Owen, Patterson & Owen was in talks with firms from around the country who believed it could take on Merck. A network of attorneys, with various strengths at their own firms, was created who pooled their resources, documenting capabilities and finances together.

Locally, Owen, Patterson & Owen estimates it invested between \$2.5 and \$3 million.

“By the end of the project there were 100 lawyers involved,” Greg said.

The firm survived the initial investigatory period but once the case got going the partners said it was like going down a very fast river they couldn’t get out of it until they got in front of a jury.

The cases were complex, so the courts would combine hundreds of cases into a pool where legal teams from both sides would select cases to fight in court.

In the process of preparing for cases, the same research and documentation used by Merck – “the science that they used and abused” – is what helped us win cases, Patterson said. Merck eventually settled after a series of lawsuits over a six-year period.

“We tried one patient at a time and were getting some wins. Juries didn’t like what Merck did. They gave pretty substantial verdicts. That’s what drove them to settle,” Patterson said.

And settle Merck did – to the tune of \$4.5 billion.

“We saved thousands of lives taking that drug off the market,” Gregg Owen said.

Having survived such a monumental undertaking, how does a law firm stay in business?

War chest

“An integral part of what we do is not just always looking at the bottom line,” said partner Susan Owen. “We’re saving lives, we’re solving a problem and stopping bad practices.”

Unlike most law practices, personal injury firms put their own money on the line when taking on a case in exchange for a contingency fee, or a percent of any monetary award.

But, if the firm loses a case it loses the money it invested. The firm spent \$350,000 on the last case it handled, so while the rewards can be good, the stakes are high.

Contingency fees level the playing field for people who have been harmed, Susan Owen said.

“An individual can’t go up against the large companies or finance a legal fight on their own. And insurance companies often drag out the cases hoping to force us to go to trial, hoping we’ll quit.”

“Only about 10 percent of our cases go to trial,” Patterson said. “Insurance companies know we litigate if it’s warranted, of if they aren’t forthcoming with offers that are fair and reasonable. We try to help them settle their cases in ways that are fair and reasonable.” But it takes money to front those battles and the firm estimates at any given time it has up to 350 cases.

The firm builds its war chest by stashing its winnings for a rainy day, or the next big court case.

“We’re well-funded,” Greg Owen said. “We have a good war chest to go up against big companies.”

That war chest helps the firm take on other cases where it believes people have been harmed by poor practices.

High-profile cases

Owen, Patterson & Owen has won several high-profile cases, including the Metrolink train crash and the radiation overdoses caused by GE Healthcare’s CT brain scan machines. The 2008 train crash injured 135 people and killed 25 in Chatsworth. Representing some of the victims and the victim’s families, the firm obtained the largest verdict in the Chatsworth train crash, Patterson said.

The firm also became involved with patients who were harmed by the flawed calculation of

radiation doses to be given each person by the GE scan machines, first discovered at Cedars-Sinai in Los Angeles. People were receiving scans equal to 10 times the amount of what they should have been receiving, Patterson said.

The scan machines are great diagnostic tools but they also make money for the hospitals, he said.

Up until the firm’s litigation, there were no government regulation or protocols for dosages, Patterson said. Now there is a reduced radiation dosage in the industry.

“Radiation is cumulative in nature but patients are given no information about the risks or choices,” he said. “As a result of the attorneys going to California legislator, a law was passed last year that put some reporting requirements in place.”

According to 2011 reports, there was a five to seven percent drop in the number of CT scans. Patterson believes those numbers will continue to go down.

Aside from the strategies of winning, other areas in the business of practicing law are changing.

Age of the Internet

For a young attorney just starting out today, the business of law looks a lot different than it did just a decade ago.

For one, gone are the big libraries full of law books consuming so much space in an office, taking valuable square footage away from people who need to work in the office.

“We pay a lot of money each month to a couple of online sources,” Patterson said. “books are passé now. There’s too much expense of updating them.”

The legal landscape has also been changed by the Internet. The firm gets clients who connect remotely, changing the whole working atmosphere, Susan Owen said.

But the Internet isn’t the end-all solution. An incredible website and online presence can attract clients. Young lawyers just starting out, however, can set up a great website and think they’re in business until they start getting cases they don’t have the expertise for.

And then there’s Court Call, Greg said. It used to be an attorney had to make in-person court appearances to file a motions or for a judge to review a case. Making those trips to the courthouse could involve driving to a distant city or getting on a plane and flying to another state. Now these matters can be routinely

handled over the phone unless it’s an important issue that should be handled in person, he said.

The biggest factor affecting a young lawyer today, however, is often the economy.

“There is so much competition for young lawyers and few jobs,” Greg Owen said. “The big cases trickle up to only two or three law firms.”

Susan Owen agreed. The new lawyers just out of law school might not make any more than lawyers made 20 years ago, she said.

In spite of the Internet, however, word-of-mouth referrals are still a vital component of building a law practice’s business. The biggest compliment a law firm can be paid is when it gets a referral from an attorney it opposed in court, said Susan Owen. The firm recently gained a new client from an opposing attorney in a \$35 million case.

“Seventy percent of our cases are referrals from other lawyers,” Patterson said.