

DO YOU **REALLY** NEED TO DO THAT?

A tiny Chicago firm wins big by questioning everything.

BY SUSAN HANSEN

DISCOVERY WAS MOVING AHEAD IN THE BREACH of contract case that Chicago's Valorem Law Group was defending for RF Surgical Systems, Inc., and Valorem partner Patrick Lamb seemed to have his work cut out. RF Surgical, which makes high-tech sponges and cotton designed for foolproof detection and removal after surgeries, had originally been sued by medical products distributor Medline Industries, Inc., in mid-2008. All told, Lamb figured he might have to depose at least a dozen Medline employees to get the facts he needed to fend off the breach of contract claim.

He started by deposing Medline's CEO, which went far better than Lamb had expected. "We got great testimony," recalls Lamb. Next, he turned to the head of the Medline division that oversaw the contract with RF Surgical and wound up getting even more revealing information. In fact, as Lamb recalls, the division head effectively conceded that he had mishandled the distribution agreement with RF Surgical.

Lamb went ahead with his deposition of Medline's general counsel, and could easily have continued down his list of potential witnesses. But after just three depositions, Lamb concluded he had gotten all he needed to undercut Medline's claims. He shared

that opinion with Kevin Cosens, RF Surgical's CEO, who took Lamb's word that getting more testimony wouldn't help his case. "So we stopped," says Lamb. A few months later, by mid-2009, the two companies were able to reach a settlement—on far more favorable terms than Lamb or RF Surgical expected, bringing the litigation to an end.

A lot of law firms might not have been so keen to quit deposing witnesses, especially if they were billing by the hour. But Lamb, who founded the eight-lawyer Valorem three years ago, isn't a big believer in overkill (or the billable hour). Indeed, he and other Valorem partners pride themselves on their efficiency—and their staunch commitment to delivering top-notch service and results on complex commercial litigation matters at a fair, reasonable price.

To Lamb, it's obvious that the days when law firms could throw large numbers of bodies on litigation matters and blithely run up fees really are coming to an end. "We've decided it's better to be on the front end of that change," says Lamb. Accordingly, Valorem, whose name means value in Latin, has not only been deploying a wide range of project management tools to impose strict discipline on the litigation process, it has also largely scrapped straight hourly rates in favor of a

mix of flat- and performance-based billing arrangements. And in the process, it's been drawing glowing reviews from major clients, who see Valorem's approach as a model for how to deliver cost-effective legal services.

"They actually do think differently about matters," says Mark Wolf, chief litigation counsel at FMC Technologies, Inc., a Houston-based manufacturer of drilling equipment for the gas and oil industries. "It's uncanny how they figure out how to do the least possible to get major issues resolved."

LAMB, 54, CERTAINLY KNOWS ALL ABOUT THE OLD WAY OF DOING business, having spent 18 years at Chicago's Katten Muchin Rosenman, including more than a decade as an equity partner. During that time, Lamb saw that the hourly rates Katten and other big firms were charging kept going up—and that continued in 2000 when he jumped to the Chicago boutique Butler Rubin Saltarelli & Boyd.

At the end of every year, as Lamb recalls, he and fellow members of Butler Rubin's management committee would meet, and the discussion would turn to billing rates—or, to be more precise, how much the firm ought to raise them for the year ahead. "I kept wondering what the end game was," says Lamb, who concluded that at some point clients would balk. In fact, he came to believe that the entire hourly billing model was probably doomed too.

Rather than waiting for the old model to die out, Lamb found three like-minded litigators and fellow big-firm veterans who shared his views and wanted to be part of building a different kind of law firm—and in 2008 Valorem was launched. Three years later, Valorem has added four more lawyers, and it now boasts a list of big, brand-name clients, including funeral industry giant Service Corporation International; national shoe retailer DSW Inc.; Veolia Water, a supplier of water and wastewater management services; and the online travel site kayak.com.

Though the firm's limited bench strength is definitely a deterrent for some prospective clients, Lamb and his partners are in no hurry to grow. They say they like the extra collegiality a small firm offers, and they take pride in not taking themselves too seriously and in their iconoclastic approach. (Their Web site features a shot of a mallet-wielding Lamb standing over a time clock as well as a photo of the door of Valorem's "Bored Room.")

Still, when it comes to their caseload, Valorem partners are as intent as ever on boosting efficiencies and reducing costs. Indeed, given that 80 percent of the firm's revenue comes from a mix of fixed- and performance-based fee arrangements, they point out that they have a powerful incentive for minimizing the time and money expended on any one matter. The good news, says Valorem partner Nicole Auerbach, is that that approach also coincides with what clients typically want. They recognize that the "majority of litigation doesn't require you to uncover every stone," says Auerbach, who is also a Katten alum. "They don't want you to boil the ocean to make a cup of tea."

The exact goals of clients obviously vary from case to case. Therefore, with each new matter Auerbach and her partners will not only ask clients to fill out a detailed questionnaire—they also have thor-



VALOREM LAWYERS (FROM LEFT) HUGH TOTTEN, PATRICK LAMB, AND LISA CARTER KNOW WHEN ENOUGH DISCOVERY IS ENOUGH.

ough discussions up front to make sure they understand what the client's short- and longer-term objectives are and what they want Valorem lawyers to accomplish. From there, Valorem draws on its project management chops to devise a plan that lays out the discrete steps and requisite deadlines for achieving those goals, and the marching orders for the lawyers.

In carrying out that action plan, Valorem partners say they are guided by one overriding principle—namely, they try to be sure that each and every thing they do as part of a given piece of litigation actually helps get them to their goals. On many cases, Lamb and his partners have concluded that things that are considered necessary parts of litigation—especially discovery—actually aren't all that necessary. Take document production and review. Valorem partner Hugh Totten recalls that the question of how to handle turning over documents recently came up as part of a suit Valorem had taken on against aluminum giant Alcoa, alleging the company had aided and abetted fraud in its sale of a now-bankrupt smelter in Washington State.

During discovery, Alcoa's lawyers at Cravath, Swaine & Moore had requested thousands of files from Valorem's client—William Brandt, the U.S. bankruptcy trustee for the smelter. A big law firm, notes Totten, would have enlisted a half-dozen associates to review

the documents before turning them over. But Totten says that he decided that there wasn't anything to be gained. "I basically said, 'Here's a roomful of documents. Have at 'em, ' " recalls Totten, who was a partner in Perkins Coie's Chicago office before he joined Valorem. (He says the decision had absolutely no effect on the case's outcome, which was dismissed on the grounds of collateral estoppel; Valorem is now appealing.)

Valorem's Auerbach recalls getting even bigger time savings in an insurance coverage case last year for a major retailer (who didn't want to be named). After reviewing the matter, she concluded that the only thing that really mattered to the outcome was the interpretation of the language in the policies. While obtaining the actual policies and all related correspondence was critical, she notes that other evidence she might have turned up would have no bearing on the coverage issues. So she spoke with the insurance carriers lawyers at SNR Denton, and at her behest they agreed to forgo much of the discovery in the case, saving hundreds of thousand of dollars. "When we told the magistrate [what we had decided], it seemed like she wanted to leap over the bench and hug us," says Auerbach.

Not surprisingly, Valorem clients, such as Kayak.com general counsel Karen Klein, tend to like not having to spend money on things that don't improve their prospects in arbitration or litigation. Along with their discriminating use of experts, says Klein, Valorem lawyers also pick their spots carefully in deciding who in a given matter to depose, and unlike a lot of firms, she adds, they also don't typically go in for filing a lot of unnecessary motions. "They understand that we're working with a budget and that if [something] isn't contributing to a resolution, it's a waste of time and resources."

AT FMC TECHNOLOGIES, SENIOR LITIGATION COUNSEL MARK Wolf lauds the quick work Valorem's Lamb recently did to extricate one of the company's subsidiaries from a wave of asbestos suits.

The subsidiary, which makes meters for tracking oil and gas flow, had been named along with nearly two dozen other defendants in the litigation, which began in mid-2009. Yet while some of its fellow defendants did have real liability issues, Wolf points out the meters contained no asbestos and therefore couldn't have caused any harm. Lamb

went to work, and quickly secured a detailed affidavit from the subsidiary's engineers attesting that the meters were asbestos-free, which he put before the lead plaintiffs attorneys in the initial suit. Within a few months, those lawyers dropped their claims. And over the next year or so the other plaintiffs lawyers behind roughly half a dozen more follow-on suits against the FMC subsidiary did the same.

In the end, Wolf says, he spent just over \$100,000 to resolve all of the matters—which he considers a bargain, given that he had initially feared it might cost hundreds of thousands of dollars more.

Wolf and other clients definitely like the fact that Valorem is more than willing to work out fee arrangements that are at least partially tied to the results they produce. Case in point: a major lease dispute that Valorem is currently handling for DSW that is headed for trial in Los Angeles this fall. As part of its agreement, the company has been holding back 20 percent of Valorem's billings, with the final payout to be determined by how well the firm meets mutually defined success metrics in the case.

"They're taking a significant risk," says DSW senior counsel David Graham. He says he was so impressed with Valorem's hyper

value-based approach to litigation and its willingness to put its own money on the line that he decided to hire them.

Valorem's pitch doesn't work on everyone. Lamb and his partners readily admit that some prospective clients don't view them as large enough or established enough to handle big, brand-name matters. "We have an extra sales job to make every time we go out and talk to clients," says Totten. Moreover, despite all the talk about the need for alternatives to the hourly rate, they say that many GCs are still reluctant to actually try something different. "We're pushing up against 60 years of an existing business model," says Lamb.

Yet Lamb takes heart in the fact that he and his partners have been winning repeat business from major clients, including FMC and Service International, which he notes tried the firm out on small assignments and are now enlisting it on bigger matters. "Once they start," says Lamb, "they keep coming back for more." ■



(FROM LEFT) HANK TURNER, STUART CHANEN, AND NICOLE AUERBACH

DON'T TAKE OFFICE DECOR TOO SERIOUSLY.