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Right Time, Right Place, Right Lawyer

BY PAUL JASKUNAS



By dazzling a few deep-pocketed clients, Marc Kasowitz has converted opportunity into gold throughout his legal career. Now He's put his name on the line as head of his own firm.



MARC KASOWITZ HAS BUILT A STRONG BUSINESS AROUND HIS BEST-KNOWN CLIENTS, HOECHST CELANESE AND LIGGETT

As of last March, the tobacco industry had yet to settle a case or lose a dime in a smoking-related product liability suit, despite a barrage of litigation that the industry had been fending off since the late 1970s. But thanks to Marc Kasowitz, on March 12, 1996, that was about to change. That night he and a group of colleagues and plaintiffs lawyers gathered in the midtown Manhattan offices of Kasowitz, Benson, Torres & Friedman to finalize a settlement between his client, Durham, North Carolina-based Liggett Group Inc., a cigarette manufacturer, and the plaintiffs in the massive class action *Castano v. American Tobacco Company*. Around midnight, the deal was done. The first chink in the tobacco industry's armor might have spelled bad news for other tobacco lawyers, but Kasowitz, a gregarious, cigar-smoking host, was pouring his guests champagne and offering backslapping congratulations.

Kasowitz, 44, had plenty of reasons to celebrate that night. For a man who was successful at practicing law but new to the tobacco wars, this settlement was a coup of coups, winning him prominent mentions in *The Wall Street Journal* and guest appearances on CNN and CNBC. In addition to settling the *Castano* case, he struck a deal with five states that had brought suits against the tobacco industry to recoup the medical cost of treating smokers.

This January Kasowitz made news again, as word broke that Liggett, in another aggressive attempt to settle further class actions and state government suits, had proposed turning over highly sensitive documents to plaintiffs lawyers. Kasowitz may have won Liggett's trust and loyalty, but he's clearly not afraid of making enemies in the tobacco industry: The documents he is considering releasing are notes taken during meetings of the leading

companies' in-house attorneys (only those notes on nonlegal subjects like marketing or health reports).

With Liggett—a client that Kasowitz actively sought out—Kasowitz definitively proved his talent for thinking big, showing off his ability to convert the slightest opportunity into an enviable achievement. Combining the talents of an entrepreneur and a tenacious advocate, Kasowitz has won the trust of one other gold-mine client, enabling him to leave the security of his old home, the New York office of Chicago's Mayer, Brown & Platt, to start his own operation. Kasowitz has led his firm to extraordinary profits since its beginning in 1993. The 18-partner firm, says a former partner, netted \$21 million in 1995; of that, \$7 million went to Kasowitz, a former firm insider confirms; and a friend of Kasowitz's says he took in about the same in 1994. ("That's a ridiculously high number," says Kasowitz, declining to comment further.)

Before Liggett came to the fore, Kasowitz's financial success was unusually dependent on the benevolence of a single client that has been loyal to Kasowitz through three different firms: Hoechst Celanese Corporation, the Bridgewater, New Jersey-based chemical company that was embroiled for years in litigation involving leaky plumbing pipes "Greedy, Greedy, Greedy," November 1996. But if Kasowitz happened to have the right client at the right time, he has also himself the right lawyer to make good on that opportunity. Versatile and sharp, Kasowitz can be by turns an intimidating negotiator and a warmhearted friend, a frank speaker and a connoisseur of spin. "He has a variety of personas. He can be tough, he can be gentle, he can be loving, he can be an asshole. He can be a lovable asshole," says James Moriarty, a Houston-based plaintiffs attorney and former adversary. "If he quit practicing law tomorrow, he could become a multi-

millionaire playing poker."

"A REAL SCRAPPER AND A REAL HUSTLER"

As a boy growing up in New Haven, Connecticut, where his father founded a scrap metal business, Kasowitz demonstrated the unbridled aggressiveness that would take him far as a lawyer. His boyhood friend Richard Casher (who is now a partner at Hartford's Hebb & Gitlin) recalls that as a member of the high school basketball team, Kasowitz was "a scrawny, stick-like guy who wasn't afraid to mixup with guys that were bigger than him and dive for loose balls. He was just a real scrapper and a real hustler." That determination would remain a trademark both in court and on the court: Later in life, while playing on Rosenman & Colin's basketball team, Kasowitz would find himself in a fistfight with a member of the opposing team. (Kasowitz defended himself as only a litigator would, claiming that his foe had provoked him with a kick: "I took all appropriate measures to defend myself until my teammates interceded," he told *Manhattan Lawyer* in 1988.)

At Yale University, where he was an undergraduate, and at Cornell University Law School, Kasowitz made several long-lasting friendships, in a pattern that would continue at the law firm he joined as an associate in 1977, Rosenman & Colin. As captain of the firm's basketball team and later as head of its summer associate program, recalls partner Gerald Rosenberg, Kasowitz became popular with the more junior lawyers, many of whom would later go on to work for him.

While Kasowitz was befriendng other Rosenman associates on the basketball court, he was also impressing what would become a very important client: Hoechst Celanese, then known as Celanese Corporation, which had tapped regular outside counsel Rosenman to deal with a spate of product liability cases nationwide involving formaldehyde foam insulation in the early eighties. Kasowitz was still an associate, but he became "the man" on the Celanese work, in the words of one Rosenman colleague, all but taking the reins from the partner on the matter and settling most of the cases for "nominal" amounts (\$1,000-\$3,000 each). Celanese lawyers took note. "He showed his leadership very early -- his ability to control a room, control an environment, and be a successful advocate," says Stephen Block, formerly

a lawyer at Hoechst Celanese, and now vice-president-law, regulatory affairs, and secretary of International Flavors & Fragrances Inc.

In 1988, two years after he'd made partner, Kasowitz left Rosenman for the New York office of Chicago's Mayer, Brown & Platt. He was not yet a big fish—then-partner Robert Bada, who recruited him, says that Kasowitz's business was well under \$1 million when he joined the firm. But he brought with him a slew of litigation assignments from Celanese.

At Mayer, Brown, Kasowitz, who had recruited several loyal friends from Rosenman, became the leader of something of a clique, says one former partner. Late in the afternoon, the partner says, the group would leave the office for a nearby bar, have a few drinks,

plumbing and Dallas's United States Brass Corporation, which manufactured the pipes. Godfrey advised his client to avoid infighting with Celanese's co-defendant, Shell Oil Company, the other producer of compounds used in the pipes.

But in the few cases that went to trial before Kasowitz got involved, juries were hitting Celanese with far higher damages than they were Shell, argues James Moriarty, the Houston-based plaintiffs lawyer who brought many of the early plumbing cases, and who was eager to form an alliance that would help him delve into Shell's even deeper pockets.

Celanese associate general counsel Israel, believing that Celanese was less responsible than Shell, sought out Kasowitz, hoping he could execute a more aggressive strategy to correct

As the documents piled up by the millions, so did the Celanese tab. A former firm insider says that in 1995 the billings were limited to approximately \$3 million—a month.

and return to work in good spirits. To work with the gregarious Kasowitz, says another former Mayer, Brown partner, was to socialize with him. "You went drinking with him, you smoked cigars with him, you stayed up late with him," says this former partner. "I look to foster relationships among colleagues," says Kasowitz, insisting, though, that he would typically go out late in the evening when he'd finished his day's work.

The party really got rolling in mid-1990, when Celanese associate general counsel Frank Israel, who had worked with Kasowitz on the formaldehyde cases, called him about working on another series of product liability suits. Celanese had manufactured a compound used in the fittings for plumbing pipes made from plastic. The pipes leaked, and consumers, primarily in the South and West, were seeking redress for their flooded homes.

Until Kasowitz was tapped, Celanese had been represented by H. Lee Godfrey of Houston's Susman Godfrey and Jack Knebel of San Francisco's McCutchen, Doyle, Brown & Enersen. Their strategy, Godfrey explains, was to lay the blame at the feet of the builders who installed the

past damage.

Kasowitz was hired to play tough, but in the polybutylene litigation he demonstrated his ability to warm up adversaries and make valuable contacts, even in the thick of the battle. He became a friendly foe to Moriarty, providing him with hundreds of thousands of Celanese documents that, Moriarty says, characterized Shell as the primary marketer of the pipes and pipe fittings, including the Celanese product. "It was dynamite evidence," recalls Moriarty.

The work was a boon for Kasowitz. Pre-plumbing, he had been a run-of-the-mill rainmaker, according to one former Mayer, Brown partner. The new work changed that. To absorb the onslaught of legal work, Kasowitz hired his first batch of contract attorneys and rented out a spacious "war room" in which the contract attorneys reviewed tens of thousands of documents. As national counsel for a matter involving about 2,000 active cases and 2 million potential plaintiffs around the country, there seemed to be no end in sight to the billable hours. In 1992, according to one current Mayer, Brown partner, Kasowitz billed approximately \$13 million, almost

all of which was to Celanese.

When it came time to negotiate his own compensation, Kasowitz was in a strong position. Mayer, Brown's policy and planning committee offered him \$1.5 million for 1993, the highest compensation of any partner in the firm, according to one Mayer, Brown partner. (The compensation of the average partner at the firm was \$350,000 in 1993, according to "The Am Law 100.")

Still, Kasowitz was not satisfied. In late June 1993 he announced to the firm that he, Daniel Benson, Hector Torres, and a senior litigator in Chicago, W. Bruce Hoff, Jr.—all of whom had been working on the plumbing litigation—would be leaving to start a new firm.

"We anticipated we could do better, compensation-wise," says Benson, explaining the move. Adds Kasowitz: "We really believed that we could have our own firm, run it ourselves in a more streamlined, efficient way than large firms are run."

Kasowitz not only took client Celanese but 16 of the contract lawyers working for it as well. "Mayer, Brown had no chance at keeping that client," recalls a former Mayer, Brown partner. "Marc was very protective of it. He had his team. Whoever was on his team left with him."

Kasowitz started with 43 lawyers, most of whom followed from Mayer, Brown. (In addition, Kasowitz brought over his new wife, Lori, a Mayer, Brown secretarial coordinator who became Kasowitz, Benson's office manager.) Thus assembled, the group assumed the lease for the Mayer, Brown "war room" and found space for the main offices at 875 Third Avenue in midtown Manhattan.

"THE TOUGHEST OF THE TOUGH GUYS"

After opening up for business, Kasowitz, Benson was immediately consumed with plumbing. With 80 percent of its business tied up in representing Celanese, according to Hoff (who has since left for Chicago's Altheimer & Gray), Kasowitz had to put together an operation capable of handling and processing massive amounts of documentation. From Houston, contract attorneys and associates crisscrossed the country, deposing homeowners whose pipes had sprung leaks, and in New York, more contract attorneys trudged through the transcripts, summarizing them for the firm's vast databases. A temporary

litigation support staff of around 50 people would code, index, enter data, and proofread boxloads of documents from Celanese, Shell witnesses, and plaintiffs lawyers. Meanwhile, at the top of this furious enterprise, the Kasowitz lawyers busily prepared for trials in the key battlegrounds of California and Texas.

As the documents piled up by the millions, so too did the Celanese tab. Kasowitz declines to specify how much he brought in from the Celanese work, but a former firm insider says that in 1995 the billings were limited to approximately \$3 million—a month. (Celanese general counsel David Jenkins declined to comment.)

Did Celanese get its money's worth? Celanese associate general counsel Israel; his boss, Jenkins; and plaintiffs counsel Moriarty all believe that Kasowitz's discovery work successfully portrayed the other co-defendants as the parties most responsible for the leaky pipes. Before Kasowitz got involved, they say, everyone, including the co-defendants, was blaming Celanese at trial. Kasowitz's change in strategy paid off in at least a few cases, say Moriarty and Israel. For example, in *McDonald v. Hoechst Celanese Corporation*, tried in the spring of 1994, the jury awarded the plaintiffs about \$1,000 per home—a vast improvement over what the company had doled out to plaintiffs in earlier polybutylene cases (for example, a 1991 jury awarded plaintiffs \$35,000 per home).

While Celanese in-house lawyers continue to give Kasowitz business, plaintiffs lawyers Michael Caddell of Houston's Caddell & Warden and Marc Murr, a Houston solo practitioner, fault Kasowitz for pursuing what they characterize as an unsuccessful, if aggressive, strategy in court. Had Kasowitz pursued a global settlement earlier, they argue, he would have considerably curtailed Celanese's legal fees. And if Shell's exposure in the litigation has increased since Kasowitz's involvement, says Murr, it's because of the plaintiffs lawyers' work, not Kasowitz's. "I really saw no significant change in Celanese's exposure as a result of all the work and all of the fees that Kasowitz's firm billed," says Murr. In at least one case, Kasowitz's efforts haven't paid off: In a 1993 arbitration before three retired Texas judges, the defendants were hit with approximately \$40,000 per home, says Murr. Celanese was found liable for 70 percent of the total -- Shell, only 5 percent.

It will be easier to judge Kasowitz's strategy later this year, after an arbitration between Celanese and Shell determines how the companies will split a \$950 million class action settlement reached in the winter of 1995. But Kasowitz maintains that Celanese is, in fact, in a much better position than it was before he took charge, in part due to his adversarial stance toward Shell. He cites the McDonald case and an earlier trial in California, *Gawara v. U.S. Brass*, in which the jury found Shell 26 percent liable and Celanese only 12 percent. "The fact of the matter is, before we got involved, Celanese was the only target," he says. "Afterwards, the liability of Celanese vis-a-vis the liability of Shell changed dramatically."

Celanese eventually settled with two groups of lawyers -- one led by a

and gives up as little as possible." His measured response is typical Kasowitz: Conversing with him is often a negotiation itself, one in which it's clear he has interests, agendas, and concerns he'd never betray.

In spite of Kasowitz's posturing, Moriarty grew to respect him for his obstinacy. "Kasowitz is one of the most charming sons of bitches you've ever seen in your life," he says. "Kasowitz kind of reminds me of my seven-year-old. When he makes his mind up, he's not budging."

For Moriarty, Kasowitz seems to present the thrill of the challenge, like a chess opponent hell-bent on checkmate. Moriarty recalls a skirmish in 1994, after Kasowitz agreed to settle all of Shell's and Celanese's remaining cases for \$88 million. Celanese, however, still hadn't

Kasowitz has moved on to other things, among them tobacco litigation.

Other than being a cigar enthusiast, Kasowitz never had much to do with the tobacco industry until his partner David Friedman gave him his break. In 1994 Friedman, a lateral bankruptcy partner from Mudge Rose Guthrie Alexander & Ferdon, brought Kasowitz into contact with Bennett LeBow, chairman and CEO of the Brooke Group Ltd., a holding company that included Western Union and Liggett. At the time Friedman was handling bankruptcy work for Western Union; LeBow continued to turn to Mudge Rose for litigation, where then-Mudge partner James Kearney had been Liggett's defense counsel in the tobacco wars for 20 years.

But when Mudge Rose dissolved in October 1995— and Kearney and his team joined the New York office of Los Angeles's Latham & Watkins—LeBow says he was beginning to think he needed a fresh look at the litigation. "Until that time," he says. "I hadn't paid much attention to it."

LeBow's reconsideration was partly inspired by a proxy fight he was then waging to win control of RJR Nabisco Holding Corporation's board of directors. A major RJR shareholder, he wanted to raise Nabisco's stock value by spinning it off and releasing it from the albatross of the tobacco litigation faced by R.J. Reynolds Tobacco Company. But the company feared that the plaintiffs lawyers, seeking huge damage awards, would try to enjoin the split. In late 1995 Kasowitz and Benson called LeBow with an idea: Liggett could settle the Castano case and the state attorney general Medicare claims, and negotiate a provision by which any company that merged with Liggett would also take part in the settlement and be absolved of liability. If the plaintiffs also agreed not to try to enjoin a Nabisco spin-off, then maybe, Kasowitz and Benson told LeBow, such a settlement would make it easier for R.J. Reynolds to break from Nabisco and join Liggett under the settlement's umbrella. Intrigued, LeBow gave Kasowitz the green light to explore. "I decided I didn't like the old approach of 'Let's fight this to the death,'" says LeBow. "It's expensive. There was big litigation coming up. What happens when you lose?"

Although Kasowitz credits Benson with the settlement strategy, it fell to Kasowitz to execute the plan. As his relationship with the polybutylene plaintiffs lawyer Moriarty had helped him in the plumbing litigation, another

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Washington, D.C.-based group called Trial Lawyers for Public Justice and Caddell, and the other by George Fleming of Houston's Fleming, Hovenkamp & Grayson. In the settlement talks with the first group, Kasowitz made only the occasional appearance, says Caddell, but when he showed his face, people noticed. "He was the toughest of the tough guys," recalls John "Don" Barrett of Lexington, Mississippi's Barrett Law Offices, who says he grew to like Kasowitz over the course of the litigation. "I mean, he played the heavy. We would propose something that was reasonable. Shell would say, 'We want to talk about it for a while, we want to think about it.' Marc would say, 'That's the most outrageous thing I ever heard!' He went kicking and screaming into every concession."

Plaintiffs lawyer Murr was more frustrated than charmed: "It was like trying to nail jam on the wall," he says. "That's exactly how I felt negotiating and trying to bring things to a closure with that firm."

"We enter into settlements that are advantageous to our clients as possible," responds Kasowitz. "That means you have to use a negotiating style which extracts as many concessions as possible

paid when the agreed-upon deadline had passed, says Moriarty. "He stalled and he stalled and he stalled. I call him on a Friday, and I say, 'Look, Marc, pay the money and pay it now,'" says Moriarty. "His response is, 'Fuck 'em, what's he going to do?'" Moriarty proceeded to mail his 11,000 clients Kasowitz's telephone number with instructions to call him on a specified Monday morning at 9 a.m. and ask for the money. "They had hundreds and hundreds of calls. That's the one time I got to Marc Kasowitz," says Moriarty, who met with him afterwards. "I thought his eyes were going to bulge out of his head."

Kasowitz concedes that he was upset by the incident, but won't give Moriarty any more satisfaction than that: "Any action he took in telling his clients to call our offices," says Kasowitz, "did not affect us in terms of meeting our obligations under the agreement, which we did in due course."

DOWN TOBACCO ROAD

The plumbing litigation remains a live concern at the Kasowitz firm—the arbitration against Shell over how to divide the class action settlement awaits, as do the cases of those plaintiffs who opt out of the two settlements—but

adversary would help him in getting the tobacco settlement started. Kasowitz had what he calls a "working relationship" with one of the plaintiffs lawyers in the tobacco litigation— Don Barrett, who had worked on the plumbing class action—and the two of them began talking about a deal. In February 1996 the negotiations between Kasowitz, Benson, and plaintiffs lawyers in the Castano case began in earnest at the Four Seasons Hotel in Houston.

In the end, Liggett agreed to pay 5 percent of its pretax profits for the next 25 years to settle the Castano case. To settle with the five participating states (Mississippi, West Virginia, Florida, Louisiana, and Massachusetts), Liggett agreed to pay \$5 million, plus either 2.5 or 7.5 percent of its pretax profits for the next 25 years, depending on how many other states eventually join the deal. Liggett also agreed to follow some of the FDA's proposed rules limiting the marketing of cigarettes to minors. For Liggett, the two settlements seemed safe: Kasowitz secured several "opt out" clauses that would allow it to get out of the settlements if time proved that fighting the litigation made more sense than settling, and he also secured a provision that would extend the deal to any concern—except Philip Morris—that chose to merge with Liggett.

But the deal didn't accomplish what it had set out to. It didn't help LeBow in his proxy fight to spin off Nabisco; and news of the settlement did not fly well on Wall Street, as the RJR and Liggett stock prices both dropped following the announcement. An article in *The Wall Street Journal* reported on April 17 that the "maverick strategy of pushing to settle cigarette lawsuits backfired badly among tobacco investors." What's more, when the Castano class was decertified by the federal court in New Orleans, a new wave of about 15 statewide class actions were filed. In addition, 18 state attorney general actions are now pending against Liggett and the other tobacco companies, says plaintiffs lawyer Barrett. At the time of the settlements, there had been only six. "I don't think we would have fifteen or sixteen states filing these lawsuits now if the Liggett settlement had not occurred," says Florida's attorney general, Robert Butterworth. "Once there was a break in the dike, it made it easier to come aboard."

But LeBow hasn't given up. He says he still wants to settle outstanding litigation against Liggett, and has turned to Kasowitz to do the job. Kasowitz

declines to comment on the negotiations, but according to one lawyer involved, he has been talking to a core group of about ten plaintiffs lawyers for the past seven months about a comprehensive settlement for Liggett.

At press time no agreements had been reached, but it appears that Kasowitz is willing to give up more to settle this time around than he was last year. A lawyer representing one of the states confirms a January 9 *Wall Street Journal* report that Liggett has discussed the possibility of turning over to the plaintiffs sensitive documents that could be marshaled against the tobacco industry as part of the settlement. The documents in question, this lawyer says, are notes taken by Liggett's lawyers during meetings of the Committee of Counsel, a group of in-house attorneys from the

by merging with Liggett.

But at press time Kasowitz and LeBow seemed to have a few obstacles to clear before reaching a comprehensive settlement that would extricate the company from all tobacco litigation. Some states are wary of a deal that would give RJR the opportunity to escape liability by getting in on Liggett's deal, says the lawyer representing one of the states. Minnesota is one of them, according to Michael Ciresi of Minneapolis's Robins, Kaplan, Miller & Ciresi, counsel to the state. "As long as there is a thread of possibility that RJR could get out that cheap," he says, "it's not a good deal." In the end, he says, it may not be necessary to strike a deal with Kasowitz to get the documents, as Minnesota is pursuing them through the discovery process (as are several other states).

into will not violate any legal obligations that Liggett has."

MAKING LUCK HAPPEN

If Kasowitz does manage to settle Liggett out of the tobacco litigation, he won't be without work. He gleefully reports having won a beauty contest this December to take on litigation brought by Nihon Sangyo Co., a Japanese real estate company that has sued the daughter of a large shareholder over her allegedly fraudulent purchase of a stake in the Empire State Building. Kasowitz is also handling litigation for Clairrol, Inc., and has recently worked for the Jack Parker Corporation, which owns the Parker-Meridien Hotel chain.

To some degree, Kasowitz's success thus far has been a function of timing: In 1990 he happened to have an in with a client with potentially disastrous mass-tort litigation on its hands, and later he happened to meet LeBow through a lateral partner. But a former Kasowitz, Benson partner observes that Kasowitz's enviable achievements haven't been flukes. "He works harder, faster, tougher," says this lawyer. "There are a lot of people in the city who are extremely jealous of Marc, but they fail to understand that he worked hard for fifteen years." True enough, it was largely Celanese's polybutylene problem that sponsored Kasowitz's rise, "but, you know, he hasn't screwed it up," the former partner observes. "They've stuck with him."

Kasowitz himself is reluctant to give too much credit to the wheels of fortune. "At the risk of sounding immodest," he says, "we've tried to make our own luck."

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“There are a lot of people in this city who are extremely jealous of Marc,” says a former Kasowitz, Benson partner. “They fail to understand that he worked hard for fifteen years.”



major tobacco companies that meets regularly to discuss litigation strategy and business issues. According to this lawyer, plaintiffs attorneys are also seeking notes from meetings of the group of outside lawyers retained by the industry. The states want the documents pertaining to the groups' discussions of nonlegal matters, such as marketing and health reports, that would not be protected by the attorney-client privilege, says the lawyer. "Any resolution with Liggett will have to involve the disgorgement of documents," says Russ Herman of New Orleans's Herman, Herman, Katz & Cotlar, who has helped bring the 15 statewide class actions.

According to the *Journal* report, Liggett is also contemplating putting more money on the table than it did a year ago; under a recent proposal, the report reads, Liggett would pay \$27 million to both the states that have sued and the plaintiffs in about 15 statewide class actions, and would pay up to one-third of its annual pretax profits for the next 25 years. In return, the story says, Liggett would be released of liability in pending litigation and would keep the door open for another company (namely RJR) to join in the settlement

What's more, any attempt to divulge documents concerning discussions between tobacco lawyers will surely be fought tooth and nail by Liggett's rivals. "Liggett has no right to turn over notes that reflect legal discussions at a joint meeting without the consent of all involved parties," reads a statement issued by Philip Morris U.S.A. in response to the *Journal* report. "Nor does it have the right to disclose jointly privileged documents unrelated to the litigation."

Kasowitz declines to comment on the specifics of the negotiations, but says, "Any cooperation provision we enter

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