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How They Won It: Susman Nets $50M Verdict In Glass IP Row

By **Matthew Bultman**

Law360, New York (May 31, 2017, 9:33 PM EDT) -- In convincing a Delaware federal jury that Ardagh Glass Inc. infringed a glass recycling patent owned by Green Mountain Glass LLC — and securing a $50 million verdict for the small Pennsylvania company — Susman Godfrey LLP showed the value of preparation and planning.

Green Mountain sued Ardagh Glass, a unit of the Luxembourg-based Ardagh Group, in March 2014, accusing it of copying patented technology related to the use of recycled glass of mixed colors, as opposed to raw materials, in the glass manufacturing process.

The five-day trial kicked off April 17 in a courthouse in Wilmington. But for Green Mountain, the foundation had been laid years earlier — Susman Godfrey attorney Matthew Berry said lawyers began developing a litigation strategy even before the lawsuit was filed.

“At the very beginning, we have one purpose: to win at trial,” Berry said. “We assume every case will go to trial, and we need to develop at the very outset how it is that we’re going to win the trial.”

Green Mountain’s case revolved around two patents covering an invention that allows glass makers to use recycled glass of mixed colors, or cullet, in the manufacturing process. Cullet is reportedly cheaper and more efficient than using raw materials.

Green Mountain executives were said to have met with Ardagh’s predecessor, Saint-Gobain Containers Inc., on various occasions to discuss the technology. But rather than license the patents, Ardagh copied the technology and passed it off as its own, Green Mountain contended.

Keeping in mind the end goal — to win at trial — Susman Godfrey attorneys fine-tuned their strategy as the case progressed. Their preparation and planning shone through, perhaps most notably, during depositions, which turned out to be an important factor in the case.

In a recent court filing, Green Mountain highlighted a declaration submitted early on in the case from Katie Flight, the person in charge of buying cullet for the defendant. In it, Flight denied the company used “mixed-color cullet.”

But during her deposition, according to Green Mountain, Flight admitted she didn’t actually write the declaration and said, “If I were to sign a declaration today, it would say something completely different than what this declaration said.”

“We knew what our trial strategy was before we took that deposition, and we executed it,” Berry said.

Other Ardagh witnesses, according to Green Mountain briefs, seemed to take a “know-nothing” approach while being deposed, often answering questions with, “I don’t know.” These sorts of responses appeared to impact their credibility in the eyes of jurors, attorneys said.

“There was a lot of deposition testimony here that I think, more so than most cases with deposition testimony, played an important role,” said Susman Godfrey's Justin Nelson, who was lead counsel for Green Mountain.

Another important moment came in April 2016, when Green Mountain won a favorable claim construction ruling. Similar to their approach in depositions, Berry said they knew going into the hearing exactly what they wanted to argue at trial.

“We didn’t try to overreach,” he said. “We tried to stay within the claim language and the specifications and we prevailed.”

The ruling undercut at least some of Ardagh’s arguments.

“Under our construction … their noninfringement position effectively went away,” Nelson said.

Once trial began, Susman Godfrey attorneys zeroed in on what the instructions to the jury would be. Every direct examination and cross-examination of a witness focused on what had to be proven in the jury charge, keeping in mind the language needed to prove or disprove the other side’s arguments, Berry said.

By incorporating language from the instructions into their questions, “when we go to argue the charge in closing arguments, we point [jurors] back and really help the jury connect the dots,” he said.

All that planning paid off in a big way. On April 21, jurors found Ardagh infringed one of the two patents at issue and awarded Green Mountain $50.3 million in damages. The company has since asked the judge to triple the award based on the jury’s finding that the infringement was willful.

Reflecting on the win, Berry noted that Susman Godfrey’s trial team was relatively small: a core group of two partners and two associates who “lived and breathed” the case for more than three years. From his perspective, that was a real advantage.

“We were all working together with this common purpose, this common understanding of how all these facts fit together because we were the ones who did all the work on the case,” he said.

The case is Green Mountain Glass LLC et al. v. Saint-Gobain Containers Inc., case number 14-cv-00392, in U.S. District Court for the District of Delaware.

--Editing by Philip Shea and Aaron Pelc.