

Memo

The G-Man

A week in the life of a \$1,000-per-hour lawyer



TO: ALLEN PUSEY, managing editor

FROM: TERRY CARTER, senior writer

SUBJECT: Story pitch on \$1,000-an-hour lawyer

You asked me to look into doing a story on Houston litigator Stephen Susman as an example of the new breed of \$1,000-an-hour lawyers.

It's complicated. Seems he's part of a breed all right. But it's a breed of one.

Billables account for less than 20 percent of his work. He actually bills a bit more—\$1,100. And he prefers making a lot more for himself by taking on some of the risk with other fee arrangements. The selling point is that clients will come out better, too.

On a random week we chose in November (see attached), Susman showed me that he billed 11.5 hours at that \$1,100-an-hour rate of his, though he wouldn't say what matter(s) or which client(s) were involved. But he seemed pretty surprised to discover when he looked a little deeper into his spreadsheets that in 2007, he had billed at hourly rates for a higher percentage of his time than usual.

The Susman Godfrey firm opened an outpost in New York City a little over a year ago. Nearly half the year he and his wife, Ellen, live in the Regency Hotel on tree-lined Park Avenue, just a block and a half from work.

Each morning Susman either works out for an hour or heads to nearby Central Park, where he walks his two Cavalier King Charles Spaniels, a toy breed that belies the nature of this particular owner.

And most mornings he has business break-

fasts back at the Regency. (Mobil Travel Guide description: "Home of the original power breakfast, where deals are sealed and fortunes are made.")

Since planting the Susman Godfrey flag in NYC a year earlier, Susman has been power-breakfasting, power-lunching and powering whatever else to get work from big New York law firms. He tells them he's not out to steal clients. His firm has some specialties and some special ways of billing for them, and he pushes single-case litigations referred when firms are conflicted and such.

Says Susman: "I tell them we only do litigation for their clients as one-night stands, or like a heart surgeon. We're not needed again."

After the morning routine, he hoofs it to the office on Madison Ave. at 60th. The views from the newly built-out offices—the firm recently moved to double its space to 7,500 square feet—are OK, not spectacular. Unless you care that you're next door to Calvin Klein's flagship store and across from the upscale Barneys.

The offices themselves are nicely done, though without the effort some firms go to for an exalted aura of greatness. These folks are all about trying high-stakes commercial lawsuits.

He's a first-rate hustler.

Susman and his firm make for an amazing story: him the wild man, the counterintuitive business model, the high-stakes cases. There is no firm like it.

"I'm hustling New York City's big firms," says Susman. "And they're listening."

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November 5, 2007

MONDAY

6 a.m.-7 a.m.

Workout in Regency Hotel gym with trainer.



9 a.m.

Meeting with Canadian lawyer Harry Bloomfield, former president, Canadian branch of the International Law Association.

Re: Potential case on behalf of an investor in India.



10:30 a.m.

Conference call with some members of Susman's law firm.



11 a.m.

Meeting in Susman's office with someone trying to sell him (for a change) a litigation services consultant.

1 p.m.

Travel by train to Wilmington, Del., for hearing in the Sallie Mae matter. Susman represents the student-loan giant (SLM Corp.), which is trying to get a \$900 million breakup fee from several companies that backed out of a takeover agreement. SLM Corp. v. J.C. Flowers, No. 3279-VCS (Delaware Chancery Court).



November 6, 2007

TUESDAY

6 a.m.-7 a.m.

Walk the dogs in Central park.



8 a.m.-9:15 a.m.

Breakfast at the home of George Soros with about 30 others, including Democratic National Committee Chairman Howard Dean. The purpose: "Trying to take back our country," says Susman.

9 a.m.

From Soros' house, a conference call to Susman's NY office for regular weekly meeting with the lawyers.



9:30 a.m.

Telephone call with Sallie Mae's general counsel concerning the breakup-fee litigation.

10 a.m.

Conference call in a patent infringement case concerning a medical device (stent). Susman represents the plaintiff in Wall Cardiovascular Technologies v. Boston Scientific, No.2:2007-cv-00504 (Eastern District of Texas).

11 a.m.

Conference call for the NYC-based Foundation for Jewish Culture. Susman is on its executive committee and is vice chair.

12:30 p.m.

Lunch pitching Robert Goodkind of Pryor Cashman at the Sidecar, the more elegant upstairs sister of P.J. Clarke's, the late-night draw for famous folks seeking a famously great hamburger.

November 7, 2007

WEDNESDAY

6 a.m.-7 a.m.

Aerobics workout.

10 a.m.

Call ABA Journal reporter.

11 a.m.

Conference call in price-fixing class action against Ready-Mix Concrete in federal court in Indianapolis. Susman is co-lead counsel. (At any given time he's involved in about 12 cases.) In re Ready-Mix Concrete Antitrust Litigation, No. 1:05-cv-00979-SEB-VSS (Southern District of Indiana, Indianapolis Division).

11:30 a.m.

Conference call concerning a patent-infringement case. (It went to trial in early December.) Susman represents Sky Technologies of Melbourne, Australia, which claims \$40 million in damages (asking they be trebled), against Ariba Inc. of Sunnyvale, Calif. It concerns online negotiation technology. (Two partners and one associate from the Houston office joined Susman in Boston for the trial.) Sky Technologies v. Ariba Inc., No. 1:06-cv-11889-WGY (District of Massachusetts).

skytechnologies

12:30 p.m.

Lunch with Tom Janover, partner with Kramer Levin. Janover specializes in distress investing matters: the purchase and sale of securities and claims of companies in restructuring or bankruptcy. "I know these people," Susman says of his hustling for work. "I'm not doing cold calls." They eat

3 p.m.

Conference call during a hearing break regarding two patent cases Susman's client, MicroUnity Systems Engineering Inc. of Santa Clara, Calif., brought against Sony and AMD in the Eastern District of Texas federal court. Both soon settled. *MicroUnity v. Sony Corp. of America Inc.*, No. 2:05-cv-00505-TJW. *MicroUnity v. Advanced Micro Devices Inc.*, 2:06-cv-00486-TJW.



4:15 p.m. – 5:45 p.m.

Train back to NYC.



6:15 p.m. – 7:15 p.m.

Weekly conference call among Susman Godfrey's nine-partner executive committee.



6:30 p.m. – 8:45 p.m.

Dinner at a benefit honoring a friend of Susman's involved with the Aperture Foundation, an organization that promotes fine-art photography. Event is at the Skylight, 275 Hudson, an 18,000-square-foot gallery space for special events.



aperture foundation

3 p.m.

Conference call with a group of the firm's law-yeers to do root-and-branch review of their ongoing cases, from meeting deadlines to the likelihood of winning. Susman and four other partners conduct these reviews on a rotating basis. These often last a couple of hours. "Mechanisms to make sure nothing falls between the cracks," Susman says.



4 p.m.

Conference call in a breach of contract case Susman's client brought in state court in Houston. Northville Product Services v. Green Earth Fuels, No. 2007-45993 (11th Judicial District Court, Harris County, Texas).



5 p.m.

Telephone call with Susman's client who is in arbitration in Connecticut in a claim against his former law firm—breach of partnership agreement.

7 p.m. – 8:30 p.m.

A reception at the firm's NYC office for alumni of the University of Houston Law Center. This is a favor for Ray Nimmer, the law school dean. Two of the three SG partners who attended there come for the reception.



8:30 p.m. – 9:30 p.m.

Dinner with Nimmer at the Post House, part of a restaurant group anchored by Smith & Wollensky. Susman's wife, Ellen, wasn't feeling well and Susman was tired, so they canceled.

at Aquavit, a Scandinavian restaurant. It rates four stars from New York magazine. It also gets \$\$\$.

AQUAVIT

1:30 p.m.

Conference call concerning a patent infringement case, *Peter Sklar v. Microsoft*, No. 206-cv-7 (Eastern District of Texas). Susman's client, Sklar, claims Microsoft appropriated his improved method for database searches. (The case would settle in early December.)



2:30 p.m.

Conference call concerning a Susman client's patent infringement case over computer networking software. *Droplets Inc. v. Adobe Systems*, No. 2:2006-cv-00307 (Eastern District of Texas).

3 p.m.

Conference call. Susman represents Platform Solutions, which developed a way to use an IBM operating system on a Hewlett-Packard mainframe. IBM sued and stopped licensing its OS for use on non-IBM hardware. Susman's client turned that into an antitrust claim against IBM. International Business Machines Corp. v. Platform Solutions Inc., No. 06-cv-13565 (Southern District of New York, White Plains).



4 p.m.

Phone call with Joel Samuels, bankruptcy lawyer in Sidley Austin's Los Angeles office. He was possibly sending a matter to Susman, but it didn't work out.

5:30 p.m. – 8:30 p.m.

Reception at the firm's Manhattan office.

He is like a voracious animal, and that is the feeling you get in his presence. He scares people on his own side. The opposition is often terrified.

An associate in the firm's New York office, Tibor Nagy, says Susman "is a force of nature." I met some of the associates and partners, world-beaters on their own. They're gorillas among lawyers. But when Susman walks by, it's like they're making way for Kong.

It seems like his id, ego and superego are all always on stage at the same time, such that he can bellow a pretty explicit expletive at a new acquaintance who pokes a little fun at him; somehow it works.

Susman's evenings make you want to live in this city—with money. The night section of his daybook is

to die for: the best of previews and openings for exhibits and shows, the best restaurants, etc.

His plane is parked in New York, though the two pilots are back in Houston till he needs them. He and Ellen were to leave at Thanksgiving for Houston and return to the Regency in March. (They prefer Texas taxes and spend more time there.)

S-G is as profitable as it is aggressive.

His now-90-lawyer firm is a litigation assault weapon, having made much of its reputation in antitrust and, more recently, thanks to the Eastern District of Texas becoming the plaintiffs patent-bar venue of choice, is

November 9, 2007

FRIDAY



7 a.m.

Workout with personal trainer.

10:30 a.m.

Conference call regarding an antitrust case against NASCAR. Susman's client, Kentucky Speedway, has sued to force bids for NASCAR sanction at tracks that meet spec. Without NASCAR's imprimatur, the Sparta, Ky., speedway cannot host one of the cherished Nextel Cup series races.



Kentucky Speedway v. National Association for Stock Car Auto Racing, No. 2:05-cv-00138 (Eastern District of Kentucky).

11 a.m.

Conference call on the Sallie Mae case.

12 p.m.

Conference call on Sky v. Ariba.

12:30 p.m.

Lunch with Joe Whatley, an Alabama lawyer who has worked cases with Susman over the last 15 years. Whatley recently moved to NYC, so Susman wants to know what he's doing. "I'm looking for him to cut me in on some action," says Susman.



They go to Aureole, an upscale restaurant with comforting food and no pretension, according to New York magazine.

November 8, 2007

THURSDAY



6:30 a.m.

Walk the dogs.

8 a.m.

Breakfast at the Regency with a non-lawyer met through Democratic political activities. (Susman's breakfasts are almost always aimed at hustling up business from big law firms.) Though this one is purely social, the guest presents a matter that Susman says "could turn out to be the biggest case of my career."

9:30 a.m.-12 p.m.

Blocks time for interview with ABA Journal reporter at his office.

12 p.m.

Lunch at 21 Club with Stephen Lash, chairman of Christie's America and a college classmate. When the economy dips, some who committed to buy hugely expensive pieces of art sometimes renege, and Susman wants to handle the contract disputes.



2:30 p.m.

A conference call that includes a Houston lawyer who is now general counsel for a company in New York that has a portfolio of patents it believes are being infringed upon. He is trying to decide whether the infringement cases are certain winners. Every lawyer in the firm votes on whether to accept cases pitched by others in the firm. They don't take possible losers, or those without significant profit potential.

3 p.m.

Regular Thursday conference call with co-counsel in Indianapolis on a case they have there. It is a certified class action on behalf of state employees suing for back wages.

4 p.m.

Regular weekly phone call for updates and strategy in a patent infringement case in the federal Eastern District of Texas. Susman's firm is joint-venturing with a Fort Worth firm in a suit against Skype, maker of technology for free or inexpensive Internet telephone calls worldwide. Peer Communications Corp. v. Skype Technologies, No. 6:06-cv-370.

4:30 p.m.

Telephone call with a soon-to-be-deposed witness in IBM v. Platform Solutions. Susman doesn't bother with facts and details. He tells the witness that everything is videotaped, so don't get caught picking your nose.

5 p.m.

The Susmans go to Chelsea Piers for the opening of an Asian-art exhibit.

6 p.m.-8 p.m.

The Susmans visit Gagosian Gallery for a reception opening the exhibition of painter Cy Twombly.



8 p.m.-9 p.m.

The Susmans go to a Broadway preview at the Music Box Theatre. They see The Farnsworth Invention six days before it opens. The play-by Aaron Sorkin, creator of TV's The West Wing-is about a patent infringement case. The story takes place in 1929 when two separate inventors were racing to develop television.



1 p.m.-5 p.m.

After clearing up certain matters during the morning conference call on his case against NASCAR, Susman spends four hours in the afternoon preparing for oral argument set for Nov. 19 on a summary judgment motion. He would be up against David Boies.



6 p.m.

Opening night reception for an exhibit of new paintings by Pat Steir at the Cheim & Read Gallery.



7:30 p.m.-9:30 p.m.

The Susmans take three other couples to Coco Pazzo, a pricey Upper East Side Italian restaurant.



big into IP litigation.

Revenues and profits per partner are off the charts, reportedly far and away the highest of all U.S. firms. Heavy emphasis on contingency fees and other alternative fee arrangements was a decade or two ahead of that emerging game.

His candlepower matches the physical presence. He left Houston for college at Yale in the early 1960s, then returned to the Lone Star State for law school at the University of Texas, where he is said to have had the highest GPA ever. Legend also holds him as the first clerk that Justice Hugo Black allowed to draft his opinions.

The firm hires almost exclusively former federal

court clerks. All six who just came on board were: two of them at the U.S. Supreme Court and three at the circuits.

The business model probably is not replicable. They started in Houston in 1980 with an unheard-of plan: Do commercial litigation but make the money plaintiffs lawyers do in toxic torts, personal injury and medical malpractice. That meant alternative fee arrangements, especially contingency fees.

When \$450 an hour was the top charged in a 1987 survey, Susman was getting \$600 from the notorious Hunt brothers in Texas.

“At the beginning I wanted to hire lawyers who were
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personable and could persuade juries, young Joe Jamail types,” he says. In the one-lawyer, one-vote system that continues today, Susman lost. The firm wanted credentials: law review, top of class, federal clerkships. Quality attracts quality, they said.

**Susman is flexible,
and Bill Carmody proves it.**

Susman was able to recall only one exception to the rule—an exception who now occupies the only corner office in the firm’s NY branch.

When Susman set up a shop in Dallas in the mid-’80s to represent the Hunts, a local lawyer named Bill Carmody sent him a letter inviting Susman and his wife to dinner.

“The letter seemed cold,” says Susman, and he didn’t respond. But Carmody kept at it, letter after letter. “I finally told my wife we might as well take the free meal at a good restaurant.”

They arrived early and were at the bar. Carmody, whom they’d never met, came in and clearly was known to the restaurant’s management. He’d done his homework: Susman’s favorite wines, and a version of the “Susman Tuna Tartare” then featured at the famous Tony’s Restaurant in Houston.

At that initial dinner Carmody, knowing where Susman went to college, asked if he’d be attending the Harvard-Yale game. Susman didn’t have tickets; Carmody could get them from a friend, former Dallas Cowboys running back Calvin Hill, himself a Yalie.

“I asked Bill whether he went to Harvard or Yale,” Susman says.

Neither. He’s from the Merchant Marine Academy.

“I like hustlers,” says Susman. “His law office in Dallas was the swankest I’d ever seen.”

So Carmody must have been quite successful already?

“No,” says Susman. “He was spending far beyond his success at that time.”

Susman wanted Carmody. But the firm blackballed him. Didn’t have the credentials.

Some years later, a couple of other prominent Susman Godfrey litigators worked a

case with Carmody. They were convinced he’d make the grade, and Susman finally got his wish.

Carmody is now the No. 5 rainmaker this year in a firm that’s been averaging revenues of about \$2 million per lawyer (including associates). In 2004, no partner took home less than a million bucks. In some years, associates have doubled their salaries with bonuses.

Carmody is near the top of the chart most dear to Susman: contingency work. This year his portfolio is 64 percent contingency, 32 percent fixed fee and 4 hourly. Partners get 40 percent to 60 percent of the premium from cases they bring in. Now it’s harder for Carmody to outspend his success.

Susman calls Carmody the firm’s concierge. “He can get reservations at the hottest places in New York, that day,” Susman says, ticking off the names of several prime locations.

**Susman can
throw a party.**

The guest list from November’s first-anniversary party for the New York office had plenty of Who’s Whos. It was, says a guest from Cahill, the most amazing and impossible mix of defense and plaintiffs bar imaginable in NYC at one 250-person fete.

“Only Susman could pull this off,” the guest says.

It was catered to the max. By the Veuve Clicquot champagne stood bottles of Lone Star beer—an unexceptional brew, but a great label for the occasion.

There was Stanley Arkin of Arkin Kaplan, Bernie Nussbaum from Wachtell; and chatting for a long time by a table set with caviar and Russian vodka in Susman’s glass-front private office were Mel Weiss and Ted Wells.

(People noticed. Weiss has been indicted by the feds; and a former partner, Bill Lerach, had recently pleaded guilty. A prominent client of Wells, Scooter Libby, got off not long ago without serving a day in prison—albeit via commutation from the White House.)

The Houston firm has branched out over the years: Dallas, Los Angeles, Seattle and

now New York. In each instance it has done so for what others would consider the wrong reason.

Law firms typically open new offices to follow clients or chase business. "We've done it when we've either wanted to get or keep a good lawyer," says Susman.

Why now New York? The Big Apple was ripe for his hustle. And Susman wanted to be near his three grandchildren. Now 66, he wants to go another 10 or 15 years, if not more. The sheer élan in his approach to this new venture seems to have reversed the aging process.

Susman Godfrey looks for and holds on to entrepreneurial lawyers. The formal partnership track is four years, but no one stays that long without making partner. Everyone knows within two years or less whether mojo matches book smarts. Candid and pointed reviews at six-month intervals ensure it.

Each Wednesday all the firm's lawyers, even if on the road, meet via conference call to consider three or four pitches to take on work. On Mondays, memos of 10 pages or fewer are circulated for each. About 20 percent are shot down. One that lost out this week was great on the law, precedent and other necessities except for one thing: unclear on the money.

If all that doesn't convince you ...

He teaches environmental law on the side at the University of Houston. He has been working with the Inuits, who are losing their Arctic lands and lifestyles to global warming. He did pro bono work last year that stopped development of coal-burning power plants in Texas. He's waiting for a federal circuit opinion that either will open or shut the door as to these being political or legal matters.

Though he is collecting piles of pelts and heaps of money in patent litigation—among major cases, he is countersuing IBM right now—Susman thinks business might slow down. On the day I was there, he had lunch with the CEO of Christie's auction house, his classmate from Yale '62. Susman says as the economy gets worse, people who commit to

buying high-priced art back out—and need to be sued. He does that sort of thing.

Guests at the anniversary party included Peter Hewett, a director for a medical device manufacturing company that hired Susman for a patent battle in Texas. Hewett pushed aside his New York patent lawyers who worked up the case—he sees two of them across the room—and got Susman because he wanted a Texas lawyer litigating.

First there was mediation with William Sessions, former federal judge and former FBI director ... and also a Texan. Susman was there with his client, Hewett. On the other side was a group of New York lawyers. They spoke first to "Judge Sessions."

When they finished, Susman was brief: "Bill, we are out of here in 60 f---ing seconds if these guys can't assure us that they can make decisions right now on behalf of their client."

Liberal use of the f-word might be a verbal tick, or it might just speak to Susman's directness in all matters.

Did I tell you this? Robert Rivera, who joined the firm in 1990 and recently made the move to New York, got the Houston office tour from Susman when he was hired.

A big, irregularly cut piece of cardboard was stuck to the wall in Susman's office, and the new hire asked if it was a memento from Susman's famous *Corrugated Container* anti-trust case, in which he got one of the biggest dollar verdicts in history.

The quick explanation: "No, f---face, it's a Rauschenberg."

Some years later, Rivera had a chance to tell that story to the artist, Robert Rauschenberg, a Port Arthur, Texas, native. It prompted Rauschenberg himself to playfully jab at Rivera, saying Susman's estimation had been pretty much on the mark.

But then Susman has made quite a mark as a litigator who doesn't just eat what he kills—he consumes live prey in a most unconventional practice. He bills at \$1,100 an hour but tries to avoid it so he can make a lot more.

Like I said, it's complicated. ■

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