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Litigation Boutique of the Year

Runner-Up

SUSMAN GODFREY

Susman Godfrey likes placing the *big bets* almost as much as it likes taking in the *big fees.*

Risky Business

BY ALISON FRANKEL

JUST BEFORE MIDNIGHT ON Wednesday, November 3, the 62 lawyers of Houston's Susman Godfrey received an e-mail from partner Parker Folse III. To many of them it came as a surprise, albeit a very happy one. More than a year before, Folse had won firmwide approval to pursue antitrust claims against Microsoft Corporation on behalf of Novell, Inc., the software giant that marketed an operating system called NetWare. Folse—who had previously negotiated two antitrust settlements with Microsoft, including a $275 million deal in 1996—had told Susman Godfrey's lawyers that his plan was to open negotiations with Microsoft before filing a complaint. If informal talks didn't produce a settlement, Folse had warned, he would need the firm to gear up for spare-nothing litigation.

But the case had since progressed so slowly that it had drifted out of the consciousness of most of Folse's colleagues. Fewer than a dozen knew that in September, he had begun mediation sessions with Microsoft's lawyers at Sullivan & Cromwell.

In his November 3 e-mail, Folse had the best kind of news for his colleagues. Microsoft had agreed in principle to settle Novell's NetWare claims for $536 million. If the deal won board approval from the two companies, Folse noted, Susman Godfrey's share of the spoils would be about $88 million. That represented the biggest contingency fee ever earned by the firm—a reward all the more notable because Folse had achieved Novell's half-billion-dollar settlement without ever filing a suit or engaging in formal discovery.

The replies to Folse's e-mail began pouring in that night, as Susman lawyers, never done working, checked their BlackBerrys. "The reaction was shock and disbelief," says Folse, a quiet partner who, despite moving away from Houston to start Susman's small Seattle office, is one of the leaders of the firm. "The next day, as you can imagine," adds partner Neal Manne, another of Susman Godfrey's headliners, "there was a lot of talk in the office. People were so happy for Parker." And for themselves. Though the firm's compensation policies heavily reward lawyers who have originated cases—partners generally take home 40–60 percent of the fees they bring in—the entire staff will share the benefits of Folse's fee.

That's fitting, because every Susman Godfrey lawyer, from name partners Stephen Susman and H. Lee Godfrey down to the newest associate, had a say in the Novell case. The firmwide approval Folse sought before accepting the Novell case was not a rubber stamp from the senior partners. By Susman Godfrey's one-lawyer, one-vote rules, Folse and Susman, who worked on the case in its early stages, had to present the case to the

LEE GODFREY (LEFT), ERICA HARRIS, NEAL MANNE, AND STEPHEN SUSMAN

SUSMAN GODFREY

SIZE 34 partners, 28 associates

FOUNDED 1980

FIRM ORIGIN Susman and cofounder Gary McGowan left a Houston personal injury firm. Lee Godfrey, who joined in 1983, was a law professor at Rice University.

UP NEXT Representing Enron in its pursuit of claims against bankers. Representing plaintiffs in about 2,000 individual fen-phen cases to be tried around the country.

PHOTOGRAPH BY DANIEL LINCOLN

entire firm, which meets every Wednesday afternoon at 5:15 to consider which contingency cases to accept under what sort of fee arrangement. The Monday before the Novell meeting, Folse circulated to every Susman Godfrey lawyer a case acceptance memo, laying out reasons to accept the case. The memo reflected Folse's considerable due diligence: his march through the legal issues, his review of Novell's market share analyses, and his comparison of Novell's claims to a parallel case against Microsoft brought by the European Commission.

Then, at the Wednesday meeting, Folse told his colleagues that with the leverage of the E.C. case, he planned to try to resolve Novell's NetWare claims without filing a high-profile complaint. Even if that didn't produce a settlement, he told them, Susman Godfrey would have access to the discovery the E.C. had already conducted and analyzed—a valuable head start in a contingency case. His colleagues asked Folse a lot of questions about technical aspects of the case. Some commented that the litigation would be expensive for the firm if it went to trial. But Susman lawyers voted to commit to Folse and the Novell case. His settlement, and the firm's $88 million fee, are a testament to the unique culture of Susman Godfrey, runner-up in *The American Lawyer*'s 2005 Litigation Boutique of the Year contest.

Susman Godfrey achieved outstanding results in 2003 and 2004 on both the plaintiffs and defense sides of the bar. The firm's successes came in federal and state jurisdictions across the country, in practice areas that ranged from pro bono criminal defense to class action securities fraud to ERISA. More often than not, Susman lawyers faced opponents with several times their manpower, yet clients lauded the firm's ability to counter opponents' size advantage with creativity and efficiency.

The firm undoubtedly had its failures in the last two years. In early 2003 some of Susman Godfrey's biggest guns traveled to Alaska for a trial of antitrust conspiracy claims they'd brought on behalf of a class of Alaskan sockeye salmon fisherman. Susman Godfrey and cocounsel from The Furth Firm had fought up and down the Alaska courts since 1995 to keep the case alive, and had achieved $40 million in settlements with some defendants just before the trial began. From the remaining defendants, the firm was looking for $200–300 million in damages, before trebling. But at the end of the four-month trial, the jury did not find evidence of a conspiracy against the remaining defendants.

In another case, an arbitration of intellectual property claims in which Susman defended New Century Mortgage Corporation, a federal district court judge in September 2004 overturned a ruling in favor of New Century, citing the arbitrator's failure to disclose a prior cocounsel relationship between his firm and Susman Godfrey. The judge didn't stop there, however. He also accused Susman Godfrey's client of misleading him about its ongoing use of the software it had promised to remove from its computers. (Susman Godfrey is appealing the ruling.)

Some losses, as partner Manne acknowledges, are inevitable at a firm that takes chances. Susman Godfrey, which splits its docket evenly between defense and plaintiffs work but derives 80 percent of its revenue from contingency fees, is nothing if not a chance-taking operation.

And what we admired about Susman Godfrey was its ability in 2003 and 2004 to evaluate risk more intelligently and creatively than other firms, examining cases from a multitude of angles and approaches, like diamond cutters assaying gems. When Cavalry Investments, for instance, came to Susman Godfrey with its breach of contract case against two entities of NationsBank Corporation, Akin Gump Strauss Hauer & Feld had already lost a summary judgment motion that ended the suit. Stephen Susman and associate Shawn Raymond had the case reinstated by the state appeals court, took it to trial, and won a $46.9 million verdict, including $25 million in punitive damages. "Susman prepared extraordinarily well," says Cavalry's Alfred Brothers, Jr., who was at the trial every day. "We won every aspect of the case."

In another well-litigated contingency-fee win, Susman Godfrey partners Mark Wawro and Joseph Grinstein represented James Hunter III in a Texas state securities claim against Service Corporation International. Hunter had sold his company to Service Corporation in an all-stock merger. Days after the deal closed, Service Corporation announced that it had missed earnings targets, and its stock dropped about 40 percent, costing Hunter millions. Class action securities lawyers immediately filed complaints in federal court, but Susman Godfrey's strategy was to proceed in state court, where Hunter's suit would not be tied up in the rules governing securities class actions. Wawro suffered a setback when, on a defense motion, the federal judge overseeing the class action enjoined Hunter from pursuing his state case. Even after Wawro persuaded the Fifth Circuit to vacate the injunction, the federal judge stayed Susman Godfrey from conducting any discovery in the state court case (under provisions of the Private Securities Litigation Reform Act).

Wawro responded boldly, asking the state

Profits and *Pro Bono* Go Hand in Hand

SUSMAN GODFREY IS A FIRM UNABASHEDLY devoted to making money, a pursuit they execute so well that 2004 will probably be the second year in recent memory in which every partner at the firm, beginning with lawyers only four or five years out of law school, will take home at least $1 million. But Susman also takes its pro bono obligations seriously. In 2003, for instance, partner Barry Barnett represented a Navarro County, Texas, farmer who couldn't afford to pay the $150,000 he owed to an agricultural chemical company, winning a withdrawal of the judgment against him and, after a trip to the state court of appeals, a confidential settlement.

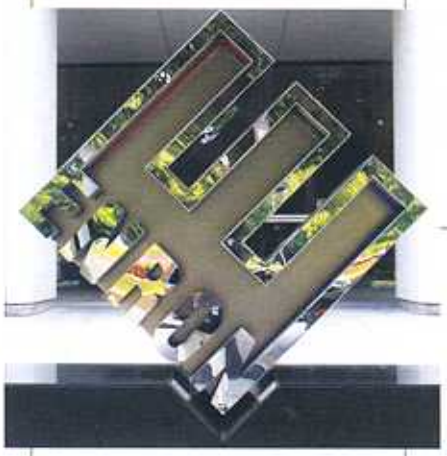
Partners Stephen Susman, H. Lee Godfrey, and Jonathan Ross (along with East Coast cocounsel) represented the Democratic members of the Texas congressional delegation who were challenging the state legislature's controversial redistricting plan; although they lost at the December 2003 trial before a panel of three federal judges, the U.S. Supreme Court in October 2004 vacated the panel's ruling and remanded the case for further proceedings. Seattle partner Parker Folse III, meanwhile, represented the Washington State Democratic Party in its unsuccessful efforts to keep Ralph Nader off the ballot.

In 2004 partner Neal Manne finally concluded a nine-year battle with a Mississippi group called The Nationalist Movement that sought to overturn user fees on Houston's nonprofit public access cable station. Representing the station, Manne, assisted by second-year associate John Turner, persuaded the Fifth Circuit to uphold the lower court's ruling that the station's user fees were constitutional.

The firm's most impressive pro bono victory in the last two years was on behalf of George Rodriguez, who was convicted in 1987 of the abduction and rape of a 14-year-old girl. Working with Barry Scheck of the Innocence Project, Susman partner Mark Wawro pursued DNA and serology evidence that Rodriguez was innocent, as well as legal arguments that the prosecution had failed to turn over exculpatory evidence at his trial. On October 8, 2004—after the Harris County, Texas, district attorney acknowledged that the new scientific evidence suggested Rodriguez had not received a fair trial—the trial judge released Rodriguez on a personal bond and recommended vacating his conviction. —A.F.

The *Susman* Docket

E LIKE ENABLE Susman Godfrey recently won a starring role in Houston's biggest continuing legal drama. Lee Godfrey and several other Susman lawyers are representing the Enron estate in its pursuit of claims against a roster of banks including Citibank, JP Morgan Chase, and Credit Suisse First Boston. The case accuses the banks of abetting Enron insiders who were breaching their fiduciary duty.



Novell

PAYDAY The firm won its biggest contingency fee ever—$88 million—in the November 2004 settlement of client Novell's antitrust claims against Microsoft. Parker Folse won $536 million for Novell without filing a formal complaint, thanks in part to the leverage of a parallel investigation by the European Commission.

PUNISHING PENCIL PUSHERS On the eve of trial in October 2004, Stephen Susman settled a negligence case against PricewaterhouseCoopers. The firm represented more than 90 banks and investment banks. "Our sincere thanks," wrote one client after the case settled, "for achieving a very good outcome."

FISH BUSINESS Susman Godrey's biggest defeat in the last two years came in a case the firm brought on behalf of a class of salmon fishermen in Alaska. The suit claimed that processors and importers had conspired to keep the price they paid fishermen artificially low. Stephen Susman, Neal Manne, and Parker Folse led the Susman team during a four-month trial in 2003. The firm sought over $200 million in damages, but the jury concluded that there was no conspiracy.

court judge for a quick trial date without any discovery. In the end, despite Wawro's efforts to send the case to trial, Hunter's claims went to arbitration—still without pretrial discovery. Wawro took testimony from three Service Corporation executives, as well as Hunter and damages experts. The arbitrators granted Hunter $27.8 million. "The jurisdictional issues were quite significant, but we got 100 percent of what we were seeking," says Hunter. "I couldn't be more pleased."

Susman Godfrey's ability to foresee and counter difficulties in contingency fee cases is a direct result of the Wednesday meetings, which partner Kenneth McNeil calls "the best idea in America. . . . The experience in the room and on the phone every Wednesday is unbelievable. The questions people ask [ensure] that we'll handle the case right, that we'll spot problems early." The one-lawyer, one-vote rule, McNeil adds, reflects "a true, firmwide commitment to the case."

We were skeptical that associates really pipe up with questions about cases presented by senior partners, so we asked Laurie Gallun, a second-year associate, whether it's true. Gallun is a rising star at the firm; with another Susman associate, she defended firm client Valence Operating Company in a September 2004 trial seeking to bar her client from drilling an oil well, winning not only a defense verdict but also $400,000 in wrongful injunction damages. Gallun confirmed that Wednesday meetings are in fact the free-wheeling legal seminars that partners described. "For the first nine months, I didn't ask any questions," Gallun says. "Now I ask all the time." Associates most often speak up, Gallun says, if an issue they've researched in another case has bearing on the case under discussion, or if a point of law that they considered during a clerkship—20 of Susman's 28 associates are former federal judicial clerks—is relevant. Moreover, Gallun says, only lawyers who actually attend Wednesday meetings, in person or by telephone hookup, are permitted to vote on whether to proceed with the cases under consideration. "There are a lot of meetings when associates outnumber partners," she says, "so we're the ones deciding." Listening to her colleagues debate and framing her own questions about cases, she says, "is one of the ways I've learned the most about being a lawyer."

The Wednesday-meeting scheme has played out exactly as Susman intended when he founded the firm 25 years ago. Susman, a 63-year-old Texas native, went to work at Fulbright & Jaworski after clerking for U.S. Supreme Court justice Hugo Black. But Susman has the entrepreneurial restlessness—and shamelessness—of a true plaintiffs lawyer. He toyed with academia, then joined a Texas personal injury firm, intending to become a plaintiffs antitrust and securities class action lawyer.

In 1980 he and Gary McGowan founded their own seven-lawyer firm, bringing with them an antitrust class action alleging a price-fixing conspiracy in the manufacture of cardboard boxes. *Corrugated Container*, as the case was known, was Susman's big break. All but one of the defendants, Mead Paper, settled. Susman took Mead to trial, and after three months, won a jury verdict of more than $200 million.

But Susman, who readily acknowledges his oversize ego, was determined not to dominate his fledgling firm. "I always wanted to create a culture in which trial lawyers—who are all egomaniacs—could work together. I didn't want teams to form, so we have a docket manager who keeps mixing up the teams who work together. And we vote on everything." Associates, who receive the firm's monthly financial statements and annual compensation figures, vote not only on contingency case acceptance, but also on matters as big as hiring decisions and as small as the site of the firm retreat. The only issues in which they don't have a vote are *continued on page 106*

continued from page 87 partnership decisions and partner compensation.

We witnessed Susman Godfrey's egalitarianism ourselves, when Susman, Neal Manne, and a 32-year-old partner named Erica Harris made the firm's presentation to *The American Lawyer*. Harris was quick to jump into the conversation and contradict Susman, never even bothering to glance at him for his reaction when she did.

In 1983 Susman was joined by Godfrey, a Rice University law professor whose smooth style and Robert Redford charm were an effective counterpoint to Susman's intensity. Godfrey endorsed Susman's idea of how to build a firm through democracy: Attract the smartest, most entrepreneurial lawyers coming out of law school, and then take advantage of their talents instead of asking them to carry senior partners' briefcases. "We hire with the hope and expectation that people will be here for life," says partner Manne. (Susman Godfrey has lost the occasional partner, but usually to a judgeship or politics.) The firm's partnership track is only four years—three for associates who have served a judicial clerkship—and because Susman Godfrey is so lean that partners are constantly clamoring for help, associates are immediately put to work. Gallun tells a story about her first trip to court to argue a motion as a first-year associate. Partner Geoffrey Harrison sat in the jury box to watch her go up against a partner from a big Houston firm. "Mr. Harrison, aren't you going to argue?" the judge asked. "No, Your Honor. Miss Gallun is doing just fine." Harrison replied.

> Clients know *Susman Godfrey* represents *both sides*. "I think that's how they keep their tools *sharp*," says one.

Every Susman Godfrey lawyer is expected to be comfortable in the courtroom, ready and willing to make an argument or try a case. Indeed, Susman says, it is the firm's focus on the possibility of trial that makes its lawyers efficient. At the beginning of his cases, Susman tries to persuade opposing counsel to agree to restrict document discovery and depositions, figuring that little of it ends up making a difference at trial.

The firm had five trials and five arbitrations reach verdict in 2003 and 2004, winning four trials (in one it was cocounsel with Boies, Schiller & Flexner and Cohen, Milstein, Hausfeld & Toll) and three arbitrations (of the other two, one victory was overturned by the district court, as discussed above; and the other was a split ruling). In October 2004 Susman was expecting another trial, in a case in which he and partner Marc Seltzer represented 93 investment funds and banks suing PricewaterhouseCoopers. Instead, the case settled on the day set for jury selection. Susman's clients were demanding hundreds of millions of dollars in damages based on Pricewaterhouse's audits of a since-collapsed company called Safety-Kleen Corp. Settlement terms were confidential, but one Susman client wrote him afterward to thank him. "I believe that the settlement came very close to the maximum that PwC would ever be willing to pay without going to trial," he said, "and was amazingly close to what you predicted two years ago."

Susman considers it a point of pride that some of the banks he represented against PricewaterhouseCoopers are defendants in a multibillion-dollar case Godfrey recently filed

for Enron Corp. in its Chapter 11 bankruptcy, alleging that commercial and investment banks abetted Enron insiders. Susman Godfrey likes to stay nimble. Indeed, beginning with Mead, the defendant Susman beat in the Corrugated Container trial, a succession of companies sued by Susman Godfrey lawyers have turned around and hired the firm in other cases. (The list includes Georgia-Pacific Corporation, El Paso Corporation, Tenneco Automotive Inc., and Nokia Corporation.)

Susman and Godfrey turned the firm's ability to represent both plaintiffs and defendants in such disparate matters as securities fraud, toxic torts, and oil and gas royalties into its hallmark. Each lawyer is expected to handle a balanced docket. Folse, for instance, was defending Northwest Airlines Corporation in antitrust litigation even as he pursues Novell's antitrust claims. Kenneth McNeil rushed to defend an Indiana power company headed to trial as he pressed securities class action claims against Anicom, Inc., an Illinois wire distributor.

Clients know Susman Godfrey represents both sides. "I think that's how they keep their tools sharp," says one. Another, the chief legal counsel of the State of Wisconsin Investment Board, says McNeil's understanding of defense tactics helped him craft an unusual approach to the Anicom litigation. Keith Johnson asked McNeil, along with plaintiffs lawyers from other firms, to submit a proposal to represent the investment board as lead plaintiff in the securities class action. "[Susman Godfrey's] proposal stood out," says Johnson. "It was designed to get the case to trial, get it tried as quickly as possible."

McNeil, like Susman, urged limits on document discovery and depositions, all with the intention of improving the class's leverage by threatening a quick trial. "Sometimes these cases drag," says Johnson. "The idea here was, here's Ken McNeil with a whip, driving everybody, even the defendants."

When Anicom went into bankruptcy, McNeil suggested that the securities class action plaintiffs throw in their lot with Anicom's creditors and banks, rather than squandering money in fighting with one other about how to divide the remains of Anicom. All three agreed to combine their claims and use Susman Godfrey to squeeze settlements from Anicom's auditor, PricewaterhouseCoopers, insurers, and officers. (A mediator would then decide how to divide the money.) When the case concluded in April 2003, McNeil had produced $40 million. More importantly, says client Johnson, he had devised a new and effective approach to a securities class action. "We could have ended up in litigation with the creditors for a couple of years," he says. "Instead, Susman Godfrey was very creative, and it made a [huge] difference in this case."

In 2003 and 2004 Susman and Godfrey were as busy as ever. This year will be more of the same. Godfrey heads the Enron case, and Susman is scheduled to go to trial in October in a $300 million antitrust suit against medical device makers. But the firm several years ago passed a milestone: Another partner outearned both name partners. The two name partners did not bring in the biggest fee in 2002, 2003, or 2004, when Folse's $88 million fee led the way.

That's one of the most significant benefits of Folse's achievement, says Manne. "It sends a good message to everyone in the firm: We're stronger than the two people at the top," he says. "It helps stress that the firm's not going anywhere when they hang it up."

Susman Godfrey will always be infused with the philosophies of its name partners, though. It will always be different from other firms litigating at the top level because in its heart it is a plaintiffs firm. "We're more willing to take chances, more willing to see the way a chase will play out," says Folse, who adds that he's spent more time thinking about how to leverage his Novell success into new antitrust cases than daydreaming about how he'll spend his windfall. "People here always act like the wolf is at the door when it never is. We never take anything for granted."

E-mail: afrankel@amlaw.com.