

CORPORATE COUNSEL

An ALM Publication

The Business Magazine for In-House Counsel

corpcounsel.com | September 2014

SMALL FIRMS

(FROM LEFT) SUMMIT PARTNERS SHANNON PHILLIPS, PHIL MCCUNE, RALPH PALUMBO AND POLLY MCNEILL

BY SUSAN HANSEN

Law Firm With a **VIEW**

Summit partners' leap from Big Law paid off. But they weren't always so sure it would.

PHOTOGRAPHY BY RON WURZER

BACK IN 1997, WHEN POLLY MCNEILL DECIDED to quit Heller Ehrman White & McAuliffe to help launch [Summit Law Group](#), it didn't seem like the smartest bet. Leaving Heller, after all, meant giving up her busy environmental law practice, not to mention a coveted partner slot in the Seattle office of one of San Francisco's oldest and most venerable firms.

Like her fellow Summit cofounders, McNeill was convinced that the standard law firm billing model was in desperate need of an overhaul. And she was excited by the idea of teaming up with Heller colleagues—including litigator [Ralph Palumbo](#) and employment partner [Otto Klein](#)—to build a different, more entrepreneurial kind of firm. But she'd also be leaving virtually all of her major matters behind at Heller, along with the relative stability and long-term job security that a big firm seemed to

offer. Would Summit's value-billing-based model actually attract clients? Would the Seattle-based Summit even be able to hold together more than a couple of years? There was no guarantee. "It was a huge leap of faith," recalls McNeill, "and in more ways than one."

Funny the way things turn out. Indeed, McNeill and other Summit cofounders say they never would have imagined that 17 years later their firm would still be in business, while Heller Ehrman, which disbanded in November 2008 after a rash of partner defections, would be gone.

In part, that's clearly a testament to the 33-lawyer Summit's reputation for excellence, and its ability to deliver high-quality legal work in the firm's four key practice areas: litigation, labor and employment, environment, and corporate and business law. Without those two things, obviously, no firm could last very long.



POLLY MCNEILL, A SUMMIT COFOUNDER, SAYS STARTING THE FIRM WAS "A HUGE LEAP OF FAITH."

But Summit lawyers are convinced that the firm's decision to eschew the standard law firm management model has also been key to its staying power.

From the start, Summit opted for a nonhierarchical, nonleverage-based structure in which all Summit law-

yers, including the most junior, were partners with at least a small equity stake in the firm. And not only did it pledge to staff matters leanly—and avoid passing along, much less marking up, basic overhead costs—it also offered a range of incentive- and results-based fees and flexible bill-

ing options instead of the straight hourly rate. Plus, for good measure, its invoices included a so-called value adjustment line that offered clients the right to reduce the amount they owed if they didn't believe the charges reflected fair value.

Considering that those sorts of policies were in place well before the Great Recession—and well before many in-house departments began seriously clamping down on outside legal costs—it's fair to say that Summit's commitment to providing maximum value for clients put it far ahead of the pack.

Not surprisingly, the bigger-bang-for-the-buck approach has been a hit with Summit's clients (or customers, as the firm likes to call them), which range from tech startups to Fortune 500 stalwarts such as Waste Management, Inc., FMC Corporation, BP and Google Inc.

IF IMITATION IS THE HIGHEST form of flattery, Summit can also be proud. In recent years a handful of firms, including Valorem Law Group in Chicago and Sapia Law Group in Minneapolis, have picked up key elements from the Summit playbook to build their own value-driven, customer-centric firms. "They're one of the firms we looked to for ideas," says Valorem cofounder Patrick Lamb, who recalls that he and his partners were so taken with Summit's value adjustment line that they asked if they could use it on Valorem's invoices. (Summit said yes.)

Of course, even a trendsetter like Summit continues to have its share of serious challenges. While firm founders believe being small has distinct advantages, they also concede that it has made it harder to compete, especially as more in-house departments have shifted their outside legal

work to smaller numbers of preferred providers. Given that reality, they say that it's imperative that Summit, which recently added five new corporate partners from Seattle's Leibow McKean, not just rest on its laurels. "If we want to remain viable, we need to see what's happening in our customer community," says Summit cofounder Palumbo, and continue beefing up Summit's capabilities. "We've been successful in establishing our brand," adds Summit comanaging partner [Mark Worthington](#). "But you have to keep finding ways to innovate, and we continue to do that."

No question, at least a bit of the early idealism of Summit's founders has been tempered. At the outset, the vision was that all Summit attorneys would help make management decisions, and the firm would be run by consensus. But that vision, as litigation partner [Phil McCune](#) recalls, almost immediately ran into reality. "Big surprise: Sometimes really good attorneys need more structure," says McCune, who notes that the firm

quickly addressed the problem by creating a managing partner slot.

That said, the firm has managed to retain much of its original egalitarian ethos. There's still no partner-associate hierarchy, since all Summit lawyers are considered partners, with at least some equity. All of the firm's offices, including those for support staff, are still the same size, and all

Summit staffers, from partners to paralegal to administrative assistants, are invited to attend the firm's annual retreats.

Over the years the firm, which launched with just 12 lawyers, has nearly tripled in size. Still, with fewer than three dozen attorneys today, it has no choice but to continue to staff matters leanly—and to handle the

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—RALPH PALUMBO



requisite legal tasks as efficiently as possible. Far from being a handicap, Summit's lawyers contend that the firm's compact size is a virtue. That's certainly been the experience of Summit's trial lawyers, according to litigation partner Palumbo. "I always think that the smallest trial team is the best," says Palumbo, who notes that because the entire team handles depositions, witness prepping and other pretrial work, all team members tend to know a given case cold. "Everybody has an in-depth understanding of all the issues," says Palumbo, adding that that helps ensure that Summit is fast on its feet at trial.

Judging from its standing in law firm rankings, Summit's litigators must be doing something right. In one recent Washington state survey by Benchmark Litigation, the firm's litigation group was rated as "highly recommended," alongside litigators at Seattle's 950-lawyer Perkins Coie, whose litigation department is roughly eight times the size of Summit's.

Among other recent matters, this past spring Palumbo led the trial team for longtime client FMC in a dispute with the Idaho-based Shoshone Bannock tribe over permitting and for FMC's phosphate mining operations. (As expected, FMC lost at trial, which was held in the Shoshone Bannock tribal court, and now plans to challenge the tribe's jurisdiction in federal court.)

Likewise, Palumbo has served as lead counsel for BP, ExxonMobil and other oil giants in their long-running dispute with the state of Alaska over property valuations and taxes tied to the Trans-Alaska Pipeline.

YET PALUMBO AND OTHER Summit litigators are probably best known as a go-to firm for compa-

nies doing battle with Microsoft Corporation. Since the firm's founding, Summit has assisted a series of Microsoft adversaries—including software maker Caldera Inc., RealNetworks Inc. and most recently Motorola Mobility and Google—in a series of high-profile antitrust and intellectual property-related disputes. Both the Caldera and RealNetworks litigation ultimately settled, while Motorola and Google, which acquired Motorola Mobility in 2011, lost at trial in federal court last September and are now appealing the verdict in the U.S. Court of Appeals for the Ninth Circuit.

Robert Kimball, former general counsel at RealNetworks, certainly isn't complaining about the \$761 million settlement that Summit (along with cocounsel Bartlit Beck Herman Palenchar & Scott) helped it secure in its antitrust case against Microsoft in late 2005. "It was a very big win," says Kimball, who recalls that despite his initial concerns that Summit might be too small to handle such a high-complexity case, Palumbo and his partners came through. Plus, he adds that Summit lawyers got the job done with peak efficiency. "In litigation, it's so easy to default to the 'let's do everything' [mode]," says Kimball,



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WITH SUMMIT

who adds that Palumbo and his partners took a much more discriminating approach to the discovery process. “They knew what rocks to look under and what rocks to pass by,” says Kimball. “The question was always what will it take to tell our story to a jury.”

Kimball, who also deployed Summit on a number of smaller litigation matters, says he also appreciated the firm’s flexibility on fees, and its willingness to share in the risks. Because he felt the amount the firm charged for its work was consistently fair, he says he never asked for a fee reduction via Summit’s value adjustment line. But he was glad the opportunity was available if needed. “Just having it there [as a recourse] gives you peace of mind,” says Kimball.

Andrew Kenefick, senior legal counsel at Waste Management, a longtime Summit client, notes that as the legal market has gotten more competitive, more firms have scrambled to offer better value and service. And he says that it’s now practically a given that clients can obtain fee reductions if they don’t believe the amount they’re being charged is fair. Still, Kenefick gives Summit credit for helping to pave the way. “They’ve been on the leading edge of the wave on a whole lot of things,” says Kenefick, who deploys Summit for occasional litigation in the Northwest as well as on all of Waste Management’s regulatory matters in Washington state. “The expertise they offer is invaluable,” he adds.

New Summit client Andrew Scharenberg, founder and CEO of Seattle-based biotech startup Preci-

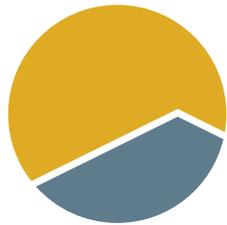
sion Genome Engineering Inc., says he was equally impressed with how Summit’s corporate group handled the recent sale of his company to Bluebird Bio Inc. Scharenberg hadn’t worked with the firm previously. But his longtime lawyers at Seattle’s Leibow McKean had merged with Summit late last summer, and after speaking with Summit corporate finance specialist Mark Worthington, Scharenberg says he was confident that Summit’s corporate team could do the job. Indeed, he says that Summit’s work on the deal, which closed this past June, far exceeded his expectations. “What was impressive to me was the short time frame,” says Scharenberg, recalling how Worthington and other lawyers “jumped right in and hammered out a close” in under six weeks. On top of that, he figures his legal costs were only about half of what they would have been if he had gone with a big firm—and he believes he got better service, too. “If I had a question, Mark would respond in five to 10 minutes, no matter what time it was,” recalls Scharenberg.

So far, anyway, the merger with Leibow McKean appears to have been a smart move for Summit. The group, headed by partner [Whitney Leibow](#), has not only brought in new clients, including TripAdvisor and a range of technology startups, but with its strengths in IP licensing and outsourcing transactions, it will also increase Summit’s ability to stay competitive, given that Wilson Sonsini, Cooley Godward and other Silicon Valley firms have recently moved into the Seattle legal market.

Still, navigating what’s become an increasingly tough competitive landscape remains a big challenge. Indeed, Palumbo and other partners say that given recent trends in the legal market, it’s becoming more difficult for small firms to remain viable. “It’s a lot easier for [a GC] to pick an Am Law 50 firm than it is to pick a small group of litigators,” says McCune. Case in point: Summit recently lost two key clients—The Boeing Company and Amazon.com Inc.—after they switched to a short list of preferred providers consisting of firms with national and international offices. While Amazon was a relatively small client, Boeing had regularly used Summit on employment and labor matters as well as some litigation matters and brought in close to \$1 million in annual revenues, according to Palumbo. It was a major loss, he acknowledged.

Given that, he and other partners are convinced that Summit, and particularly the litigation group, will have to scale up—at least modestly—in order to compete.

Palumbo doesn’t particularly relish the prospect of growth. On the bright side, he remembers worrying during Summit’s initial growth phase, when the firm’s lawyer count first topped 20. “I thought, if we get bigger, we’ll be like every other firm,” recalls Palumbo, who notes that Summit’s culture and commitment to the way it does business survived then and should be able to withstand the next growth spurt. “One very good piece of news,” says Palumbo, “is that our core values are strong.” ■



SUMMIT
LAW GROUP

315 Fifth Avenue South
Suite 1000
Seattle, WA 98104-2682

Tel. 206.676.7000
Fax. 206.676.7001
Email: slg@summitlaw.com

