An ALM Publication

THE AMERICAN LAWYER

THE AM LAW LITIGATION DAILY

The First Time's a ($236M) Charm for New Boutique Reichman Jorgensen

"When you assemble a diverse group of the most talented lawyers in the country you can achieve great things" said Reichman Jorgensen founder Courtland Reichman.

By Jenna Greene
January 31, 2020

Our Litigator of the Week is Courtland Reichman of Reichman Jorgensen, who led a team in winning a $236 million jury verdict in Delaware federal court on behalf of Densify against VMware.

Sixteen months ago, Reichman and Sarah Jorgensen launched the 22-lawyer boutique, a spin-off from McKool Smith. This was the firm's first trial—a bet-the-company patent fight for Densify against a much larger rival—which was represented by a much larger firm, Morrison & Foerster.

Reichman discussed the case with Lit Daily.

Courtland Reichman

Lit Daily: Who is your client and what was at stake?

Courtland Reichman: We represented Densify in a patent trial against VMware in Delaware federal court. The case involves virtualization technology—the ability to turn physical servers into multiple virtual servers. Densify's technology optimizes the placement of virtual machines on physical servers.

Densify and VMware engaged in significant, high-level acquisition discussions in 2015. Instead of buying the company, VMware decided to build Densify's technology itself despite knowing about the patents. VMware is the dominant company in this technology space.

Without protection of its intellectual property, Densify could not compete with VMware's vast resources and influence. It faced an existential threat if VMware's infringement was allowed to continue.

Let's take a step back. Tell us about your firm—When, why and how was Reichman Jorgensen formed?

Reichman: We started the firm in October 2018. It's hard to believe it's been over a year already. Our goal was to practice law the right way—to find joy in being trial lawyers and helping clients navigate the legal system.

We kept the best practices from our prior firms and threw out things that didn't work along with things that traditionally hold lawyers back, not the

least of which is the billable hour. Our firm is all about putting clients first (which is a surprisingly revolutionary concept), unleashing our lawyers so they can practice at the highest levels, and focusing on solving our clients' problems using the legal system as a tool—which, after all, is why most of us went to law school in the first place.

This was the firm's first trial, and you were up against MoFo, which has about 1,000 lawyers. How did you handle the size disparity? Are there advantages to being smaller?

Reichman: Elite talent and hard work wins cases, not team size. When you assemble a diverse group of the most talented lawyers in the country you can achieve great things.

Several of us have run teams with 50-100 lawyers, but at trial that can be a detriment, with inefficiencies and mistakes in managing such a large group on tight timeframes. We use the analogy of "Seal Team Six," and look at our size as an advantage since we're able to move quickly and efficiently.

Small, elite teams are our model, and history has proven that some of the best trial results are achieved with teams of this size.

You fielded a very diverse trial team. Who were the key members and what contributions did they make?

Reichman: What we call "big D" diversity is crucial to our firm and impacts the results that we're able to achieve for clients. Bringing together stars from diverse backgrounds and perspectives helps us see things from points of view that we might otherwise miss if we are all the same.

In this case, we were able to look at and understand key points of the case from many perspectives, including the jurors'. We were thrilled to have associates such as Ariel Green and Wesley White examining critical witnesses, and Kate Falkenstien arguing motions and running the legal show. They were all outstanding!

The jury enjoyed seeing them do their thing, and the client benefited from having their exceptional minds at work. And of course, the real differentiator was Christine Lehman, managing partner of our D.C. office, who is a true first-chair trial lawyer, hard-core engineer, and patent lawyer—a rarity in these male-dominated spaces.

This was a fast-moving case. Was that a challenge? Walk us through some of the big milestones.

Reichman: The speed was a challenge for all involved. Judge [Leonard] Stark is an incredibly hard working and dedicated judge. He moved the case along from complaint to trial in about nine months. The lawyers and parties had to work many nights and weekends to keep up with the judge and the pace.

Every part of the case was a milestone because of the pace—like producing hundreds of thousands of documents in only a few weeks. Or six days before trial, having six motions in limine, five Daubert motions, claim construction on a key term, and summary judgment, then having to adjust the case presentation in light of the rulings in only a few days.

Did you take the case on contingency? Use a litigation funder?

Reichman: We don't discuss our clients' confidential fee arrangements. But I can say that the firm has eliminated the billable hour in favor of arrangements from fixed fees, to contingency, and everything in between. It's surprising how many clients and lawyers are sick and tired of the billable hour, and the degree to which it incentivizes mediocrity, yet how ingrained it is in our legal system.

What were your primary themes at trial?

Reichman: Patents give their owner the right to exclude others for a limited number of years in exchange for publicly disclosing their inventions. If patents are ignored, the only question is which party is richer, has more employees, customers, and reach—there is nothing a regular person can do to compete if it's only about money.

Patents are the great equalizer, allowing inventors who come up with something special to break

into the market and compete. But for patents to mean anything, they need to be enforced, especially when, as we argued here, the technology was intentionally stolen from a smaller competitor.

Did you make any unconventional strategic choices in litigating the case?

Reichman: We made many. Maybe the biggest was asking to try the case 4-5 months after the preliminary injunction hearing (which was in August 2019). I intentionally didn't turn around to look at our team when I told the court we could be ready for trial in 4-5 months!

The fast pace required us to focus on what would be important at trial, as opposed to turning over every stone. We were "on the clock" at trial, and had to make serious choices about how to spend our limited time. We decided to invest more in our case in chief, and to call VMware's key witnesses in our case on adverse examination. As a result, we had to pass on, or only spend a few minutes on, cross examination of key defense witnesses later in the case. It was a gamble, and we were fortunate it turned out so well.

What's the significance of the willful infringement finding?

Reichman: It validates that the jury understood Densify's technology was stolen, which was the case we presented at trial. It recognizes that Densify invented this key technological innovation in cloud computing. For the inventors and employees who have dedicated their lives to these inventions, it meant the world to be recognized and acknowledged.

VMware has filed its own infringement counterclaims against Densify, with trial scheduled for August of 2021. How do you think that might play out?

Reichman: It seems like it will play out in the normal ways. These were filed as a defensive maneuver, and we'll need to defend them vigorously. VMware has a right to be in court just as Densify did, and we're confident that the right result will be reached.

In the meantime, will you move for enhanced damages and a permanent injunction?

Reichman: Yes, the next step is addressing first and foremost the permanent injunction. Densify wants to compete in the marketplace and build its business on the strength of its innovation. That always has been the point. The company is not in the litigation business, and avoided litigation until all other options were exhausted.

What will you remember most about this case?

Reichman: The pace and how rewarding a good trial can be. We are building a firm just for this, and it was validating to see it play out.

Win or lose, we tried a great case and I'm proud of the exceptional lawyering, dedication, and hard work by the team. I'll remember always that this was an example of what the practice can be, and what we hope to build as a new generation of law firm.

Jenna Greene *is editor of The Litigation Daily and author of the "Daily Dicta" column. She is based in the San Francisco Bay Area and can be reached at jgreene@alm.com*