

Beating the best: Lawyer handed former prosecutor his first defeat

BY AMANDA BRONSTAD

On March 23, James G. Bohm did what no lawyer had accomplished in 17 years: He defeated John Hueston, a former lead federal prosecutor in the criminal case against Enron's Jeff Skilling and Kenneth Lay.

A jury in Orange County, Calif., awarded no damages against Bohm's client, who was sued for fraud and intentional and negligent misrepresentation, among other claims, in a complicated accounting dispute worth more than \$12 million, plus punitive damages.

Bohm, founding partner of Bohm, Matsen, Kegel & Aguilera in Costa Mesa, Calif., faced a team of lawyers led by Hueston, former chief of the Santa Ana, Calif., division of the U.S. attorney's office for the Central District of California, now co-chairman of the corporate crisis and white collar criminal defense practice at Los Angeles-based Irell & Manella.

Bohm told *The National Law Journal* that he had some concerns about his high profile opponent, but he also credited his own skills.



BOHM MATSEN'S JAMES BOHM

When asked to comment about his loss, Hueston issued a statement: "This is my first case loss of any type in 17 years," he said. "I guess now I'm a real trial lawyer."

Bruce Wessel, a partner at Irell & Manella, representing one of the plaintiffs, said that he would move for a new trial based on the jury's partial finding that the defendant made false representations, even though his client hadn't relied on them.

"Plaintiff believes defendant prevailed because of a misunderstanding of the law related to co-trustees of a trust and errors in the jury instructions," Wessel said in a prepared statement.

NLJ: First off, who were the parties in this case?

JB: My client's name is

Mike Danzi. One plaintiff is Ann Smead, the co-trustee of a marital trust set up by her late husband, Joseph Smead, the CEO of Kaiser Aerospace [and Electronics Corp., part of Rockwell Collins Inc. The other plaintiff was John Smead, Ann Smead's stepson.

NLJ: What were the facts of the case?

JB: The genesis of this deal came about in early 2004. My client created CL Financial, and it did business as Coastal Coachworks. They were building high quality, high in-demand limousines. He'd done four previous deals with John Smead. John Smead asked for an opportunity to lend money to the company in a secured manner. Ann Smead had set up the Ann Smead Investment Partnership. John Smead was one of the managing partners of that investment partnership. John Smead said, "Maybe the family trust could put up a line of credit." A meeting was arranged on July 20, 2005, where Ann Smead flew out on her private jet and wanted to meet with Mike Danzi. That morning, John Smead told Mike and Ann that he want-

ed to see the financials. He printed off a balance sheet, a profit and loss statement, and he created an operating profit and loss statement. The marital trust put up a bridge loan of \$6 million for them to buy a building, and John Smead and Mike put up \$1 million each of their own money for this facility. John Smead started taking over production.

NLJ: So why did they sue?

JB: They started to develop problems with manufacturing. They couldn't meet demand. A year later, the company was going out of business. Ann and John filed suit against Mike Danzi for fraud and conversion. They're saying [that] when my client presented them with the financials in July 20, 2005, he did not reflect the condition of the company at the time. Had he accurately reflected the condition, they never would have done the deal.

NLJ: How did you get involved in this case?

JB: I got involved in the case at least two years ago. The lawyer handling the case was going to another firm for some reason and could no longer represent him, so they asked if we would represent him.

NLJ: How familiar were you with Hueston before this case?

JB: I knew of John Hueston because we were on the Association of Business Trial Lawyers together. I was the past president. He was on the board when he was with the

U.S. attorney's office. It was the Orange County chapter. So I had worked with him before. I never had a case against him.

NLJ: He'd never lost a trial in 17 years. How did you prepare to face him in court?

JB: We knew we had a very able opponent. And we knew that he was good at strategy and good at delivery, and he had a lot of jury trial experience. Did that change the way we focused our case? No. I prepare all my cases as if I'm going against a John Hueston. It's a little bit daunting because I knew he'd had some high profile big cases. But I also had confidence in my skills.

NLJ: Why do you think the jury decided for your client?

JB: There are two things that probably gave the jury the best ammunition to rule in our favor. One was that we did a complete accounting of the time period involved in the financials given to them in the July 20 meeting. We simplified it in a Power Point presentation where we did graphs and showed how everything was booked and how their expert was not correct in what he was saying about the financials. The second thing was they produced this very damning demonstrative, and it was really the theme of their case: That if you were to press the button on QuickBooks today, what would come out of the computer was different than what Mr. Danzi gave to the Smeads

on July 20, 2005. That's true. The reason for that was it was an accrual-based accounting system. They were trying to suggest we had stripped all these expenses we should have shown them. We were able to show, by using a QuickBooks backup, that what we showed was right. At that point, the dynamics of the case shifted.

NLJ: What was the most challenging part of the case?

JB: There were generally seven lawyers in trial, four from the Irell firm and three from the other firm, on most days. And I was the only lawyer on our side. They had an unlimited budget. That was probably the most difficult thing. I had to do every witness, and they could trade off between them. It was an endurance test.

NLJ: Irell has indicated that it plans to move for a new trial based on the jury's answer in parts of the verdict and the jury instruction, among other things. Your thoughts?

JB: I fully expected that those big firms would bring all the motions they could possibly think of. I think the court will deny their motion.