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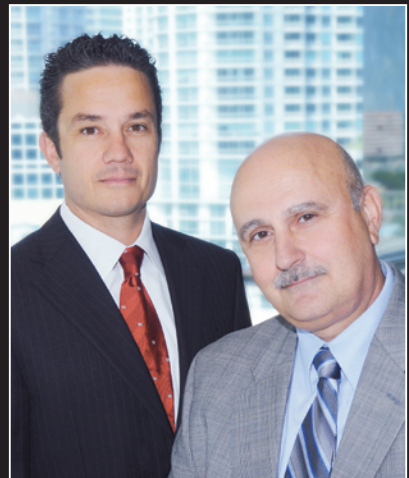
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WINNING

Profiles of successful attorneys
and their strategies.



He thought he could do it better. He was right.

To win over jurors, this Morrison & Foerster litigator reached into his bag of tricks.

BY JORDAN WEISSMANN

After 25 years as a trial lawyer, Arturo J. González has come to believe that most attorneys make a simple mistake when they step before a jury: They try to make their case about the law.

According to the Morrison & Foerster partner, who chairs his firm's trial practice from its San Francisco office, that's not the place to start. Winning a case, he said, means making an argument about right versus wrong.

"If you convince [the jury] that something happened that was wrong, you're halfway home," González said. "Because they'll latch onto whatever law supports their view."

González's latest victory may be a case in point. On April 21, he landed a \$36.3 million dollar verdict on behalf of Mountain View, Calif.-based Hansen Medical Inc. in a suit against its former collaborator, Roanoke, Va.'s Luna Innovations Inc. Hansen and Luna had signed a contract to co-develop an advanced piece of medical equipment—a robotic catheter used in heart surgery. The deal gave Hansen the right of first opportunity to license Luna's intellectual property. Luna allegedly broke the agreement by continuing to shop around its technology to other companies and eventually signed a deal with one of Hansen's competitors. Hansen later sued Luna in California's Santa Clara County Superior Court, alleging breach of contract, fraud, lack of good faith and fair dealing, and trade secrets theft.

To sell the jurors on a highly technical case, González used a metaphor that put the suit in stark moral terms: A man cheating on his wife.

"I thought people could relate to that," González said. "When [Luna] found people who were better mates, people who offered more money, they broke up with us."

'I CAN DO THIS'

For González, 48, trials have been a lifelong passion. He set his sights on becoming a trial lawyer as a senior in high school,

after watching an attorney present a relative's criminal defense (He wouldn't say what the charges were; the jury hung).

"I thought two things. No. 1, I thought, 'I can do this.' And No. 2, I thought, 'I can do this better than these people,'" González said.

ARTURO J. GONZÁLEZ

MORRISON & FOERSTER



ARTURO J. GONZÁLEZ: "That's what you're doing in trial. You're putting on a play."

JASON DORR

The son of Mexican immigrants, González grew up poor in California, "working in the fields picking peaches and tomatoes during the summers to make ends meet."

Nonetheless, he set his heart on law school, and the summer before starting

college at University of California, Davis, he painted "Harvard or bust" on the side of his beat-up Volkswagen Beetle. He made good on the promise, earning his Juris Doctor from Harvard Law School in 1985.

He joined Morrison & Foerster, where he had worked as a summer associate. He knew that it was tough for any young attorney to break into trial work. As the firm's only Latino lawyer, he believed it would be even harder. So he took a backdoor route, picking up civil rights cases pro bono, which let him take the helm in court.

"That's where I got a lot of my experience," he said.

These days, González is known primarily for his work in large defense cases, such as his representation of Bank of America Corp. in 2004 against a billion-dollar suit claiming that it had misused Social Security funds.

He was a late addition to the Hansen Medical suit. Several other partners from Morrison & Foerster's Palo Alto, Calif., and San Francisco offices had guided the case through nonbinding arbitration. Once it became clear the dispute would go to trial, González joined the team.

Jury selection was the first major challenge. Hansen alleged that Luna had breached its contract by failing to complete work on the catheter that would have led to animal trials. Three potential jurors had expressed a strong opposition to animal testing. There was a chance, González thought, that their views could bias them against his client but in every other respect the three women seemed like perfect jurors.

Ultimately, he decided to keep them. One became the forewoman. "I basically concluded that there were so many people out there who have strong feelings about animal testing that just to knock them all off wouldn't be prudent," González said. "You have to assume risks that are reasonable. And at the end of the day, we said it was a reasonable risk."

To prevent the animal testing from becoming a distraction, González realized that he needed a strong, simple argument that would keep the jurors focused on the contract issues central to the case.

TRIAL TIPS

Focus on key documents well in advance and make sure you have a plan to get them into evidence.

Identify your opponent's best facts and figure out how to diffuse them.

Be judicious in the videotaped depositions that you play at trial; less is more.

González settled on the idea of a cheating spouse because it would appeal to the female jurors on a gut level.

He saved the metaphor for closing arguments. During rebuttal, he approached the jury while carrying a brown paper bag. From it, he drew out an apple and an orange. The apple, he said, was Hansen. It had stayed faithful to the contract. The orange, he said, was Luna, which had "dated other companies" while stringing Hansen along. Luna's lawyer, James DiBoise, a partner in Palo Alto-based Wilson Sonsini Goodrich & Rosati's San Francisco office, tried to object on the ground that González was reading motives into his clients actions. The judge overruled him.

"There's no question that I played it up," González said. "I wanted these women to think of cheating husbands, or men who cheat. I just thought this case reeked of that."

Hansen ultimately won four of its claims, mostly by votes of 9-to-3. (One of four breach of contract counts came back unanimous. The jury rejected the fraud count.) The five women on the jury voted as a solid block. The forewoman, it turned out, had been Hansen's strongest advocate.

DiBoise agreed that the forewoman and the female voting bloc played a crucial role in deciding the case. But he interpreted their decision-making differently: The jurors simply didn't believe some of Luna's witnesses and inter-

preted the first-right-of-license clause in Luna and Hansen's contract too literally. He plans to appeal the verdict, which he said could bankrupt his client. The talk of adultery, he said, will figure in the appeal.

"We'll see what an appellate court has to say about comparing a business affair with a cheating wife," DiBoise said. "My client was offended by it, I was offended by it, many people in the courtroom were offended by it. Was it successful? They say it was. I'll tell you from my perspective, I expected better from Arturo."

To González, there was nothing remarkable about the tactic. Trials, after all, are theater, he said.

"The question becomes how do you persuade a jury that [the defendant] did a bad thing," he said. "In hindsight, I wish I had done more acting in high school and college, because that's what you're doing in trial. You're putting on a play."

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