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LAW FIRM BUSINESS

## Small but Mighty

Foley Bezek Behle & Curtis LLP has scored some big wins in complex business litigation, especially lender liability, with good old fashioned skill and perseverance.

By Deirdre Newman / DJ Staff Writer

When Choung Fann Yik and Ying Faung Ley fled the murderous Khmer Rouge regime for America in the 1980s, they had practically nothing. But like many immigrants, they came with a fierce work ethic, unflinching faith in the American Dream and a solid belief that they would be treated better here than in Cambodia.

They worked menial jobs, saved every penny and ultimately bought a piece of land in Rancho Cucamonga for “Victoria Promenade,” a large commercial development that included a hotel, shopping mall and gas station. But in 2007, their lender, East West Bank, failed to release funds to the contractor correctly, among other issues, and the couple had to borrow money from family to keep the project afloat.

Desperate and worn out, they turned to Foley Bezek Behle & Curtis LLP to help salvage their dream and take on the bigger law firm representing the bank, Buchalter Nemer. The choice paid off: With the help of Foley Bezek, the couple won a \$38.9 million verdict. *F&F LLC v. East West Bank*, BC462714 (L.A. Super. Ct., filed June 1, 2011).

The civil litigation firm credits its win in the East West Bank case, and in all big cases, to free-wheeling, all-hands-on-deck discussions — from the most senior partner to the newest associate — where ideas get thoroughly vetted, no matter how outside-the-box they are.

“It was through the sessions with all the other lawyers at this firm and really hashing it out and playing devil’s advocate that we could really design a strategy to go forward,” lead counsel Robert A. Curtis said. “That’s when this firm is at its best. We all pull on the same oar.”

Peter J. Bezek and Thomas G. Foley Jr. started the firm in 1994 in Santa Barbara as a lender liability and commercial litigation practice. They had been working together at Capello Foley & Bezek and felt the time was right to break away and pursue their own vision. The pair has been working together for more than 30 years.

The firm specializes in issues including complex business litigation; class and mass plaintiff actions; entertainment issues; intellectual property issues; and



Alexander Drecun/Special to the Daily Journal  
From left: Peter Bezek, Roger Behle, Thomas Foley Jr., Justin Karczag, and Robert Curtis of Foley Bezek Behle & Curtis LLP.

Ponzi litigation. While their main office is in Santa Barbara, they have outposts in Costa Mesa and Nevada.

The Costa Mesa office, which opened in 2005, evolved through Bezek’s work with attorney Roger N. Behle Jr. on a copyright case in 2003 involving celebrity architect William Hablinski. The case involved the theft of Hablinski’s plans for a house for well-known L.A. realtor Fred Sands. Bezek and Behle tried the case and won a \$5 million jury verdict in favor of Hablinski — at the time the largest verdict in favor of an architect for infringement of copyright for a single-family residence.

“I was so impressed with [Roger’s] abilities that we talked about merging his firm into our firm,” Bezek said.

In Nevada, attorney and legal analyst for Fox News Channel Bob Massi invited the firm to open a Las Vegas office, through his connection with Behle, to capitalize on business that Massi was already sending to the firm. Foley Bezek also has its eyes on Silicon Valley, the next logical place to plant a flag after doing work in the San Francisco Bay Area for 20 years.

Another of the firm’s recent successes was a national class action, spanning nine years and involving more than 2 million Verizon customers, for which Bezek and Curtis teamed up. The case, which involved a billing dispute regarding advertising practices the firm believed were deceptive, resulted in a

\$64 million settlement for the class earlier this year. The case has been appealed.

“That was just a hard-fought piece of litigation,” Bezek said. “Our partners are exceptionally good at technology and understanding these sorts of issues and we did a lot of discovery in that case. We had a huge amount of documents that we obtained. And, we hired some very credible experts to walk us through the case. And when we found the linchpin, that’s when it settled.” That linchpin: a billing error endemic to the entire billing system.

One of Foley’s recent successes involved health products distributor, Herbalife. The company came to the firm’s attention after William Ackman, CEO of Pershing Square Capital Management LP, made an audacious billion-dollar short bet against Herbalife’s stock. News reports of this bet proliferated, and in evaluating all the information, the firm brought a suit against Herbalife, in conjunction with attorney Philip D. Dracht, accusing the company of employing a pyramid scheme with its distributors.

On June 17, the firm achieved a \$15 million cash settlement after almost two years of litigation. *Bostick v. Herbalife International of America Inc.*, CV13-02488 (C.D. Cal., filed April 8, 2013).

But the case involving the Cambodian couple remains one of the firm’s most memorable successes, especially for lead counsel Curtis and co-counsel Justin P. Karczag.

“I found that case particularly rewarding, because here were people who left Cambodia because the Khmer Rouge regime had come in and taken everyone’s property,” Curtis said. “And they came to America because they thought there were laws to protect them and that no one could come and take their business or lives from them. And sure enough, it was our allegation during trial that the bank had done just that: Lured them in with false promises, breached the contract, and took everything again. So, it was rewarding to restore that sense of justice in the American system for a family that left such a horrific place. It’s why I became a lawyer.”

While the story was emotionally riveting, neither Curtis nor Karczag considered it a slam-dunk. Buchalter Nemer offered a paltry \$1 million to settle it before trial, Curtis said. East West Bank is appealing the decision, after posting a cash bond of \$54 million in December.

With all these recent successes under its belt, the firm’s gross profit was in the high seven figures last year and is on track to reach the low eight figures in 2015. Its practice areas, especially lender liability, are fairly recession-proof, Bezek said. And, whether the economy is recovering or flourishing, commercial litigation and IP and entertainment help the firm ride the wave.

Most of the firm’s business comes from referrals, including from opposing counsel who refer clients to the firm because they are impressed with the caliber of what they see in court, Foley said.

One of the opposing counsel who holds the firm in high esteem is R. DeWitt Kirwan, a partner with Barnes & Thornburg LLP. He recently argued a telephone rate case against Bezek in state court in Riverside. Kirwan represented AT&T while Bezek represented a class of AT&T long-distance customers alleging that AT&T had violated federal and state telephone rate laws. Kirwan ended up winning the verdict, which was upheld on appeal, but applauded the opposition’s clout, calling Bezek “a dangerous adversary.”

“Bezek is an excellent trial lawyer,” Kirwan said. “He knows what he’s doing. He tells a good story. He’s a careful and skillful lawyer. He tries a good case.”