

SMALL FIRM FOCUS

Looking for Rembrandts

Gary Osborne and Dominic Nesbitt have carved out a niche helping companies across the state recover on insurance policies, often long after others give up pursuing the claims.

By Pat Broderick

Daily Journal Staff Writer

SAN DIEGO — Gary W. Osborne and Dominic S. Nesbitt were content representing insurance companies in business disputes, until they saw how the other half lived.

A decade ago they received a referral for a business client that had been sued, but whose insurance company refused to cover its liability claims.

“We sued the insurer and were successful at getting a recovery,” Osborne said. “We thought, ‘This is a lot more fun than working for insurance companies, it pays better, and it’s more creative.’ You’re working for the insureds. You walk into court and you are wearing a white hat, versus walking into court and everybody assuming you are wearing the black hat.”

Since then, that has been the San Diego firm’s exclusive focus — challenging insurance companies that either have flatly denied coverage, or haven’t paid out what the client believes is fair.

There’s a sort of cold case aspect to their practice, which now totals four attorneys, because in some scenarios the underlying legal matters have been resolved, leaving the insurance claims unsettled. For this, Osborne and Nesbitt have developed specialized audits to determine the validity of the policyholders’ claims.



Gary W. Osborne, left, and Dominic S. Nesbitt of Osborne & Nesbitt in San Diego

Robert Levins / Daily Journal

Osborne said many policyholders don’t even realize the statute of limitations may run for several years after the underlying matter has been resolved, and they file away the insurance denial notice and forget about it. Osborne calls these potential “Rembrandts in the attic.”

“You don’t know if it’s worth \$5 or \$5 million,” he said. “We come in and dust it off and assess whether these are extremely valuable business assets.”

The two first teamed up in 1996, combining Osborne’s litigation talents with Nesbitt’s extensive background in insurance coverage analysis. As a solicitor in his native England, Nesbitt was trained as a Lloyd’s insurance broker before moving to San Diego, where he represented the insurance industry.

“Dominic has a particular expertise,” said Osborne, previously a sole practitioner. “He sees things that normal human beings don’t see.”

Osborne & Nesbitt LLP San Diego

Number of lawyers: Four

Founded: 1996

Specialty: Insurance coverage analysis and litigation

Business Tips:

- Establish a niche your firm is well-suited to handle
- Keep your overhead low
- Select your clients carefully

Switching sides to represent policyholders posed unique risks to the small firm, however.

For one, most lawyers that leave firms take some clients with them to get started.

“You couldn’t do that if you’re switching sides,” Nesbitt said. “You’d be starting fresh. That’s very hard to do.”

Since taking the plunge, they have kept to some basic principles: Find a solid niche, keep the overhead low, and be careful in choosing clients. But a lot of the uncertainty about their cases is minimized because they already have been filtered by the referring attorneys, giving the firm a good track record in recoveries. In the past 12 months, the firm has recovered more than \$15 million for clients — the best year yet, according to Nesbitt .

Some of those millions were reaped for Align Technology Inc. in San Jose. In two related cases, involving trade secrets litigation, the company’s insurance companies initially denied coverage.

“Insurance policies are hard to figure out, and I don’t have the time or the brain size to

process all of the complexities,” said Roger E. George, the company’s vice president of corporate and legal affairs and general counsel. “We expected nothing. After those guys explained what was in the policy, in our favor, and court cases that were applicable, they were able to recover what we were due.”

In this often esoteric practice, knowledge is key.

“You have to know a little bit about everything,” Nesbitt said. “If it’s a patent case, you have to understand the patent claims to see whether they are covered, or if it’s a copyright case or a tort case. You have to really dive in and understand the underlying case before you can evaluate if it’s covered by the policy.”

Douglas Morton, CEO and chairman of the board at Woodruff Sawyer & Co., an insurance broker in San Francisco, initially was skeptical he needed the firm’s expertise.

“I didn’t see any reason we needed anybody else,” Morton said. “I thought we had the

expertise to handle clients. But I saw their work product, and they knew things I didn’t know.”

He recalled a complex aviation claim, “coupled with errors and omissions,” and overlapping several areas of the law.

“Because of their work, we settled very quickly and the insurers followed the direction laid out to them by the firm,” Morton said.

How they handle the insurance end of a case can impact the underlying issues as well, said Douglas Clark, a partner at Wilson Sonsini Goodrich & Rosati in Palo Alto.

“It influences the ability to defend the underlying case from a cost perspective, and it’s critical in the ability to settle,” said Clark, who regularly refers clients to Osborne & Nesbitt. “They are very, very smart people, and Gary is terrific in court. They are the whole package.”

In the past few years, the firm has significantly increased its contingency cases.

“When companies retain a lawyer, they think of the law firm as being an expense,” Osborne said. “By offering to handle an insurance recovery matter on a contingency-fee basis, we’re not an expense. We are a potential upside.”

On the other side of the aisle is Stephen D. Treuer, a partner at Barbanell & Treuer P.C. in Los Angeles, who credited their expertise in an “intensely litigated” case Treuer handled for the insurer.

“They were very knowledgeable and very creative in representing their client,” he said of a case that ended up settling for hundreds of thousands of dollars.

Neither Osborne nor Nesbitt have any desire to grow beyond their current size.

“Our mission is to level the playing field between the insurance companies and those they insure, and when we’re hunting for those Rembrandts, we are educating people along the way,” Osborne said. “We don’t need a big army.”