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INSIDE

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Firms eye 'nanotech' cautiously

The industry could lead to big business.

By Leigh Jones
STAFF REPORTER

WHILE MANY LAW firms are poised for a surge in nanotechnology business, some say the real dollars will come only when people figure out what it is.

A blending of chemistry, physics and biology, the science involves creating new configurations, atom by atom, to make materials that are, for example, super strong, lightweight or soft. It is the re-engineering of matter on a scale equal to one-billionth of a meter—a length known as a nanometer—which can turn something as thin as a human hair into a substance stronger than a steel bridge.

Although nanotechnology is utilized in an array of products, from sunglasses to cosmetics, from pharmaceuticals to sport utility vehicles, the technology has yet to make a big splash on Wall Street, and remains largely unknown to mainstream investors. But nanotechnology is on the cusp of a potentially large-scale debut, and with it could come big business for law firms.

Pillsbury Winthrop partner Tom Thomas said the pending initial public offering (IPO) of a company called Nanosys Inc. will serve as a bellwether for law firms eyeing potential work.

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WINNING

SUCCESSFUL TRIAL STRATEGIES FROM 10 OF THE NATION'S TOP LITIGATORS

Daniel J. Callahan wins big by thinking outside the box.

William C. Price switches sides and still sees victory.

Dick DeGuerin beats the odds in a murder case.

James W. Quinn handily distills complexity into a win.

Edward F. Fernandes scores a complex litigation hat trick.

William G. Schopf looks back to 1916 for a $32M award.

Martin R. Lueck takes on Microsoft and wins $521M.

Robert C. Weber makes sure that IBM's defense computes.

John M. O'Quinn lands a $1 billion fen-phen verdict.

R. Paul Yetter digs a $137M win in a tough mining town.

SPECIAL PULLOUT SECTION

More suits seen after ruling on sex harassment

'Constructive discharge' at issue.

By Marcia Coyle
STAFF REPORTER

WASHINGTON—A workplace sexual harassment ruling last week by the U.S. Supreme Court left both employers and employees claiming victory and both sides predicting more litigation over the "gray areas" surrounding so-called constructive discharges.

The justices, ruling 8-1 on June 14, rejected the approach of the 3d U.S. Circuit Court of Appeals, which had held that a constructive discharge was a tangible employment action resulting in strict liability for the employer. A constructive discharge occurs when an employee resigns because working conditions are so intolerable that a reasonable person would have felt compelled to quit. *Pennsylvania State Police v. Suders*, No. 03-95.

Plaintiffs' lawyers called the decision a victory because the high court ruled for the first time that Title VII of the Civil Rights Act of 1964 applies to constructive-discharge claims, and employees do not have to prove that the employer intended to force them out. Defense

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Lights, camera and...time to testify

Bringing testimony to life with actors.

By Leonard Post
STAFF REPORTER

PROFESSIONAL ACTORS don't just portray witnesses on TV—they play them in real trials.

In a move to connect more effectively with juries, a number of attorneys are using professional actors to play people who were deposed, but who are out of subpoena range and who lawyers could not—or preferred not to—bring into court.

Juries like it because actors bring a piece of themselves to a role that used to be reserved for paralegals, secretaries or associates, many of whom nervously read in monotones, lawyers say. An actor can make a witness seem credible, confident and authoritative—or not, as the role necessitates.

No appellate court has yet cried "foul" or perhaps even been asked to, but the practice is controversial. That's because lawyers not only get to cast the talent—by choosing someone attractive or repellent—but they

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DANIEL J. CALLAHAN

Scoring with jury by thinking outside box

By Tresa Baldas
STAFF REPORTER

ATTORNEY: *Daniel J. Callahan*
FIRM: *Callahan & Blaine, Santa Ana, Calif.*
CASE: Beckman Coulter v. Flextronics, *No. 01 CC 08396 (Orange Co., Calif., Super. Ct.)*

ATTORNEY DANIEL J. Callahan has no problem thinking outside the box.

The flamboyant lawyer recalls how 12 years ago he tracked down a judge by phone at a late-night private poker party and asked him to show up early to court the next day to block the forfeiture of a friend's hotel.

"I told him, 'My name is Dan Callahan. I need you to come in a half-hour early and issue a restraining order to block the foreclosure of the Canyon Hotel,' " recalled Callahan. "[The judge] was so amazed. He said not even his wife knew he was at this party."

Callahan's plan worked and the hotel was saved. Such tactics have become ingrained in Callahan, whose zany and theatrical litigation style has produced more than $1.1 billion in verdicts and settlements in the last five years, the most recent involving a record $934 million verdict issued in a breach of contract suit in Orange County, Calif., on Sept. 24, 2003.

The big one

For three months last summer, Callahan told a story to a California jury about a company that allegedly interfered with the nation's health and safety. That's how he pitched the complex breach of contract case of *Beckman Coulter v. Flextronics.*

Beckman Coulter Inc., his client, a biomedical testing company, sued Flextronics International Ltd. of Singapore for allegedly breaking a contract to make parts for its major product, a blood analyzer used by hospitals and medical labs to diagnose illnesses.

Flextronics had a five-year contract to make circuit boards for Beckman, but terminated the deal after 2 1/2 years. Callahan appealed to the jury by focusing on a health issue: People would suffer without these blood analyzers.

"This was a case about the impact on the American public's health and safety," Callahan said. "If you tie your case into fundamental values—like it was a personal injury case with sympathy and emotion—you can get the jury on your side. Otherwise, we would have ended up with a boring contract case about circuit boards. It would have been a yawner."

Callahan also entertained. David Letterman-style, he presented the jury with a Top 10 list of values in the defendant's corporate policy statement—all of which he made up.

On the list were quotes like, "Worship at the altar of the almighty dollar," and, "Lie until you get caught, and then make up a new lie."

"I put on a show," he said.

The *Beckman* case started out as a simple breach of contract suit but evolved into much more.

For example, Callahan said, during discovery he deposed a Flextronics employee—found by a private investigator—who admitted to helping defraud Beckman of $655,000 in bogus surcharges. That led Callahan to his first extortion claim.

Weeks into the trial, Callahan discovered documents that showed that after Flextronics had ended its contract with Beckman, it withheld parts that Beckman needed to continue making circuit boards, and therefore, the blood analyzer.

He said Flextronics also refused to give Beckman the needed parts unless it also purchased excess inventory sitting in a Flextronics warehouse.

"That was extortion," Callahan said. "I put a couple lawyers together in the office and came up with a doctrine called economic duress, which has never been recognized as a tort in California," Callahan said.

"It was virgin territory so we brought over cases from other states that do recognize it. That was big."

Case of potential harm

Just days before Callahan rested his case, he amended the claim to include economic duress for potential damages that Beckman would have suffered if it couldn't get the parts it needed.

It was those "potential" damages that made the case so significant, Callahan said.

During trial, Callahan cited three U.S. Supreme Court cases that recognize a plaintiff's right to rely on potential damages in determining punitive damages. He said that under typical analysis for damages, potential damages aren't relevant over actual ones.

But since he was seeking a significant award, he showed the potential harm Beckman would have faced without the necessary parts.

In the end, that 11th-hour action—claiming economic duress from potential damages—paved the way for the $934 million award.

"I asked the jury to send a message back to Singapore where Flextronics is incorporated so that other companies that are watching this trial will know that this conduct is not tolerable," Callahan said. "I told the jurors, 'You're not dealing with your own checkbook. Do not be afraid to do the right thing.' "

Meanwhile, Callahan's showmanship didn't end with the verdict.

At the end of the trial, he delivered elegant, personalized invitations to the jurors inviting them to a party at his home. Not only did most jurors accept, but they went in style: limousines provided by Callahan.

"Some of my lawyer friends said, 'Oh my God, you did that?' " Callahan recalled. "I said, 'Yeah, it's legal.' "

TRIAL TIPS

- **Be prepared. Read everything, know everything.**
- **Be creative. Step outside the civil procedure.**
- **Make sure your presentation is courteous.**

A winning record

Last year, Callahan received a healthy share of the media spotlight for the record $934 million verdict. A $23 million settlement was later reached in the case. Callahan said that because the jury award was so high he didn't want to risk losing at the appellate level. But, he noted, the $23 million is still the highest punitive damages award paid in California. And he still has a trail of victories behind him.

In 2002, he helped a tire-accident victim receive a $28 million settlement for brain damages he suffered when the wheel of a big rig flew across the freeway and crushed the cab of his pickup. *Dohrman v. Roe Trucking Co. and Rote Truck Servicing Co.*, (Orange Co., Calif., Super. Ct.).

In a precedent-setting case with nationwide implications for the insurance industry, Callahan successfully argued at the appellate level that an insurance company must pay for his client's defense in a lawsuit because it was covered under policy.

The 9th U.S. Circuit Court of Appeals agreed, ruling that commercial liability insurance policies provide insurance coverage for claims of trade secret misappropriation. *Sentex Systems v. Hartford Accident & Indemnity Co.* (1996), 93 F.3d 578.

And in 1994, Callahan convinced an Orange County judge to award $60 million to a surgical manufacturing company that had sued one of California's largest insurance companies for allegedly breaking a contract to defend it in a series of patent infringement and unfair competition lawsuits. *Surgin v. Farmers Group*, No. OCSC681872 (Orange Co., Calif., Super. Ct.).

Callahan said the secret to his success is simple: hard work.

He often works late into the night. When he can't get information he's after, he'll hire an investigator.

And when the issues get complex, he gets creative.

"I don't take no for an answer," he says. "I'll think, what other way can I skin this cat." NLJ

ANNE FISHBEIN

DANIEL J. CALLAHAN: *"If you tie your case into fundamental values...you can get the jury on your side."*