

Alison Frankel's **ON THE CASE**

The little law firm that could

May 31, 2011

The litigation boutique MoloLamken opened its doors 20 months ago with four partners and one associate. It's been a good 20 months. Name partner Jeffrey Lamken, a former Baker Botts partner and assistant to the U.S. Solicitor General, won three cases in the U.S. Supreme Court in the last term, including the June 2010 ruling that upheld the constitutionality of Sarbanes-Oxley's Public Company Accounting Oversight Board. Steven Molo, a former Chicago federal prosecutor and Shearman & Sterling partner, helped convicted Credit Suisse banker Eric Butler beat the federal sentencing guidelines; he's now working on Butler's appeal of his conviction. MoloLamken has grown to 13 lawyers and shows up regularly on high-profile dockets.

Even by those standards, though, last week was notable. On Wednesday, a majority of the U.S. Court of Appeals for the Federal Circuit set new standards for inequitable conduct in patent cases, adopting almost entirely the arguments MoloLamken helped George Washington law school professor John Whealan articulate in en banc briefs for Abbott Laboratories. (Whealan, a former solicitor general of the U.S. Patent & Trademark Office, knew Lamken from Lamken's time in the Justice Department.) The next day, Alexandria U.S. district court judge James Cacheris dismissed one count of an indictment against MoloLamken client William Danielczyk, finding that the McCain-Feingold ban on corporate campaign contributions is unconstitutional under the Supreme Court's Citizens United decision. Those landmark rulings, moreover, came just days after MoloLamken filed a headline-making suit claiming that J.P. MorganChase defrauded NES Financial by misrepresenting the liabilities of a tax business the bank sold to NES.

In an interview Tuesday, Molo and Lamken said the startup has been "what we expected and more" when they walked away from their secure, lucrative jobs as big-firm lawyers. "We have a great mix of civil and criminal cases—the stuff we did at our old firms," said Molo. "There's been no change in the quality of our cases. If anything, we've been able to expand the kinds of cases we're able to handle."

At Baker Botts or Shearman & Sterling, Molo and Lamken said, they wouldn't have been able to file suits against financial institutions. (Big firms don't like to run the risk of irritating banks, especially if they represent financial institutions.) Now they represent hedge funds and clients like NES in claims against banks. Molo said he probably wouldn't have been able to bring asset manager Wing Chau's libel suit against *The Big Short* author Michael Lewis if he'd still be working at a big firm, nor to work with Kasowitz, Benson, Torres & Friedman on Celanese's legal malpractice suit against Kaye Scholer.

MoloLamken continues to work closely with Baker Botts and Shearman & Sterling, Molo and Lamken said. Baker Botts, for instance, referred Danielczyk to the firm to assist his criminal attorney, Timothy McEvoy of Cameron McEvoy, on constitutional issues. But MoloLamken also gets referrals from and partners with other big firms, including Kasowitz and Kirkland & Ellis. "That's been great," Molo said.

Starting an appellate and white-collar boutique in the teeth of the recession was good timing, Molo and Lamken said. Real-estate costs were down, clients were amenable to cost-saving alternatives, and the downturn has spurred the sort of cases MoloLamken was looking for. "This has worked for us," Lamken said.

(Reporting by Alison Frankel)

