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## Of Counsel Interview...

# Texas-Based Litigator Scores Big in a Headline-Generating IP Case, with a Surprising Twist

When James Walker left the law firm he cofounded to join the Dallas office of New Jersey-based Cole, Schotz, Meisel, Forman & Leonard in September 2013, one partner in particular knew the firm had scored a recruiting victory.

Michael Warner, who has been friends with Walker for years and had worked cases with him, was the partner who initially asked Walker if he might be interested in using his considerable litigation talents at Cole Schotz. Fortunately for the partnership, Warner says, Walker was ready to make a change.

“Jim is an amazing litigator, has a keen business acumen and a great vision,” Warner says. “A lot of litigators I know play chess, and then there are less skilled litigators who play checkers. Jim plays chess; he thinks three, four, five moves ahead. I’ve watched him do that in many cases. He’s very good at seeing the big picture, figuring out the strategy, organizing the presentation of the case, and delivering that presentation in court.”

Earlier this year Walker made all the right moves for his client, ISOL Technology Inc., a manufacturer of MRI systems based in South Korea, in an intellectual property case against a “dream team” of lawyers from the top-shelf law firm of Akin Gump Strauss Hauer & Feld. Walker overcame several obstacles leading up to and during the trial.

“Jim came in and took over a case for which he could no longer do any discovery, and the discovery that was done left a lot to be desired,” Warner says. “He needed

interpreters to communicate with his clients and he faced a lot of other challenges. In getting the good result that he got for his clients, he pulled a rabbit out of a hat; he did a heckuva job. But Jim’s very humble. He doesn’t brag about it.”

But he does answer questions about his work in the case that garnered headlines in the national legal press trade for its complexity and an interesting twist after the trial’s verdict that turned the case on its head. Walker talked to *Of Counsel* about that important case and another one, his career, and other topics. The following is that excerpted interview.

## Career Decision at the Age of Six

*Of Counsel:* What attracted you to the legal profession, Jim?

**James Walker:** That’s a good question. When I was five, I said I wanted to be an astronaut. And then I started watching “Perry Mason” on TV, and I met our family lawyer, who made a big impression on me. So when I was six, the next thing I said was I wanted to be a lawyer. And, from that time forward, that’s all I wanted to do. I think some people are just wired a certain way. I feel fortunate that I always knew what I wanted to do.

So I planned for it. In high school, I was in debate and I took Latin, and was always preparing for a career in law. I went to Austin College, in part, because when they were recruiting me they told me they had a 100

percent acceptance rate to law school for everyone who applied. I went to law school at SMU [Southern Methodist University] in Dallas because I needed to work part-time to pay the bills. I really wanted to work in Dallas and later I wanted to practice law there, in part because it was such a sophisticated and thriving legal market.

**OC:** And, in fact, you did end up working in Dallas.

**JW:** Yes, I was very fortunate. Any success you achieve by the time you're in your 50s really is the result of the contributions and the grace and generosity of so many people whose paths you've crossed in your life. I'm no exception to that at all. In addition to my wife, of course, who has put up with me being a trial lawyer for almost 30 years, there've been many people who supported me.

I think about the lawyers at Burford & Ryburn where I started working right out of law school. They did a huge amount of insurance defense work and had all different types of cases. And I got into the courtroom all the time, multiple jury trials. I took probably 25 depositions in my first year. It was an amazing experience.

**OC:** Where did you go next?

**JW:** I went to Arter & Hadden, a national firm that opened a Dallas office, and I was with them for a long time. I ended up making partner there in 1992 and was made head of the litigation department in 1994. I got to learn how to manage a law practice from some really talented, bright people, corporate guys who were partners. I kept managing to find cases or they found me—I'm not sure which—that ended up going to trial.

And then I went to Cozen O'Connor when they opened up a Dallas office. At that time, I was doing a lot of insurance defense litigation and they wanted someone to get involved in that part of their practice. They needed someone to litigate commercial coverage claims. So I moved my group of lawyers

over to that firm. I was there six years, and then Kevin Sewell and I formed our own firm, Walker Sewell, in the fall of 2000.

## Out on His Own

**OC:** What made you want to launch your own firm? And maybe you could talk a little about both the challenge and the satisfaction of doing that.

**JW:** Well, we both had substantial practices. At the time, there was a lot of upward rate pressure, not just at Cozen O'Connor but at firms throughout Texas, and we felt like our rates were high enough for the insurance clients we represented, but if we lowered our cost structure we could be more profitable. So, rather than raise the rates and put client relationships at risk, we thought it made sense to go ahead and try on our own. I had just turned 40, and it sounded like a good idea at the time, and it turned out to be fantastic. We had a good run of 13 years. And we parted as friends, which is also a good thing.

Our practices had kind of grown apart. I needed a little bit more general practice and bankruptcy practice support for my work. Kevin thought he needed to move to a larger insurance firm to grow his practice, and I needed to move to a commercial firm. I had a dear friend at Cole Schotz, Mike Warner, and he said, "You should come over here. We'd really like someone to open the Dallas office for us." After about 20 years of managing other people, the thought of going back to just trying cases and arguing appeals, the idea of letting someone else handle all the management was very appealing to me. And, Cole Schotz is a fantastic firm.

**OC:** Let's change gears a little. I want to hear about the work you did for ISOL Technology, but first, what's another case that was really important or maybe a big challenge for you?

**JW:** Yes, sure. Let's talk about the Texas Utilities case, which was fantastic. I got

hired by TXU while I was at Walker Sewell to file a lawsuit against the wind farms that were owned at the time by an FPL group, Florida Power & Light, in West Texas on the power purchase agreements that TXU had to buy renewable energy from those FPL wind farms. It was one of those cases that was important to the industry. The contracts that TXU had developed were considered a template for a lot of the other renewable energy contracts in the Western zone. We were pitted up against Lynn Tillotson Pinker & Cox, who have some of the best lawyers in terms of commercial litigation.

We took 82 depositions in the case and ended up trying it for two weeks. We took a verdict at 11:45 PM on a Friday night before the July 4th weekend. [The case had a new judge] and he made it even more challenging in some ways. But we just rolled with the punches, got through the trial with a \$8.9 million jury verdict. And, we zeroed out all their counterclaims.

**OC:** That's obviously a large verdict but was there something else that made the case particularly rewarding for you?

**JW:** Well, it was a hard-fought case against lawyers who were always prepared and right in our grill about every issue. The guys at Lynn Tillotson challenged everything. We fought for everything. It was really an amazing case [because, for example, the judge invalidated the experts on damages that Walker and his team had convened, forcing them to find other experts and get them prepped for the case in a short amount of time, among other twists and turns. Walker subsequently also won the appeal for his client].

## Taking Over in the 11th Hour

**OC:** Okay, thank you. In the more recent case, you were representing ISOL Technology. They were being sued by a company called LBDS in an IP case involving MRI systems. Eventually, Akin Gump lawyers disclosed that their client, LBDS, had fabricated

evidence to win a \$25 million verdict. Please talk about this interesting case.

**JW:** This is a great story. I have a lot of wonderful experiences as a lawyer but this is easily in the top five. Justin Levy, an associate who had been with me at Walker Sewell, came over with me to Cole Schotz in September 2013 and worked the case with me.

I got a call from a partner in our New Jersey office who said he and a friend were very concerned because they were having a difficult time finding counsel for a company out of South Korea, ISOL, and that the case was set for the trial in March 2014. LBDS was going to ask for a default judgment of almost \$70 million in November, if ISOL wasn't able to have counsel appear by then. The other side, LBDS, was asking for the judgment, presuming the other counsel wouldn't show up. [The firm that had been handling the case for ISOL had withdrawn, and the judge gave the company 90 days to find new counsel.]

We considered taking the case and learned that the other side had taken depositions of our principals for days. In fact, Dr. Lee, the CEO of ISOL, was deposed for five days. On the other side of the coin, ISOL's previous attorneys had taken only a single deposition of the corporate representative of LBDS on some jurisdictional-related issues. So we didn't have any discovery on the merits of the case at all. We had 20,000 pages of documents [and there were other hurdles].

So I looked at the case and said, "Okay, so if we bring it in for less than \$70 million and the difference isn't less than the fees we spend on this, the client is ahead." In addition to suing the ISOL company, LBDS also sued four of the officers and directors of the company.

We came on board and pored over the documents. We went back to the court and asked that the trial be moved from March to July. The judge said no, and that wasn't unexpected, and told us to get ready for trial in March.

**OC:** Ultimately, you were able to knock the initial claim down to \$25 million.

**JW:** Yes, and we knocked out all four of the directors and officers, so the verdict was only against the company and, of the \$25.2 million verdict, \$24.5 million of that was for lost profits. The judge had expressed a certain skepticism about that. It was a start-up company and at trial they admitted that the technology at question was a prototype software technology that had never actually worked [thus far]. So, it's questionable whether they met the burden of establishing lost profits under those circumstances with reasonable certainty. We thought the answer was certainly no [for several detailed reasons].

**OC:** So, you were pretty sure that you could have cut most of that \$25.2 million out with some postverdict motions?

**JW:** Yes.

### **An Anonymous Tip**

**OC:** Can you talk about the pivotal post-verdict phone call you got and what happened after you received that call?

**JW:** A short time after the trial, I get this anonymous phone call to contact an FBI agent in Kansas City. I do and she tells me to contact the US attorney. It turned out that a distribution agreement [which was very important in the case] was false. They registered a fake corporation and a fake domain and copied signatures off the original email. Then they sent that email from themselves to themselves [in an attempt to support the lost-profits claim].

**OC:** Essentially, the document was fabricated.

**JW:** Yes, and so we find out all this and send the affidavits establishing the falsity of all this critical evidence to Akin Gump. Their motion says they presented their client with it, and asked if it was true [that the evidence was

false]. The client said yes, and they asked the client to self-report to the court, and the client said no. Consequently, Akin Gump reported it.

So not only did we try a case where all the cross examinations were blind—we never asked any of the witnesses any questions—not only did we try a case where our clients didn't speak English and had to testify through a translator, but we found out after the fact that the most critical evidence was fake. We brought it from a roughly \$70 million claim to a \$25 million verdict [with the lost-profit claim likely to be dropped because of the fraud], playing against a stacked deck. And that's the thing that I'm really proud of.

**OC:** What do you think about Akin Gump's role?

**JW:** I don't think Akin Gump had any idea what their clients had done. I think they're a fine group of lawyers, and it was a privilege to try the case against them. But clearly, their clients had initiated a fraud against my clients. [As of this writing, the court date has been set by the judge regarding a motion for sanctions, which will determine what happens to LBDS, and, generally speaking, will wrap the case up.]

I've been doing this for 30 years almost and I've never heard of anything like this, let alone experienced it. It goes to the heart and soul of our entire system. Our legal system largely rotates around respect for private property and ownership and the right to contract. And if people can start falsifying contracts and suing on them, it really strikes at the integrity of our entire civil justice system. We all have to have zero tolerance for this sort of thing.

Again, I want to say that it was a privilege to try the case against what was essentially Akin Gump's dream team of excellent lawyers. As it turned out, we were all playing with a stacked deck and didn't know it.

**OC:** One question remains, Jim: When this story is portrayed in a movie who will Gene Hackman play?

**JW:** [laughter] He's one of my favorite actors.

**OC:** Finally, what was the reaction of your partners at Schotz Cole to this case and your work on it?

**JW:** They are such a great bunch of people. The fact that they let me take the case under the circumstances as a new partner made me feel very welcome and part of the team, even though I'd only been there a little while at the time. So I really appreciate the faith and trust that they invested in Justin and me in allowing

us to take the case. They could've said, "Hey Jim, you are brand-new here. It's just not the norm. We'd really prefer that you not take the case under the circumstances." But they didn't. They trusted me. That means a lot to me and reaffirms my decision to join this great firm.

I'm also happy with how appreciative the client has been with our efforts. They're a very good company, and I'm glad we could help them. ■

– Steven T. Taylor

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