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Avid Competitors

BraunHagey & Borden LLP thinks strategically, acts aggressively as the San Francisco-based firm tries cases about everything from private equity firm issues to maritime law.

By Joshua Sebold / Daily Journal Staff Writer

SAN FRANCISCO — Litigation boutique BraunHagey & Borden LLP is a San Francisco firm with a New York state of mind. Clients and colleagues describe the firm as aggressive, competitive and strategic. The firm was founded by Noah Hagey, an avid basketball player, and Matt Borden, a childhood chess champion.

The pair has a penchant for strategic thinking, and a no-holds-barred attitude in the courtroom. Many of the rooms in the firm's office feature white boards where the partners develop game plans for cases in a collaborative fashion. Additional white boards on rollers allow attorneys to take these sessions anywhere, and it's not unusual for partners to jot down a few thoughts in between games of ping pong.

Home to 11 attorneys — six of them partners — the firm of complex litigators takes on both plaintiffs and defense-side matters in a wide variety of areas. A special niche, however, is representing private equity firms and hedge funds.

The firm got its start after Hagey moved from New York to California in late 2007. He worked at Quinn Emmanuel Urquhart & Sullivan LLP then, but was soon coaxed into starting his own firm.

"I had a medium-sized private equity firm client that was interested in my taking over a lot of their portfolio," Hagey said.

Hagey hired Borden, whom he knew through pick-up basketball, to help him defend some class actions. Borden worked at Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP at the time.

The pair discovered a mutual interest, bordering on obsession, with strategic thought.

"We were having so much fun bouncing ideas off of each other," Borden said.

The firm got its name, in part, from Hagey's hyphenated last name, which he doesn't use regularly but paid tribute to in the letterhead.

The firm's partnership is intellectually curious, leading it to take on a wide variety of cases. Borden was one of U.S. District Judge William Alsup's first clerks in the Northern District of California and said he takes after the judge in terms of being a generalist and believing that the

longer you work as an attorney, the more cases you view as winnable.

Although product liability and financial work are some of the firm's specialties, its lawyers say they will take unusual cases that others won't.

Recently, that led the firm to tackle and settle an obscure maritime salvage case for France's America's Cup team. A Bay Area sailor rescued the team's catamaran "Energy," which had broken free from its mooring and drifted on to the rocks of Treasure Island. The sailor attempted to invoke a maritime salvage law from the 1800s, impounding the boat and asking the French team for more than \$200,000 in payment for recovering the vessel.

"We got the boat released and we got the case dismissed and the client's security bond returned to it," Hagey said.

The case was novel not only for the firm but for the entire court system.

"We talked to the judges here. Nobody ever sees a maritime salvage case. The judge at our first evidentiary hearing was like, 'You guys are going to have to get me up to speed,'" Hagey said.

The firm also won a \$35 million verdict for a client in a fraud and breach of fiduciary duty case in the Delaware Court of Chancery. The firm's victory was upheld by the state's Supreme Court in March. *James D. Crombie v. Paron Capital Management*, 463 Del. Court of Chancery 6380.

The founders' entrepreneurial pedigrees — Borden's parents both started businesses and Hagey has an MBA — inspired them to jump at the chance to run their own business. Borden says he doesn't care much about titles, and the firm works on a collaborative basis when making most decisions, but he defers to Hagey on many business decisions because of his MBA.

Both the firm and its billing rates are growing.

Hagey explained that in terms of partner compensation. "We're all in the \$600s and at some point here we're going to cross the \$700-per-hour barrier." Associates at the firm bill in the \$300s per hour.

BraunHagey partner Mark Fickes, who spent seven years as trial counsel for the U.S. Securities and Exchange Commission, said a lot of people call themselves litigators, but BraunHagey attorneys are



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Noah Hagey, left, and Matt Borden started their own firm, which handles a variety of cases that capture their interest.

trial lawyers.

He said the difference is their "willingness to at a certain point put pen and paper down" and take a case before a jury.

"Collectively we've tried dozens and dozens of cases before juries," he said.

Fickes isn't the only partner whose background brings something unique to the firm. Rebecca Cross sits on various American Bar Association subcommittees relating to products liability litigation.

"She can literally walk through any store in the country and point out every single FDA labeling violation on the shelves," Hagey said.

The final partner, Greg Call, clerked for Chief Judge Judith S. Kaye of the New York State Court of Appeals and worked in-house for Franklin Templeton Investments for three and a half years before joining the firm.

Though it accepts a wide variety of cases, the firm's deep financial litigation experience is a particular asset.

Kara Cissell-Roell, managing director of private equity firm VMG Partners, said the firm has a deep understanding of her industry and isn't afraid to settle a case when prudent, despite its trial-heavy reputation.

"They are aggressive and thoughtful and they clearly understand the legal playbook for resolving legal issues quickly," she said.

Although aggressive in the courtroom, the firm features a variety of personality types. Borden has a quiet, contemplative demeanor and has used his narrative skills writing short stories for his children, although he says they're getting older and require more complex story lines than he has spare time to craft at this point.

Hagey, on the other hand, is the take-charge type.

"Noah Hagey is very competitive about

everything," said Karl A. Cole-Frieman, a name partner at Cole-Frieman & Mallon LLP, a San Francisco corporate boutique that represents hedge funds and refers work to BraunHagey. Cole-Frieman, who lives near Hagey in the Oakland Hills, said his fellow attorney doesn't ever want to lose at anything. "He is not going to let me beat him in a race."

He said the personalities at BraunHagey are all different, but they bring a uniform level of aggression to the courtroom without letting that affect their bedside manner, which he said is anything but abrasive.

"I think as advocates they both have a pretty charming and effective demeanor, even though it's also aggressive and zealous," Cole-Frieman said.

Bill Carson, president of Terraphase Engineering Inc., said he saw that aggressiveness at work when he hired the firm to help him start the company, a move that was resisted by his former employer, Arcadis US Inc. BraunHagey successfully disqualified Arcadis's general counsel and the company's outside counsel, Gordon & Rees LLP, from the case after they revealed they read an internal email that was accidentally sent to them.

"They were very responsive," he said. "They acted decisively and quickly, which really put the other side of our disagreement on their heels."

The firm's culture revolves around an attempt to be the opposite of big law firms. Hagey said the firm wants to grow slowly, although he could see it surpassing the 20-attorney mark in the next few years and would like to open up a New York office because of the amount of financial litigation that occurs there and the fact that about half the attorneys at the firm have some sort of connection to the Big Apple.