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DISRUPTIVE FORCE *for* JUSTICE

by Jennifer Hadley

A force that is disruptive does not create incremental change; it transforms those it impacts in such a manner that there can be no return. Since opening its doors in early 2013, Greenberg Gross LLP has created a disruption in the Orange County legal community and beyond. As Alan Greenberg, the firm's managing partner, explained: "We opened our doors at a time in our careers when we knew how to create a firm that could not only perform at the highest level, but also do so with a sense of mission." And it was that sense of mission that enabled Greenberg and co-founding partner Wayne Gross to quickly build a law firm that, despite being less than two years old, already ranks among the elite law firms in the region. Indeed, the firm, with an impressive list of clients and a string of victories, has been listed in both the 2014 and 2015 editions of "Best Law Firms" by U.S. News Media Group for the practice areas of commercial litigation and white-collar defense. How did Greenberg and Gross create what legal bloggers have affectionately called a "rocket child?" It turns out that the seeds of this particular disruption were planted long ago on opposite sides of the country.

HUMBLE BEGINNINGS

Greenberg, 50, was born in Brooklyn. His parents were the children of immigrant shopkeepers, who instilled in their children the value of education as the ticket to the American dream. They encouraged Greenberg from childhood to be a voracious reader and he graduated high school near the top of his class, thereafter attending Cornell University, where he double-majored in Economics and Government. With a passion for business and finance, Greenberg temporarily had difficulty deciding between business or law school. After achieving a perfect score on the LSAT, however, he chose the law, ultimately graduating with honors from Boston University School of Law. After law school, he returned to New York, where he worked on Wall Street financial transactions at a top law firm in the World Trade Center. Greenberg met his beautiful wife, Gina, a Los Angeles native, at BU Law. In 1990, faced with a decision of whether to live in New York or Los Angeles, they chose Orange County. In making the move west, Greenberg made another extremely important decision; he decided to switch from being a deal lawyer to becoming a trial lawyer. Greenberg explains: "I had an offer from a major firm to continue my corporate finance practice, but I decided that

my true calling was to argue cases in the courtroom, and I have never looked back." From 1990 through 2007, he worked at high-end litigation boutiques in Orange County before joining the international firm of Greenberg Traurig, where he would soon meet Gross.

Gross, 51, was born in San Francisco to a nineteen-year-old unwed theatre student who believed that she was too young and too poor to care for a baby; she chose adoption as an alternative. A high school teacher and his wife adopted Gross and raised him in a working-class neighborhood south of San Francisco. From an early age, Gross demonstrated an affinity for books and words, owning multiple dictionaries that he constantly annotated and, as a teenager, often carrying a pocket vocabulary book that he retains to this day. As you might surmise, his word proclivity did not score popularity points in a tough neighborhood and he ended up on the wrong side of many boyhood fights. "Impressive word usage did not save me from the only rule that mattered in my neighborhood: might equals right," Gross laughed. As a young adult, Gross attended the same college as his father had, the University of San Francisco, where he took a business law class taught by a practicing lawyer. Gross explained: "The professor wove war stories from his practice into class lectures; he made practicing law appear to be



the most heroic profession imaginable.” After graduating with honors and achieving a near perfect score on the LSAT, Gross attended UC Hastings College of the Law, where he graduated near the top of his class. Upon graduation, Gross commenced a prestigious clerkship with a district judge in Los Angeles. As a law clerk, Gross observed federal prosecutors trying cases against talented defense lawyers and was more than intrigued. He successfully applied to the U.S. Attorney’s Office in the Central District of California and, at the age of 27, commenced his long and successful tenure as a federal prosecutor.

And it was as a prosecutor that Gross learned the art of trial advocacy. “The U.S. Attorney’s Office provided me with a fantastic laboratory in which I learned what is likely to sway a judge and jury; I discovered how to create trial narratives designed to intrigue jurors and join me in fact-finding,” explained Gross. “Federal prosecutors are taught that it is not enough to win; we had to win fairly and with style.” Indeed, he established himself as a go-to prosecutor on high-profile cases, including the Katarina Witt stalker case, the UCI fertility case, and one of the first criminal trademark infringement cases to go to trial in Southern California. His primary emphasis became financial fraud, for which he was presented with awards by two U.S. Attorneys General and the Director of the FBI. In 2004, Gross was promoted to Chief of the U.S. Attorney’s Office in Orange County, serving as head of the most productive prosecutorial office within the Central District for the next several years.

In 2007, Gross left government service to become a partner at a large regional law firm. Gross explained: “As much as I enjoyed serving as a federal prosecutor, I knew that new challenges awaited me in the private sector and that I would be able to put to use what I had learned working for the Department of Justice.” Gross immediately did put his formidable trial skills to use, trying several high-stakes business cases and repeatedly demonstrating that he is a bet-the-business litigator. In 2009, Gross joined the global law firm of Greenberg Traurig as a shareholder in its Irvine office. “I decided that the larger platform would enable me to take on even larger cases,” Gross explained.

GREENBERG AND GROSS JOIN FORCES

Working in the same Irvine office, Greenberg and Gross, though growing up on opposite sides of the country, felt an immediate kinship. “We came from similar backgrounds and had very similar views on how complex business cases should be tried,” explained Greenberg. “We also both equally despise injustice and relish the opportunity to remedy it.” Shortly thereafter, they came upon the opportunity to jointly try a case that would change their destiny. A Newport Beach real estate developer, Newport Capital Advisors (“NCA”), had the

vision of restoring an aging Hollywood architectural landscape to its previous glory. NCA brought that vision to Commonfund, an East Coast investment fund, as a prospective capital partner. The two agreed to form a joint venture to acquire four Hollywood properties, with NCA taking the lead on identifying and developing the opportunities and Commonfund providing the financial backing. In 2007, after the properties gained \$35 million in market value, Commonfund sought to disavow the joint venture and shed itself of NCA, relying on the lack of any final written contract between them. Indeed, Commonfund went so far as to sue NCA for a judicial declaration that there was no joint venture between the parties.



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WAYNE GROSS

In response to Commonfund’s ploy, NCA unleashed Greenberg and Gross. Instead of simply defending the lawsuit, Greenberg and Gross filed a countersuit alleging that Commonfund, as a joint venture partner, had violated its fiduciary duties to NCA. Moreover, the countersuit alleged that the breach was done in a malicious, oppressive and fraudulent way, entitling NCA to punitive damages. But to NCA, the case was about more than money. It was also about principle and a desire to expose Commonfund’s business practices for all to see.

With significant money and its reputation on the line, Commonfund relied on its own big firm lawyers, who sought to aggressively defend its conduct at trial. They not only

asserted that there was no meeting of the minds on a joint venture, but also that there were no damages for the alleged breach. Specifically, Commonfund claimed at trial that while the four Hollywood properties held great promise in 2007, the financial crash decimated their value, even sending some into foreclosure. According to Commonfund, it lost \$60 million on the investments, such that NCA was not harmed by its exclusion from the joint venture.

Greenberg and Gross were prepared for this defense. Before trial, the team had mined through hundreds of thousands of Commonfund's documents, establishing through internal records not only that the investor had breached its fiduciary duties to NCA, but pinpointing the date in March 2008 when Commonfund decided to oust NCA. At trial, Greenberg and Gross successfully argued that the value of NCA's interest in the joint venture at the time of breach—\$16 million—constituted the appropriate compensatory award, rather than its reduced value after the financial crash. To bring the point home to the jury, the duo framed the fight as a battle between good and evil, using the metaphor of a thief who steals a car and claims that because it crashed and burned after the theft, the victim is entitled to nothing.

But the duo did far more than rely on metaphors during the four-week trial. They played six hours of deposition video that helped pull back the curtain to expose that Commonfund's executives, who stood to gain seven-figure bonuses in connection with the appreciation of the joint venture properties, were bent on undoing the partnership. They knew that the depositions, if wielded properly, would prove to be a powerful weapon. During closing arguments, they re-played a clip of one of the executives who reflexively sipped from his coffee cup after particularly tough questions. They played the clip with no sound, focusing the jury on the executive's shaking hand as he raised the cup before answering the question. "The jury watched this 'tell' in silence and was visibly moved by it," Gross said. "We knew, at that moment, that the other side was in deep trouble. Sometimes the most subtle evidence, if used correctly, can be the most damning."

Following the four-week trial, a 12-member jury unanimously ruled that Commonfund had breached its fiduciary duties, awarding approximately \$16 million in compensatory damages and \$34 million in punitive damages—everything the duo had sought for their client. Commonfund appealed, but ultimately entered into a confidential settlement and dismissed the appeal.

While both Greenberg and Gross have had a long history of successful trial outcomes for their big-firm clients, the NCA verdict served as an invaluable and instructive lesson on their role in the justice system. Gross explained, "Due to conflicts, big firm lawyers are often limited to defending large clients who have been sued and thus can only play defense, not offense.

But the NCA case was a rare instance in which big firm lawyers were able to play offense by pursuing a large entity, ultimately obtaining one of the largest trial verdicts in California that year." And it was that experience that led the duo to leave the big firm and form their own litigation firm, focused on high-stakes commercial cases for plaintiffs and defendants.



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ALAN GREENBERG

THE MISSION OF THE FIRM

In opening their own firm, the duo drew upon their collective experience to incorporate into the firm the best of what each had learned. For example, they decided that the firm, from Day One, would focus on pursuing justice rather than profits, and would only accept cases from those clients whose cases were

worthy of such absolute dedication. Gross explained: "This firm is not for everyone. We don't consider ourselves a place that sells legal work like widgets. It is our philosophy that every pleading, every letter, and indeed everything we do must represent the finest legal work that we can bring to bear—and we'd argue that it is the finest legal work that you'll find anywhere in this country. I know it sounds idealistic, but when we impart that message to clients through our work, and they see the results, it resonates throughout the business community and gets the attention of people who want and need serious business litigators. I guess you could say that we've found that when you are mission-driven instead of profit-driven, you are

actually more profitable.” The firm adopted a logo—a pair of interlocking Gs—that sought to capture the firm’s client-focused approach. Greenberg explained: “Our firm’s logo is displayed throughout the office—etched in the windows, on our letterhead, obviously—even on our cufflinks! We want to reinforce that we work hand in hand with our clients. We are an extremely client-centered firm, which means that when we take your case, you essentially become part of the firm. Lawyers who don’t really listen to clients and put the clients’ needs first aren’t as successful as those who do. It’s that simple. That’s what the logo means.” In addition to the logo, the firm’s lobby, just like the lobby of the U.S. Attorney’s Office, features an American flag, serving as a constant reminder to all who walk through the doors that the mission of the firm is to pursue justice.

As for the location of the firm, Greenberg and Gross determined that it should be located in the Center Tower in Costa Mesa, which is at the heart of Orange County’s business and arts community. Gross explained, “We wanted the look and feel of the office to invoke the dignity and majesty of the law but at the same time be inviting to clients and friends of the firm. So how do you do both? We started with a very strong base—we put our headquarters on the 17th floor of the Center

Tower at South Coast Plaza. It’s one of the tallest buildings in Orange County and it’s one of the county’s traditional hubs of law and commerce, not to mention philanthropy and the arts.”

But an impressive office space and a compelling logo are not enough to create an elite law firm. The most important ingredient, according to Greenberg, is its team: Greenberg Gross has hired a team of star lawyers from highly respected firms, such as Irell & Manella and Morgan Lewis. To hire such coveted associates, the firm decided, from the beginning, that it would pay at or above the associate compensation scale established by Cravath Swaine & Moore LLP. While it is highly unusual for a new firm to do so, Greenberg explained the reasoning as follows: “We have no problem paying top-of-the market compensation to obtain the best and brightest lawyers in the country to ensure that we may continue to provide world-class service in every case.” And all of such lawyers are required to dress in courtroom attire five days a week. Gross added: “We are not fans of casual Fridays. Every business day our lawyers dress in a manner that reflects the firm’s sense of purpose. This is not about fashion or trends; it’s about lawyers accurately conveying to the world in the way that they speak, act and dress that they are striving for excellence in their pursuit of justice.”

Another great Friday event where the county’s leaders in business, politics and the arts come together for champagne and hors d’oeuvres.





Adam Sechooler, Frank Mickadeit, Leanna Costantini, Joshua Franklin, Alan Greenberg, Wayne Gross, Daniel Gutenplan, Jennifer Bagosy, Jesse Bolling and Bret Hembd.

GIVING BACK

While serving its clients at the highest level is extremely gratifying to Greenberg and Gross, they both are committed to making sure that the firm also contributes to the enhancement of Orange County and beyond. Gross explained: “We want the firm not only to be an appropriate venue for legal meetings and depositions but also a place for the county’s leaders in business, politics and the arts to come together. So almost every Friday afternoon at 4:30, we have a handful of VIP guests in for champagne and hors d’oeuvres. Business leaders, politicians, heads of non-profits, educators, journalists, lawyers in other practice areas, clients—a nice mix. Great conversation, spectacular views, and great champagne! We want to be part of the civic conversation both figuratively and literally.”

The firm also gives back, sponsoring many worthy non-profits. At a recent Friday event, for example, Greenberg and Gross invited a non-profit organization called Boys Hope Girls Hope to join the firm. The organization is dedicated to supporting homeless children of Orange County who possess academic potential by providing them with a home, financial support, and academic guidance. Gross learned of the organization when a client introduced him to a teenager who had endured homelessness after losing both of his parents but, thanks to the organization, had successfully completed high school and had started college. Gross explained: “I could have been that kid. In my case, great parents adopted me. In his case, a great organization effectively did. Greenberg and I concluded that both the organization and this kid deserved the firm’s support.” They honored both the organization and the teenager at a special Friday event filled with clients and other

prospective supporters. Boys Hope Girls Hope is just one of many nonprofit organizations supported by the firm, each of which received special recognition at a Friday event. Greenberg explained why he and Gross do this: “So much of what we do in our high-stakes business litigation practice is, by its nature, adversarial; it is nice to take a break from that world and to simply extend a helping hand to those in need.”

THE FUTURE

Since its founding in April 2013, the firm has grown to ten lawyers and represents public companies, prominent law firms, nonprofit organizations, and high-level executives in their most important legal matters. Alan Greenberg explained the firm’s plans for future growth as follows: “We have no desire to be the largest law firm measured by number of offices or lawyers. We simply desire to be the firm of choice for plaintiffs and defendants in their most significant and challenging business cases.” Gross added: “We expected that the firm would be successful, but didn’t expect that it would happen this quickly. It demonstrates the power of having a sacred mission in life. Once you decide to take on such a mission, you can never go back.” ■

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