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Risk takers and money makers

For hedge fund advisors, timing is everything

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Bernard Rhee has two secret weapons: He knows patents and he knows pharmacology.

These specialties make his small Baltimore law practice a valuable asset to his bread-and-butter clients in the biotechnology and medical device fields. But where that knowledge really makes an impact is with clients who make up just a small slice of his work — hedge funds.

Rhee is one of a select few who advise hedge funds on the potential outcomes of patent litigation, providing these under-the-radar, high-risk investors with a coveted piece of information that competitors might not hold.

"We're patent people," said Rhee, a registered patent attorney whose two-man firm, **Technology & Business Law Advisors** LLC, also includes Robert Bakin, a registered patent agent with a background in microbiology.

"We know the science inside and out," he said. "That's our special sort of secret combination."

Rhee and Bakin pore over court documents and regulatory filings, looking for information to explain which way patent litigation might go. They make sure to work out any conflict-of-interest details before taking on hedge fund work; Rhee said the firm would never pass along information about, for

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Bernard Rhee, of Technology & Business Law Advisors, LLC photographed at Camden Partners office in Baltimore, Md. Thursday October 21, 2010.

RICH DENNISON

Berndard Rhee is one of a few lawyers who predicts patent litigation outcomes for hedge funds. With his extensive background and training in patent law and pharmacology, Rhee's advice can be very valuable to his risk-taking clients.

instance, a biotech client to a hedge fund.

Hedge funds have many different sources of information, so the lawyer's input is just part of the equation.

But the patent litigation advice is often very valuable to hedge funds, which study to the nth degree companies they will potentially invest in. When their ability to research or their knowledge of patents is spent, they turn to Rhee to turn difficult concepts into easy-to-understand language.

And there's a lot of potential business out there for him.

According to Hedge Fund Research Inc., a Chicago group dedicated to alternative investments, as of June there were more than 9,000 hedge funds, up from nearly 3,900 in 2000. Because of the economic downturn, the industry has faltered since 2007, when there were 10,100 hedge funds.

As of June, the industry managed $1.65 trillion in assets, down from the 2007 high of $1.87 trillion.

Unlike everyday investors or pension funds that put their money into companies they think are fundamentally sound, hedge funds might bet that a stock will fall instead of rise, known as taking a short position.

"[Hedge funds] say 'We can invest in a bad company and still make money.' They'll invest by shorting the stock," said Rhee. "Any movement in the stock price can make them money, even if it's a very small amount. They can easily make millions on a 10-cent move."

Although Rhee knows the hedge funds have the potential to pull in big money from his advice, he said he is left in the dark about what they actually make on those deals. In fact, he said he usually does not know which side the hedge fund plans to invest in because the nature of the work is so secretive.

Going with your gut

Risk is a big part of the hedge fund mentality, said David Sunshine, a New York partner with Cozen O'Connor, who litigates intellectual property and technology disputes and also aids hedge funds with information on patent litigation.

"The good thing about working with hedge funds is they're sort of risk-takers," he said. "In my normal practice you have to cover yourself. These guys understand that you're just making a call. You're not so much providing legal advice, you're giving them your gut feeling."

Rhee said he is very confident in his firm's reading of patent documents, although sometimes his gut feeling has been off.

"One time recently we told [a client] which way we thought it was going to go, and we were wrong," he said. "But they weren't upset with us because we were one of many who thought it was going to go that way."

The result of patent litigation can mean a pharmaceutical company keeps or loses its hold on the market on a certain mood-altering drug, and it can move the share price in a small or significant way, making a lot of money for hedge funds that make big bets.

When patent disputes come up, Rhee gets calls from hedge funds for his expertise. Often the calls are from hedge funds in New York and Texas that he has never worked with that have been referred to him. It's rare that he has repeat clients.

Last year, he advised a client on pharmaceutical giant Pfizer's offer to buy its rival Wyeth for $68 billion. Rhee's job was to give an opinion on patent litigation involving some key drugs made by Wyeth.

If patents for those drugs did not hold, the picture of the merger deal might have changed, leading Wyeth's share price to fall, and the client could have raked in some serious money by betting on that outcome in advance.

"There are two things that drive these companies," Rhee said. "One is the fear that someone else knows something they don't know, so they want to figure out what's going on in the marketplace.

"The other thing that drives them is finding out information that no one else knows," he said. "They love information. They want to find out as much information as they can."

Money is no object

Rhee, who was of counsel at **Venable** LLP — and spent time at four other firms — before he left to start his own firm, said money is often no object to his hedge fund clients, and many have told him that if he doubled his $450 hourly rate they would still pay. But, to Rhee, it seems "unfair" to charge one client one price and another more just because the latter is willing to pay.

As much as money might be of no object for hedge funds, timing is key. That's something clients of Robert W. Doyle, an antitrust lawyer in Washington, D.C., have impressed upon him in merger deals with antitrust issues.

"They want to get a return on their money as quickly as possible," said Doyle, a named partner at Doyle Barlow & Mazard PLLC who attracted a lot of hedge fund business after he left his job doing antitrust litigation for the Federal Trade Commission.

"The longer the investigation goes on, the longer their money is tied up," he said. "They want their money put to good use and they don't want it tied up for months on an antitrust investigation. Timing is very important."

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>
> **David Sunshine**
> Cozen O'Connor

It's a lesson Rhee has had to learn the hard way. When one potential client called just before Rhee was set to get married and go away on his honeymoon, he told the hedge fund that he could do the work, but it would need to wait for about a week. They went elsewhere.

Another time, a hedge fund representative called Rhee at 3:30 in the afternoon, wanting him and his colleague to review patent litigation and offer advice before the market opened the next morning.

"They would have paid any amount of money, but we turned it down because we could not offer an opinion in that short amount of time," he said. "We never heard from them again. If we had pulled all-nighters they would have paid any amount of money for it, but we missed the window of opportunity."

Niche market

Advising hedge funds on patent litigation outcomes is such a rare pursuit that Sunshine, the New York attorney at Cozen, said he was "surprised" that other lawyers were doing similar work.

Sunshine fell into the advising business about five years ago when a friend who worked for a hedge fund asked if he knew anything about a patent litigation case between the computer chip maker Qualcomm, which Sunshine said the fund owned an "enormous" amount of stock in, and Nokia, the mobile phone giant.

Sunshine said he did not know much, but he agreed to research the case, which put hundreds of millions of dollars at stake, and attend hearings in Delaware.

"I was going to every hearing, even the discovery disputes and really reporting back on how the judge shifted in his chair," he said. "They wanted to know everything."

That level of detail gave Sunshine the inside track on the case as it went to trial.

On the day that the trial was supposed to begin, the judge did not show up on time, but Sunshine knew that the judge was a stickler for schedules, and was never late to the bench.

"When he didn't show up after 20 minutes, I was able to tell the [hedge fund] that the case was going to settle," he said. "They were buying up the stock before the news broke later that afternoon."

Terms of the settlement were not revealed, but the companies said they entered into a 15-year deal in which Nokia would pay Qualcomm royalties to license technology. More than 40 million shares of Qualcomm's stock traded hands that day, far more than the average of 17.2 million. The stock gained 2.3 percent to close at $47.40.

The hedge fund Sunshine worked with spent thousands shuttling him back and forth to Delaware for the hearings, which, in the end, was peanuts compared to what they made from his information.

To Sunshine, spending the money on his brand of advice is worth it.

"I think it's just smart business," he said. "[Hedge funds] realize that there are cases that are real market movers. In a sense it would be irresponsible to their investors not to follow these cases."