THEY DON’T TAKE ‘YES’ FOR AN ANSWER

A D.C. boutique keeps on fighting even after a settlement is reached.

AUGUST MATTEIS JR. DIDN’T THINK THAT $16 MILLION WAS ENOUGH.
After more than 12 hours into all-day settlement negotiations last summer, Florida inventor and specialty tire designer Jordan Fishman was ready to declare victory and go to bed.

As plaintiff in a 2010 copyright infringement trial in federal district court in Virginia, the now 77-year-old Fishman had won a $26 million verdict against a Chinese tire manufacturer and its Dubai distributor, whom he claimed had purloined his design for a new breed of tire for underground mining. And he had already collected far more of that money than he ever dreamed possible.

Indeed, Fishman’s lawyers at Washington, D.C.’s Weisbrod Matteis & Copley had been relentless in their campaign to enforce the judgment. Thanks to their efforts, in November 2013 Shandong Linglong Tire Co., the Chinese tire manufacturer, had agreed to pay $16 million to resolve the matter. Getting co-defendant Al Dobowi Ltd. to the table for the daylong bargaining session in Washington on July 16, 2014, had been tougher. But by 11 p.m. that night, lawyers for the Dubai-based tire distributor had upped the amount they were willing to pay on the judgment to more than $5 million. To the exhausted Fishman, it seemed like a reasonable final offer: “I said that that was good enough.”

But his negotiating team, led by Weisbrod Matteis name partner August Matteis Jr. still wasn’t satisfied. “They said, ‘No, no, wait, there’s more,’” recalls Fishman, who notes that by the time the negotiations finally wrapped up three hours later, the Weisbrod Matteis team had managed to extract nearly $2 million more. Total payout on Fishman’s original $26 million jury award: $23 million, including the $16 million from Linglong and an additional $7 million from Al Dobowi. “These guys were good,” says Fishman.

Fishman isn’t the only Weisbrod Matteis client who feels that way. Since its launch four years ago, the tiny D.C. firm has been making a name for its dogged, determined approach to complex litigation—and its ability to get stellar results. The latest example: In mid-July the firm won a major decision in the U.S. Court of Appeals for the Fifth Circuit affirming a 2013 jury verdict that Matteis had notched in a whistleblower suit against insurance giant State Farm over Hurricane Katrina-related homeowner claims.

That and other trial wins earned Weisbrod Matteis a spot on affiliate publication The National Law Journal’s 2014 Litigation Boutique Hot List, and they’ve helped the firm attract a growing roster of big-name clients, including Nestle USA, Wells Fargo Bank and private equity giants such as Carlyle Group and Kravis Kohlberg Roberts. The firm, which started with just four lawyers, now has 20.

One of Weisbrod Matteis’ main specialties for corporate clients is insurance coverage matters. But it also regularly handles intellectual property cases, as well as breach of contract and other general commercial litigation. Not to mention its experience representing whistleblowers and its burgeoning niche helping successful plaintiffs such as Fishman collect on court judgments from defendants abroad. In virtually all of the matters it takes on, the firm represents plaintiffs. Weisbrod Matteis partners, however, point to the fact that many of the firm’s lawyers have had significant experience at major defense firms such as Wilmer Cutler Pickering Hale and Dorr, Covington & Burling, and Skadden, Arps, Meagher, Slate & Flom. And they contend that they bring a lot more to the table than they typical plaintiffs-side firm.

“A lot of plaintiffs firms come in with more of a bomb-throwing approach,” says name partner Stephen Weisbrod, who worked as an associate at Wilmer and Paul Hastings before joining Gilbert Law firm, a D.C. litigation boutique. “But we all grew up at big defense firms. We know how the defense game worked, and we know how to talk their language.”
While Weisbrod and his partners take pride in their ability to try—and win—cases, they also claim they’re adept at hammering out settlements when that’s the best course for their clients.

David Sorkin, general counsel at client Kravis Kohlberg Roberts, agrees. He says that Weisbrod Matteis recently took on a coverage-related dispute for him, and though he declined to discuss case specifics, he contends that the firm handled settlement negotiations well. “They got an excellent result,” says Sorkin. “It was definitely big-firm quality work.”

Doug Besman, head of litigation at client Nestle USA, also regularly enlists Weisbrod Matteis for insurance coverage-related matters as well as general commercial litigation. “They’ve gotten great results,” says Besman, who points to the firm’s handling of a complex product contamination and coverage dispute that pitted Nestle and other food companies against supplier Basic Food Flavors Inc.

The matter dates back to early 2010, when Nestle discovered salmonella in hydrolyzed vegetable protein (HVP), a flavor enhancer produced by Basic. Nestle reported the contamination to the U.S. Food and Drug Administration, which ordered a recall that affected more than 100 Basic customers and triggered a wave of litigation. Besides serving as counsel for Nestle, Weisbrod of Weisbrod Matteis also chaired the committee that represented claimants in settlement talks, and played a lead role in negotiating a $34 million deal between Basic and its insurer—Employers Fire Insurance Co.—and Nestle and other claimants.

Given that Employers had sued and been countersued by Basic in a separate fight over coverage for the recall, striking that deal was no easy feat. But in the end Employers agreed to pay $11 million, the full value of Basic’s policy limits, while Basic committed to giving up a percentage of its profits over a five-year period to cover the remaining settlement costs. “We wound up making the pie bigger for all the major parties,” says Weisbrod, who notes that well over 90 percent of claimants ultimately signed on to the deal.

Weisbrod Matteis followed up its work in the Basic litigation with a major jury verdict in 2013 in a False Claims Act suit in federal district court in Gulfport, Mississippi, brought by two former claims adjusters for State Farm.

The two whistleblowers—sisters Cori and Kerri Rigsby of Ocean Springs, Mississippi—had both worked for an outside contractor for the insurance giant in the aftermath of Hurricane Katrina in 2005. In their suit the pair alleged that State Farm had conspired to defraud the government by shifting responsibility for homeowner damage caused by wind to the federally administered National Flood Insurance Program. Among other evidence at trial, lead plaintiffs counsel Matteis presented engineering reports that he claimed were manipulated to inflate flood damage, and minimize wind damage so that the NFIP would be forced to cover the brunt of home repair costs instead of State Farm.

The jury, in a unanimous April 2013 decision, awarded the sisters $227,475 (which was later trebled by the court, as allowed under FCA rules) plus $2.9 million in attorney fees and expenses. Both sides appealed—State Farm because it claimed that the evidence did not support the verdict, and plaintiffs because they claimed that the district court had erred by limiting discovery in the case to a single instance (involving just one Biloxi homeowner) of fraud.

In an opinion issued on July 14, however, a three-judge panel for the Fifth Circuit dismissed State Farm’s appeal. Plus, in a major coup for Weisbrod Matteis, the judges found that plaintiffs were entitled to conduct discovery on other Katrina claims handled by State Farm. “At a minimum, the trial record supports a high probability that State Farm submitted more than one false claim,” said the court.

Given that some 6,000 Gulf Coast homeowners submitted claims to State Farm in the wake of Katrina, Matteis contends...
that the Fifth Circuit’s ruling could have huge consequences. “If we can prove thousands of false claims, like I believe we can, the damages would be enormous. The government could get back hundreds of millions or more,” says Matteis, who notes that the Rigby sisters would be entitled to 30 percent of any recovery.

In another recent high-profile case, Matteis helped secure the return of a Max Liebermann painting—“Two Riders on a Beach”—to David Toren, a 90-year-old Holocaust survivor in New York. The painting was part of a collection owned by Toren’s great uncle that was looted by the Nazis and wound up in the possession of a German art collector. German authorities had seized the Liebermann work and other stolen art from the collector’s son three years ago, but had made little effort to actually return it until Weisbrod Matteis filed suit last year. Toren, who finally recovered the painting this past May, is the father of Weisbrod Matteis partner and intellectual property specialist Peter Toren.

Of all the firm’s recent matters, however, Matteis and his partners are probably proudest of their judgment enforcement coup for Florida tire designer Fishman. No question that effort took some doing. Particularly since China and Dubai—the home countries of the two defendants in Fishman’s infringement case—don’t recognize U.S. court judgments as binding. After Fishman won his $26 million verdict in 2010, and the two defendants, Shandong Linglong and Al Dobowi, exhausted their appeals two years later, Weisbrod Matteis lawyers tried to set up discussions with both about payment of the judgment. But neither was interested in talking. “Frankly, their view was that they were untouchable,” recalls Weisbrod Matteis partner Bill Copley.

Since neither company had obvious business assets in the United States, Weisbrod Matteis partner Copley recalls that it was hard to know how to start. “It was remarkably frustrating to try to figure out the right way to do this,” he says. Still, after some intensive due diligence Weisbrod Matteis lawyers managed to identify a number of U.S. importers and distributors of Linglong-branded tires. Moreover, they learned that Linglong sales reps were planning to be in Las Vegas for a Specialty Equipment Makers Association trade show in November 2012. The firm’s response? It quickly moved to get Fishman’s judgment transferred to Nevada, then arranged for federal marshals to seize Linglong’s booth and auction off the assets. “That was our first shot across the bow,” says Matteis.

From there, Weisbrod Matteis began filing garnishment actions in order to get at Linglong’s income streams in the U.S. One target was Chinese banks in New York, but Weisbrod Matteis also went after Linglong distributors, with more than a dozen garnishment filings in Ohio, Texas, California and other U.S. states. “A lot of them became very upset that they had to deal with this,” says Copley.

In late 2013, Linglong finally caved in and agreed to pay the judgment. Co-defendant Al Dobowi was a far harder target, since its operations were all outside the U.S. Al Dobowi did have business offices in England and the Isle of Man, however, and after Weisbrod Matteis hired lawyers in the United Kingdom to go after the company’s assets there, it, too, capitulated, and agreed to come to the table last summer for judgment settlement talks.

Since then, Weisbrod Matteis lawyers say they’ve been fielding a steady stream of queries from other companies and individuals who have won judgments against Chinese companies, and Matteis claims that the firm now has several new enforcement actions in the works.

Among them: a $500,000 default judgment against Chinese water slide manufacturer Manley Toys Ltd. that Weisbrod Matteis purchased earlier this year from Briggs & Morgan, a Minneapolis law firm that had represented Manley on a patent matter and got stiffed on their legal bills.

In recent months Weisbrod Matteis has been busy filing garnishment actions against retailers across the U.S. that sell Manley products. Indeed, now that they’ve gotten the hang of it, Weisbrod Matteis reaps a bright future in judgment enforcement. And given the steady rise of companies from China and other countries that are doing business in the U.S., they’re convinced they’ve hit upon a high-potential niche. “We’ve got a lot of momentum in this area,” says Matteis, who notes that many companies with strong claims against overseas defendants often don’t file them because they don’t think the judgments are collectible.

Adds Weisbrod: “We’ve shown that we know how to get the job done.”

“We WOUND UP MAKING THE PIE BIGGER FOR ALL,” SAYS PARTNER STEPHEN WEISBROD.