

CLEVELAND BUSINESS

WWW.CRAINSCLEVELAND.COM



MCKINLEY WILEY

Jones Day attorney Ted Grossman has a New Guinea headhunter's statue in his office in downtown Cleveland. "I thought it appropriate for a litigator's office," he says.

KING OF THE COURT

Jones Day attorney with impeccable record adds Macy's case to list of high-stakes lawsuits for big-name clients

By **MICHELLE PARK**
mpark@crain.com

He says he isn't as superstitious as baseball players, but Ted Grossman once got rid of a gray suit because things didn't seem to go well when he wore it.

Fortunately for the Cleveland litigator's suit collection and his big-name clients, cases tend to be won when Mr. Grossman and his team are trying them.

More than three decades into his career, Mr. Grossman has never — *ever* — lost a case for his clients, which include national companies such as Bayer HealthCare, Wendy's/Arby's, and, more recently, Macy's.

These are big-stakes cases, and Mr. Grossman, 62, a partner at Jones Day, thrives on them.

"I like it — trial, itself," he said. "The doors close, your phone can't ring, no one can interrupt you. You're in intellectual combat. It's terrific. There's nothing else like it.

"I didn't just want to be a litigator — I wanted to have cases that mattered to my clients," he said.

Tobacco companies including R.J. Reynolds, a perpetual Jones Day client, and Philip Morris had \$800 billion to lose when Mr. Grossman argued an appeal on their behalf in 2009 in the largest class action in American history. Brought on behalf of 60 million consumers who argued they'd been defrauded into believing light cigarettes were safer, the case was decertified as a class action suit — a win for the companies.

Mr. Grossman also won decertification of a class action for FirstMerit Corp. The case was brought by victims of a local Ponzi scheme who alleged the Akron-based bank, which was the institution used by the scam artists, should have known better.

More recently, Mr. Grossman and his team sued Martha Stewart's company on behalf of Macy's, alleging that Martha Stewart Living Omnimedia is violating an exclusivity agreement with Macy's by planning to sell merchandise at JCPenney. An injunction hearing is scheduled for July 13.

To date, two of Mr. Grossman's wins have been named *National Law Journal* top 10 litigation victories of the year.

Three years turn into 27

Mr. Grossman knew from a young age that this was what he wanted — to try cases and argue appeals.

A New York City native, he earned his bachelor's degree and law degree at Cornell University in 1971 and 1974, respectively. Itching to get into a courtroom, he joined the U.S. Department of Justice in 1980.

In his 4½ years as trial and appellate counsel with the Justice Department, he handled 60 cases that went to hearing, defending almost every federal department and agency. In his first trial as lead counsel, he defended the Department of Commerce when Cook County, Ill., sued, insisting it had been undercounted in the 1980 U.S. Census and subsequently cheated out of more money and an additional congressional seat.

The three-week trial ended with the case being dismissed — a win for the Department of Commerce — and started the streak that continues today.

Years after that win, Mr. Grossman turned down a partnership offer from a New York firm to become an associate at Jones Day in Cleveland. His father-in-law thought he was nuts, but he had his reasons: He knew Jones Day lawyers understood litigation and did work that's national in scope.

So, Mr. Grossman moved his wife, Linda, and their two sons to Northeast Ohio in 1985, figuring they'd give it three years and see if they liked it. Twenty-seven years later, his wife and he are still here.

Cooler head prevails

A headhunter statue greets visitors at the door of Mr. Grossman's Cleveland lakefront office.

"I thought it appropriate for a litigator's office," he said.

But taking heads isn't exactly the style of Mr. Grossman, who's calm and confident in court, said Scott Meece, BayerHealth's general counsel and senior vice president.

"He's very bright, he's very thorough," said Mr. Meece, whose company has hired Mr. Grossman to handle cases with lots of money at stake and significant risk of nega-

tive publicity. "He doesn't need the theatrics that some use."

Once, a widow, who had cried more than once on the stand while being cross-examined by Mr. Grossman during a tobacco case involving her husband's lung cancer, sought out Mr. Grossman afterward and shook his hand, said Jones Day partner Mark A. Belasic, who was within earshot when she did.

"She said, 'I thought you would be my worst nightmare, but you were tough and fair,'" recalled Mr. Belasic, who has tried cases alongside Mr. Grossman. "That just doesn't happen."

And though trial lawyers are known for being hot-headed, Mr. Belasic said he's "almost never seen Ted get mad."

During the same trial, it was revealed during a deposition that an associate accidentally copied only one side of every two-sided page.

"I remember thinking ... 'What did this guy do?'" Mr. Belasic recalled. "I would have thought the associate would have been in for a serious chewing out."

Mr. Grossman told the jury that they had a technical difficulty and he would circle back later.

"The only thing Ted says (to the associate, now a Jones Day partner) was, 'I assume that will never happen again,'" Mr. Belasic said. "And that was the end of it."

It's a compelling example of the value Mr. Grossman places on teamwork.

"In big litigation like this, it's impossible for one person to handle the case," Mr. Grossman said, noting that it's not atypical for there to be hundreds of thousands of pages of documents to review and dozens of witnesses to depose. "One person can't possibly digest all of the material and work with all the witnesses."

Magnificent obsession

Mr. Grossman calls his unbroken record of victories a "good run, not just for me, but for the teams that I won with."

The success is the result of hard work hashing out ideas as a team, thinning through scenarios and developing battle plans that work.

"It pays to be obsessive," he said. "As cases progress toward trial, it's hard for me to think about other things. My wife tells me I don't listen to her enough as I get closer to trial. I find myself up late at night, thinking about the case."

"The thought of losing is one of the drivers that keeps me awake at 1 a.m.," he said. "If and when my time comes (to lose), I expect I'll be very disappointed ... and I'll learn a lot." ■