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TEAMWORK WINS FOR JONES DAY

WINNER

LITIGATION

DEPARTMENT OF THE YEAR

By Gina Passarella

NO EGOS ALLOWED

With an ethos of teamwork and a big talent roster, Jones Day's litigation department won a slew of impressive victories for its clients.

BY FALL 2016, JONES DAY'S INTELLECTUAL property group leader, Anthony Insogna, knew that the patent case he was handling for Merck & Co. subsidiary Idenix would be going in front of a jury. Idenix had brought patent infringement claims against Gilead Sciences over Gilead's hepatitis C drug Sovaldi in federal court in Delaware. With trial all but certain and just two months away, he called up one of his partners in Atlanta, Stephanie Parker, and asked her to be trial counsel.

Parker, the co-head of Jones Day's business and tort litigation practice—affectionately known as BATL in the firm—had never tried an intellectual property case. But as R.J. Reynolds Co.'s lead counsel in the "*Engle* progeny" tobacco litigation in Florida, she had plenty of experience presenting complex arguments to juries. She said yes.

It turned out to be a good move. In December 2016, after nine days of trial and less than two hours of deliberation, the jury awarded Merck a stunning \$2.54 billion in damages, the largest patent infringement award in U.S. history.

This isn't (just) a story about a star litigator jumping into a case at the last minute to deliver a spectacular result, though. It's about a firm assembling the best team across practice group lines to handle a client problem.

Of the four lawyers at the counsel table for Idenix in the Delaware courtroom, Parker says, two of them she'd never met before her first pretrial conference. It didn't matter. "Anthony and his team did a great job of working up the case," Parker says. She brought in some of her own top product liability litigators, including partners Steven Geise and Bradley Harrison.

"Everyone stepped up," says BATL co-chairman John Majoras. "Very senior lawyers were involved in background work."

Merck general counsel Michael Holston says he has rarely seen a firm that worked together so well to get the job done. "Stephanie Parker and the team delivered one of the best trial performances I've ever seen," he says. "From trial preparation through posttrial, the work was exceptional across the board." Jones Day, which had not represented Merck before the Idenix case, wound up with a spot on Merck's preferred provider list as a result.

Jones Day litigators take particular pride in how well they collaborate, calling it a focus on client service. Many in the firm cite Jones Day's "black box" compensation system and lack of origination credits, which reduce the incentive to hoard work and client relationships. "All of our clients are considered firm clients, and no particular partner 'owns' a client," says Insogna.

What's clear is that the ability to harness the right talent from across the firm's 1,100-litigator ranks helped Jones Day litigators deliver a big victory in the Idenix case and many others. In the contest period, August 2015 through July 2017, Jones Day won in forums that ranged from the U.S. Supreme Court to the trenches of state court, recovered billions for companies it represented, and turned back billions more in claims against other clients.

Among other big wins in the past two years, Jones Day's clients came out on the right side of a Supreme Court ruling limiting the president's authority to fill vacancies without Senate approval; beat the Federal Trade Commission's efforts to block a \$1.9 billion merger of two medi-



FROM LEFT John Majoras, Sharyl Reisman, Lee Armstrong, Anthony Insogna, Stephanie Parker

cal supply providers; litigated aggressively to win second lien noteholders in the massive Caesars Entertainment Operating Corp.'s bankruptcy 65.5 cents on the dollar, or a \$3 billion increase over the initial plan; and represented the city of Cleveland pro bono during preparations for the Republican National Convention in July 2016.

For client Robert McDonnell, the former governor of Virginia, the stakes were highest of all, as he fought for his freedom in a political corruption case. The early stages weren't promising: In 2014 McDonnell, represented by Jones Day, was convicted of bribery. But in late 2015, partner Yaakov Roth found himself pleased—though not surprised—when he reviewed the transcript and pleadings in McDonnell's criminal trial. As with every significant piece of litigation Jones Day handles, a lawyer

DEPARTMENT SIZE AND REVENUE:

PARTNERS 443 ASSOCIATES 552 OTHER 131

DEPARTMENT AS PERCENTAGE OF FIRM 44%

PERCENTAGE OF FIRM REVENUE, 2016 48%

from the issues and appeals team had advised on the case even at the trial phase. Every step of the case was planned with the idea that the overarching question—whether McDonnell had taken “official action” on behalf of a Virginia businessman as a result of gifts he had allegedly received—would likely end up before the Supreme Court.

The first test was getting the high court to stay McDonnell's sentence during the appeal and let him out on bail—something the high court hadn't done in more than three decades.



“The real hurdle is ... getting their attention in the first place,” Roth says, “and once they granted the bail motion, we felt that was a strong signal they would grant cert on the merits.” He was right. The court ultimately vacated McDonnell’s conviction in June 2016, ruling the government’s definition of “official action” was overly broad. The ruling was the latest in a string of cases restricting the government attempt to define and regulate political misconduct, Roth says. “The court’s definition of bribery was what will change the landscape for prosecutors and the defense bar working on these cases,” he says.

Tobacco companies tend to be experienced, sophisticated litigation clients. R.J. Reynolds, facing thousands of suits in Florida state and

be filed against U.S. companies for actions that happened solely outside of the United States. Parker teamed up with Gregory Katsas, now a U.S. Court of Appeals judge for the D.C. Circuit, and handed a defeat to the European Union, which had sought billions of dollars in damages for selling cigarettes that were allegedly used in money-laundering schemes.

“It’s a broad ruling that there are limits to civil RICO,” Parker says. “Any corporation that does business outside of our borders is potentially impacted by it in terms of what liability they may have.”

It wasn’t all wins for Jones Day in recent years. In one of the most closely watched cases of 2016, Jones Day, representing Aetna Inc., was unable to stop the U.S. Department of Justice from blocking Aetna’s merger with Humana Inc. on antitrust grounds. Majoras says it was a hard-fought dispute that raised previously untested arguments. “I’m still very proud of our efforts—still irritated about the decision, but very proud of the effort,” Majoras says.

As Parker and Majoras look to foster the collegiality and add depth where needed, they are mindful of the changing landscape for clients and firms alike. Many practice areas have become increasingly specialized, Majoras says. The team spends a lot of time thinking about what level of expertise it needs to be able to pull teams together for any client scenario. “Clients are looking very specifically at substantive expertise and specific skill sets that are needed,” Majoras says.

But they keep the big picture in mind, too. “We really emphasize to everyone that we are business lawyers,” he says. “Litigation can be a solution, litigation is sometimes put upon our clients, but we have to respond to clients who are ultimately looking for business resolutions.”

Email: gpassarella@alm.com.

When Jones Day came to the rescue of clients like R.J. Reynolds and ex-Virginia governor Robert McDonnell, it also created new law.

federal courts from smokers alleging the company’s tobacco products caused their illnesses, looks to Jones Day to lead its defense. The suits stem from a Florida Supreme Court ruling, *Engle v. Liggett Group*, that gives the plaintiffs a significant step up: automatic findings of liability against cigarette makers. Jones Day has more than 70 lawyers dedicated to *Engle* matters. In the past two and half years, the firm has tried 39 cases, and estimates it has saved its client \$150 million in potential liability.

The *Engle* cases give Jones Day lawyers plenty of chances to hone courtroom skills. “We have 50 or 60 lawyers who have first-chaired products liability trials,” says Parker.

R.J. Reynolds also turned to Jones Day for a civil Racketeer Influenced and Corrupt Organizations Act case that went before the U.S. Supreme Court over whether RICO suits could