

Litigation Powerhouse: Winston & Strawn

By Jack Newsham

Law360, New York (August 9, 2016, 5:51 PM ET) -- A year of squaring off against powerful adversaries such as the federal government, Apple and a potential class of 90 million members on behalf of major clients including Goldman Sachs, Comcast and Verizon Wireless has earned Winston & Strawn LLP a spot on Law360's Litigation Powerhouses list.

While remaining a key legal player in its hometown of Chicago, where about a third of its 531 litigators are based, Winston has made major inroads over the past year in Silicon Valley intellectual property battles and New York financial services disputes. Its attorneys chalk the growth up to three things: winning clients' trust over the long term, understanding the risks they face and taking on every case with an eye to dominating the trial.

"Other firms are not developing trial lawyers any more because they don't see that many trials," said Dan Webb, the firm's co-chairman and a former U.S. attorney for the Northern District of Illinois. "We're doing exactly the opposite. We want to continue to tout our trial abilities because we think it gets us the bet-the-company cases."

Of course, the bet-the-company cases don't keep coming if you don't win them, and a reputation for winning at trial can lead to cases ending even earlier. When the U.S.'s biggest cellphone carriers were hit with a lawsuit in 2008 that accused



Winston & Strawn

Litigation Attorneys: 531

Litigation Partners: 209

Big Wins:

In re Text Messaging Antitrust Litigation - Winston litigators helped Verizon Wireless defend its victory after fending off dozens of bundled class-action lawsuits that accused the mobile carrier of conspiring with its competitors to raise texting prices in tandem, inflicting \$9 billion in damages.

Chicago Board of Options Exchange v. International Securities Exchange - After CBOE, the largest U.S. options exchange, accused ISE of violating three software patents, Winston convinced the Patent Trial and Appeal Board that the patents were invalid and secured its victory in the Federal Circuit.

Omnicare Inc. v. Laborers District Council Construction Industry Pension Fund - After the Sixth Circuit ruled that drug supplier Omnicare could be sued for stock price inflation because its execs' claims of "legal compliance" didn't square with an ongoing kickback scheme, Winston convinced the U.S. Supreme Court to overturn its ruling and narrow the window for stock price inflation claims under Section 11 of the Securities Act.

Ross v. Bank of America - After several credit card issuers settled claims that they conspired to insert class-action waivers in their consumer agreements, Winston represented Discover in its refusal to do so. After prevailing on "a slender reed" before the district court in 2014, the firm continued to represent Discover before the Second Circuit and got the ruling confirmed in November.

US v. Firtash - When the Justice Department sought to have Ukrainian natural gas magnate Dmitry Firtash extradited from Austria to face corruption charges in Chicago, Winston lawyers argued that the request was part of a political effort to pressure Ukraine's government to distance itself from Russia. An Austrian judge rejected the request in April 2015, and Firtash remains free on bail.

Trial Tip: "Three words: humble but lethal. If, in front of a jury and in front of a trier of fact, you can be humble but lethal, you're going to have a very successful career." — Stephen D'Amore, litigation co-chair

them of colluding to increase text-messaging costs in tandem, nickel-and-diming as many as 90 million customers out of billions of dollars, Verizon picked Winston to help it beat the claims. After winning on summary judgment in 2014, Verizon stuck with Winston on appeal, up through the decision by the U.S. Supreme Court to reject the case.

Goldman Sachs Group Inc. also turned to Winston in two high-profile cases. When the bank and 14 other major financial firms were accused in a 2013 class action of abusing their dominant positions to wring excess profits out of the multitrillion-dollar market for credit default swaps, their attorneys negotiated a \$1.9 billion joint settlement late last year. Since then, Goldman has hired Winston to plead its case in a recently consolidated antitrust case regarding the interest rate swaps market.

The firm also rung up a landmark win before the Supreme Court in March 2015 on behalf of Omnicare Inc. The prescription drug company first disclosed in 2008 that it was being sued for promoting drugs in exchange for kickbacks. Omnicare was subsequently hit by suits from investors who said it lied about its compliance with the law to inflate its stock price and appeared to suffer a defeat when the Sixth Circuit said ignorance by its executives was no excuse. However, Winston got the ruling vacated.

Elizabeth Papez, a Washington, D.C.-based partner at Winston, said she and her colleagues need to be “relentlessly good” in order to win and keep the trust of their clients.

“I feel like in the past year, particularly given our work on the [credit default swaps] matter, we have finally gotten a place in the group of cases and firms litigating those high-stakes financial services matters that are incredibly consequential,” Papez said.

The firm’s intellectual property practice has also steadily grown even while the IP legal market as a whole has seen cutbacks, according to Michael Brody, co-chair of the practice. Ten years ago, the practice focused on pharmaceuticals and copyright work for generic-drug makers and tech clients, but it is now broader and more balanced, Brody said.

Today, the firm remains involved with the life sciences industry and has good relationships with technology clients such as cable giants Cox Communications and Comcast Corp. Last August, it helped Comcast annul a \$28 million fiber optics patent infringement verdict by arguing that Sprint Communications Co. LP contradicted the stance it took during summary judgment when it went before the jury. Sprint has appealed that ruling to the Federal Circuit.

IP litigator hires from other firms have also helped Winston grow. Earlier this year, Winston patent litigator Michael Murray — who joined in 2011 from Milbank Tweed Hadley & McCloy LLP — defeated the Chicago Board Options Exchange in the Federal Circuit after the CBOE accused his client International Securities Exchange LLC of violating three risk management software patents and sought \$525 million. And in December, Winston hires from Finnegan Henderson Farabow Garrett & Dunner LLP helped phone company Ericsson Inc. reach a confidential settlement in a licensing fight with Apple Inc. before the International Trade Commission.

The firm has built a reputation outside of tech and life sciences as well, winning a \$30 million verdict for its client FieldTurf USA in October after AstroTurf was found by a jury to have infringed a fake grass patent, one of the largest patent verdicts of 2015.

“There’s been a lot of cross-selling in the last year or two, from patent to copyright, from advertising to privacy, and every kind of permutation,” Brody said. “The net effect has been that our IP practice, in terms of the hours our attorneys are working, is up materially this year in a market [that] is down about 2 percent.”

Growing its business on the coasts doesn't mean Winston has abandoned its home base of Chicago, however. The firm represented the Chicago Housing Authority in its defense of a controversial drug-testing policy that survived the scrutiny of a district court and the Seventh Circuit, and earlier this year, it probed the division of the Chicago law department that defends cops after an attorney was found to have intentionally concealed evidence. Winston has also been retained by Ferguson, Missouri, in the wake of a scathing U.S. Department of Justice review of the St. Louis suburb's police practices and its municipal court.

The firm remains "very bullish" on taking white collar cases, according to Webb, who estimates he and other attorneys spend about 30 percent of their time on such matters.

In the past year, the firm has helped Austrian lawyers cast doubt on the U.S. government's bid to extradite Ukrainian oligarch Dmitry Firtash to face corruption charges, portraying federal prosecutors' efforts as politically motivated. Winston lawyers have also continued to pursue Israeli businessman Michael Cherney, who owes its client Alexander Gliklad half a billion dollars, in courts around the world.

Stephen D'Amore, who co-chairs the firm's 209-partner litigation practice with George Lombardi, said local government work and criminal cases were important parts of the firm's caseload, raising its civic profile and giving its trial lawyers valuable litigation experience.

"We're going to continue to invest in litigation," he said. "It's more than half the firm now, and that's going to continue to be an area of growth for us."

D'Amore added that the firm was also stepping up its game in international disputes, with plans to make new hires overseas.

The firm has recently represented a London real estate developer, Portobello Estates Ltd., after one director of the company sued the others, preventing the claim from going forward despite the passage of a recent law designed to make it easier for shareholders to sue for negligence. It has also guided investors and governments, including Jordan and Kyrgyzstan, in international arbitration proceedings.

In the U.S., Winston has made a name for itself in the food and beverage arena as well, where it has represented whiskey maker Beam Suntory in class actions in California and Florida that accused the spirits company of mislabeling its beverages as "handmade." Winston attorneys are also leading the charge in an antitrust suit that accuses Keurig Green Mountain Inc. of shutting out competition in the instant coffee pod market, and the firm represents a beef company suing ABC News in South Dakota courts for defamation after a series of broadcasts that referred to one of its products as "pink slime."

Tenacious litigation can be something of a balancing act. Papez said she always aims to "play hard but fair," even when billions of dollars in damages or company-breaking government penalties are on the line, no matter how flawed a ruling may seem or how much attorneys on the other side of the table might push your buttons.

It also requires an awareness of risks, Papez said, in terms of how a judge could rule and what a client could decide. For example, when credit card company Discover and its Winston counsel opted not to settle litigation that had gone on for nearly a decade that accused it and other financial firms of conspiring to insert class action waivers into their consumer agreements, they prevailed at trial by "a slender reed" and secured an appellate victory in November.

Businesses take a lot of risks. But when they face a competitor's lawsuit, a regulator that can impose civil penalties or a false claims action that could result in triple damages, they need to know that

Winston is doing everything it can for them at every stage of the case, according to Papez.

"One of our most experienced clients often tells us ... that our very best is the least that he expects on any matter," she said. "If we slip, there's literally a line of firms ready and willing to take our place."

--Editing by Christine Chun and Jill Coffey.

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