

Trial Group Of The Year: Winston & Strawn

By **Brandon Lowrey**

Law360 (February 8, 2018, 5:39 PM EST) -- During recent trials, Winston & Strawn LLP squeezed a nine-figure settlement out of the Walt Disney Co. over ABC News' "pink slime" reports, saved a pharmacy service provider from doom in a trade secrets case and allowed generic-drug makers to tap into Allergan's \$1.5 billion dry-eye medication market, placing the firm among Law360's Practice Groups of the Year.

The firm's meatiest case was a defamation brawl over Beef Products Inc.'s "lean, finely textured beef," which ABC News dubbed "pink slime" in a series of 2012 reports. Winston & Strawn represented Beef Products in its defamation suit against ABC, alleging the report falsely maligned the processed meat product and seeking \$1.9 billion in damages that could be trebled.

The trial was in its fourth week in South Dakota state court — and was only half over — when Disney cut a deal.

The terms of that settlement were not disclosed, but Disney recorded a \$177 million expense related to a litigation settlement for the quarter ending July 1. That \$177 million was not the total settlement amount, however: Disney said it was pursuing additional insurance coverage for the deal.

In a recent interview with Law360, Winston & Strawn co-executive chairman Dan Webb, who took the lead in the trial, said that he didn't expect it would be easy to take on Disney and its team of attorneys at Williams & Connolly LLP.

"We knew we were in for a battle," the veteran trial lawyer said. "We didn't know it was going to take 4 1/2 years. ... It's the biggest court battle I've ever been in."

Webb credited partners J. Erik Connolly and Nicole E. Wrigley with handling the bulk of the extensive pretrial litigation and taking the lead in trial preparation. He said that at trial, Winston & Strawn had a much smaller team. They moved to South Dakota for seven weeks and set up shop in a hotel.

Webb joked that it felt like he was back in the college dormitories.

But it was almost certainly an educational, if grueling, time for the young Winston & Strawn attorneys



working on the case.

"If you don't work 20 hours a day, you cannot keep up with what's going on, and it's a grind," Webb said. "The commitment of those young lawyers on BPI, the Winston lawyers on BPI, just made me proud."

In another landmark trial, Winston & Strawn attorneys represented The Chamberlain Group Inc. in a suit alleging a competitor infringed two of its patents for smart garage-door opener technology.

Silicon Valley managing partner and patent pro Kathi Vidal, who handled that case, said the key to the firm's success at trial was close teamwork between multiple groups. The already formidable task of trying a highly technical case before jurors was complicated by the fact that the court hadn't ruled on some evidentiary objections before the trial began.

"It was really a full team collaboration in terms of what the court was ruling on, what the court was excluding and how the case was going to shape up," she said.

On top of that, the opposition put the focus on confusing technical minutiae, she said.

"Instead of them opening on the patents and what the patents related to ... they actually took their garage door opener and exploded every single part of it," she said.

After an eight-day trial and less than two hours of deliberation, the jury awarded \$3.6 million in lost profits and about \$229,000 in royalties to The Chamberlain Group. It also found willfulness, paving the way for possible treble damages.

And the firm saved its clients AlixaRx LLC, Golden Gate National Senior Care and Fillmore Capital Partners from patent claims in a bet-the-company case that could have carried a billion in damages and a permanent injunction.

AlixaRx, a company providing pharmacy services using remote packaging and dispensing, was hit with a lawsuit by competitor Tech Pharmacy Services LLC in late 2015.

Tom M. Melsheimer, a partner in Winston's Dallas office, took over the case from another law firm about six months before trial, after the discovery process was essentially complete. In other words, he had to make do with what he was given.

"I find that liberating because you can't spend a lot of time crying over spilled milk, because it's not just spilled, it's dried up," he said. "We just jumped right in it."

He said it was a true Winston team effort, bringing attorneys from Chicago, Dallas, and Charlotte onto the case and drawing on expert advice from Vidal.

--Editing by Catherine Sum.