

## Trials Group Of The Year: Winston & Strawn

By **Cara Salvatore**

*Law360 (January 17, 2020, 1:05 PM EST)* -- Winston & Strawn lawyers helped NCAA players gain a limited victory in an antitrust suit over pay caps while also helping a doctor win the only full acquittal among numerous defendants in a fraud trial, making it one of Law360's 2019 Trials Groups of the Year.

Litigation is "about half of our firm," said co-executive chairman Jeffrey Kessler, "so it is very large and extensive."

Key areas include government investigations and white collar, intellectual property of all stripes, and antitrust — the area in which Kessler was part of a multifirm effort that secured a limited win for the college athletes in March. The players believe National Collegiate Athletic Association rules restricting their compensation to scholarship and aid are illegal pay caps under federal antitrust law.

In the decision after the bench trial, a federal judge blasted the NCAA for using the poorly defined concept of "amateurism" as a shield against paying athletes. The decision opened the door for athletes to receive reimbursements for computers and musical instruments, free tutoring, and internship stipends, though it stopped short of dismantling the NCAA amateurism system.

Kessler said there was good integration with the other firms that did heavy lifting in the courtroom, including Hagens Berman Sobol Shapiro LLP. Kessler's star turn was a cross-examination of a key NCAA witness.

"We spoke to each other and met with each other constantly ... We carefully allocated out the witnesses," Kessler said. "My focus, for example, was to challenge the factual predicate that the NCAA was putting forward for its claimed amateurism justification, which we viewed to be a sham. And so I focused on Kevin Lennon, who was the NCAA's official witness on the justifications for their restrictions.

"That was probably the longest cross of the trial," Kessler said.

Both the NCAA and the athletes appealed to the Ninth Circuit.

Earlier this month, the Ninth Circuit asked both sides to weigh in on how a new Golden State law affects the litigation. California's Fair Pay to Play Act was signed by Gov. Gavin Newsom in September and takes



effect in 2023. Under the law, California universities can no longer block their athletes from earning money from their names, images and likenesses.

Meanwhile, Kessler will be among those representing the women's national soccer team in its equal-pay trial on May 5.

And the high-profile work doesn't stop in the sports and antitrust arenas. Another Winston lawyer helped a doctor client become the only defendant in a nine-person trial to be acquitted by the jury of all the charges against them in a \$40 million bribery and kickback scheme aimed at steering surgical patients to Forest Park Medical Center in Dallas.

Dr. William Nicholson was found not guilty on his two charges, conspiracy and commercial bribery, while four doctors and three others were found guilty of various charges and the jury deadlocked on charges against the hospital's former director of bariatric services. The jury had deliberated for more than four days after almost six weeks of testimony.

"There were 21 medical professionals, hospital administrators and businesspeople indicted ... and of the nine that went to trial, only one was acquitted, and that's Dr. Nick, as he was known by his patients," Winston lawyer Thomas Melsheimer said.

"There wasn't any real documentary evidence that implicated him; there wasn't any corroborating email or text message. And, indeed, there was some documentary evidence that exonerated him ... We were able to distinguish ourselves in that way."

The hospital's manager, a former advertising executive, a bariatric surgeon, an anesthesiologist, a referral coordinator, a clinic owner and several others pled guilty.

Various defendants argued the marketing agreements between the doctors and Forest Park were approved by lawyers; the government said the agreements were legal on their face but, in reality, were just paper armor used to make bribe and kickback payments look legitimate.

Melsheimer said: "Winston has a completely integrated litigation practice, from pretrial motions, dispositive motions, to discovery, to trials, to appeals. So the firm does everything sort of womb to tomb, so to speak, in the litigation area ... I think we pride ourselves on being very integrated across the entire firm to try to litigate [or] appeal any kind of case."

--Additional reporting by Ryan Boysen, Zachary Zaggar, Jess Davis and Todd Hutchinson. Editing by Philip Shea.