

Securities Group Of The Year: Williams & Connolly

By **Carmen Germaine**

Law360, New York (January 13, 2016, 6:29 PM ET) -- Williams & Connolly LLP changed the landscape of securities litigation in 2015 by securing the blockbuster Omnicare ruling at the U.S. Supreme Court, demonstrating the trial strengths that have earned the firm a reputation as a securities powerhouse and placing it among Law360's Securities Groups of the Year.

The Omnicare decision, which limited executives' liability for opinions expressed in registration statements, stands out as a crowning achievement in a crowded year for Williams & Connolly. According to Robert Van Kirk, who together with Steven Farina chairs the Washington, D.C.-based firm's securities litigation and enforcement practice, the firm has increasingly attracted major clients, including both major New York stock exchanges, seeking to capitalize on Williams & Connolly's impressive reputation for trial success.



"We've established ourselves in an area that's been dominated for a long time by New York firms," Van Kirk said.

It was the firm's reputation for litigation success, and its particular expertise in appellate litigation, that attracted Omnicare Inc. The company brought on Williams & Connolly to argue its case before the Supreme Court after a Sixth Circuit decision held Omnicare and four former executives liable for allegedly failing to tell investors about a kickback scheme, finding that Section 11 of the Securities Act of 1933 didn't require plaintiffs to show defendants knew that false statements were being made in order to sue.

Arguing the case before the justices, Williams & Connolly partner Kannon K. Shanmugam faced what he told Law360 was the "somewhat metaphysical question of when a statement can qualify as a statement of fact."

According to Shanmugam, an experienced litigator who has argued 17 cases before the Supreme Court, the justices' questions were largely routine, focusing on hypothetical situations around statements of opinion — except for one curveball from Justice Stephen Breyer, who asked a "pretty memorable hypothetical question" involving an archaeologist expressing an opinion on whether newly discovered dinosaur bones belonged to a "diplodocus or a triceratops."

“Luckily because I’m a dad of an 8-year-old and a 6-year-old I knew what those were,” Shanmugam said.

In the end, the Williams & Connolly team and Shanmugam’s arguments handled dinosaur and other questions with aplomb, carrying the day and winning the most significant securities decision of that term as the high court struck down the Sixth Circuit ruling. The decision found that statements of opinion can’t be held untrue simply if they are later found to be incorrect and that such statements should be evaluated based on the expectations of a “reasonable” investor.

“Obviously this was a pretty favorable outcome for our client,” Shanmugam said.

The Omnicare case isn’t the only time clients have sought out Williams & Connolly for the firm’s impressive strengths in appellate and securities work. The firm was also retained by the Nasdaq to handle a Second Circuit appeal in litigation over Facebook Inc.’s initial public offering, defeating a jurisdictional challenge in 2014 before the case ultimately settled in 2015.

In fact, the firm represented both major New York stock exchanges in 2015, achieving a major victory for the New York Stock Exchange in August when the team extracted the exchange from suits claiming it helped high-frequency traders gain an unfair advantage in the marketplace.

That decision followed an April ruling where the Williams & Connolly team successfully defended the NYSE from claims that several large exchanges gave high-frequency traders early access to market data, as a New York federal judge agreed that the suit was preempted by the U.S. Securities and Exchange Commission’s regulatory scheme.

Van Kirk explained that Williams & Connolly’s securities practice has been able to punch beyond its 58-partner weight by relying on the firm’s litigation strengths.

He recalled one instance in 2015 in which a major client’s insurers asked the firm to conduct a mock trial to demonstrate the probability of successfully defending the suit — and were then blown away when the team won over the mock jurors.

As Van Kirk recalled, the insurers came to him saying, “We’re never in this position — we always get to the end of the day with law firms that don’t know how to try cases.”

Though that case ultimately settled, it settled for “pennies on the dollar,” Van Kirk said, and showed how the firm has been able to differentiate itself from rival teams.

Shanmugam agreed, adding that many other top securities firms are “not firms that have top-flight trial capability.”

“When a client hires Williams & Connolly, the other side knows that the client means business,” Shanmugam said. “That top-flight trial capability has always been Williams & Connolly’s calling card.”

The firm began 2015 by persuading a Virginia federal judge in January to dismiss a shareholder suit claiming telecom company Neustar Inc. misled investors about the company’s ability to secure a federal contract it ultimately lost. The suit was then settled in August for \$2.6 million, a fraction of the losses investors had alleged, ending shareholders’ appeal of the decision.

And in California, the Williams & Connolly team earned a victory for Intel Corp. in a derivative suit that arose out of a \$415 million settlement of anti-poaching litigation after the California Superior Court found repeatedly that the investors had failed to make a demand on Intel's board, granting Intel's first demurrer in September 2014 and a renewed demurrer in August.

As Van Kirk observed, the firm's continuing success in both litigating cases and achieving favorable settlements, often on the eve of trial as plaintiffs realize the strength of their opponent, shows the firm's solid reputation as a trial-capable team, a reputation that will no doubt continue to attract powerhouse clients.

"We're not trying to be all things to all people," Van Kirk said. "We're focusing on what we do best, which is litigate cases."

--Editing by Aaron Pelc.

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