

Law360's Weekly Verdict: Legal Lions & Lambs

By Lisa Ryan



Law360, New York (December 11, 2014) -- This week's lions are led by attorneys who got the National Labor Relations Board to shift its stance on allowing workers to use corporate email systems for nonbusiness purposes, including union organizing, while Manhattan U.S. Attorney Preet Bharara joins our flock of lambs after two high-profile insider trading convictions were reversed.

Legal Lions

Weinberg Roger & Rosenfeld APC attorneys convinced the NLRB to claw down its 2007 Register Guard ruling that short circuited employees' right to communicate in the workplace about personal purposes, including sending emails about union efforts. A split NLRB panel overruled the decision, calling it "clearly incorrect" and saying that employers didn't have the right to limit workers' email communications. Communication Workers of America is represented by David A. Rosenfeld and Lisl R. Duncan of Weinberg Roger & Rosenfeld APC. The NLRB is represented by Kayce R. Compton. Defendant Purple Communications Inc. is represented by Robert J. Kane of Stuart Kane LLP.

Clouse Dunn LLP captured prey for two former Goldman Sachs & Co. workers, helping them win a \$7.6 million Financial Industry Regulatory Authority arbitration award for wrongful termination and discrimination against military personnel, believed to be the largest such award ever reached against the banking giant. The employees' supervisor allegedly disparaged one of the brokers for being on reserved duty. The claimants are represented by R. Rogge Dunn of Clouse Dunn LLP. Goldman is represented by Robin D. Fessel of Sullivan & Cromwell LLP.

A Massachusetts federal jury sided with lions McCarter & English LLP, Venable LLP, Williams & Connolly LLP and Minerva Law PC when it handed AstraZeneca PLC and Ranbaxy Inc. a win in the first pay-for-delay class action trial since the U.S. Supreme Court agreed the patent settlements could face antitrust scrutiny. The jury found that AstraZeneca would never have allowed a generic Nexium to launch before its medicine patents expired. AstraZeneca is represented by Dane H. Butswinkas and John E. Schmidlein of Williams & Connolly LLP and William A. Zucker and Michael P. Kelly of McCarter & English LLP. Ranbaxy is represented by J. Douglas Baldrige, Lisa Jose Fales, Danielle R. Foley and Sarah Choi of Venable LLP and Leslie F. Su of Minerva Law PC. The direct-purchaser plaintiffs are represented by Hagens Berman Sobol Shapiro LLP, Berger & Montague PC and Garwin Gerstein & Fisher LLP. The end-payer plaintiffs are represented by Berman DeValerio, Hilliard & Shadowen LLC, Pomerantz LLP, Wexler Wallace LLP and Cohen Milstein Sellers & Toll PLLC.

A trio of high-profile judicial nominees were confirmed by the U.S. Senate to the Pennsylvania and Kentucky federal benches, as well as the Court of Federal Claims. Lydia Kay Griggsby, who currently serves as chief counsel for privacy and information policy for the U.S. Senate Committee on the Judiciary, will join the Court of Federal Claims, while Leeson Leeson & Leeson partner Joseph F. Leeson Jr. will join the Eastern District of Pennsylvania and Kerrick Stivers Coyle PLC partner Gregory Stivers will take a seat in the Western District of Kentucky.

Cooper & Dunham LLP nabbed a game-changing verdict for website patents as the Federal Circuit sent back to Texas federal court an infringement dispute over two patents owned by DDR Holdings LLC that extended e-commerce technology to third-party websites. The panel sided with the firm, fighting on behalf of National Leisure Group Inc., when it found that one of the patents that served as the basis for a jury award against the travel company was invalid. NLG is represented by Norman H. Zivin and Tonia Saylor of Cooper & Dunham LLP. DDR Holdings is represented by Louis J. Hoffman of the Hoffman Patent Firm and Ian B. Crosby of Susman Godfrey LLP.

Legal Lambs

Preet Bharara, who has staked his legacy as a Manhattan U.S. attorney on a five-year insider trading crackdown, was handed a crushing blow when the Second Circuit reversed the insider trading convictions of Level Global Investors LP manager Anthony Chiasson and former Diamondback Capital Management LLC manager Todd Newman. The panel raised the bar for prosecuting individuals who are one or more layers removed from sources of confidential information. The government is represented by Antonia Apps, who is now in private practice, as well as Michael Levy and John Zach. Newman is represented by Stephen Fishbein and John Nathanson of Shearman & Sterling LLP. Chiasson is represented by Gregory Morvillo of Morvillo LLP, Mark Pomerantz of Paul Weiss Rifkind Wharton & Garrison LLP and Alexandra A.E. Shapiro of Shapiro Arato & Isserles LLP.

Jones Day joined the flock after a Michigan federal judge bench-slapped the firm for failing to mention it was filing a combative motion in New Jersey the same day it was attending a status conference with the Michigan judge over a decadeslong environmental insurance row. U.S. District Judge Robert J. Jonker placed a cartoon front and center in an order to lambast the firm. The cartoon features a man peering over a brick wall in a bed, asking his bedmate, "Well, was it something I said?" Cooper Industries LLC is represented by Michael H. Ginsberg of Jones Day. Westchester Fire Insurance Co. is represented by Brian C. Coffey of Cohn Baughman & Martin.

Attorneys for the city of Los Angeles lost a bid to disqualify a Wolf Haldenstein Adler Freeman & Herz LLP lawyer for refusing to hand over documents the city inadvertently produced during a class action targeting its telephone users tax. A California appellate court said the lawyer was within her rights and that it wasn't grounds for disqualification. The city is represented by Holly O. Whatley, Amy C. Sparrow and Tiana J. Murillo of Colantuono Highsmith & Whatley PC and Noreen S. Vincent and Beverly A. Cook of the Office of the Los Angeles City Attorney. The plaintiff is represented by Francis M. Gregorek, Rachele R. Rickert and Marisa C. Livesay of Wolf Haldenstein Adler Freeman & Herz LLP, Timothy N. Mathews of Chimicles & Tikellis LLP, Sandra W. Cuneo of Cuneo Gilbert & LaDuca LLP and Jon A. Tostrud of Tostrud Law Group PC.

A Foley & Lardner LLP partner found himself at the center of a rare U.S. Supreme Court order this week. After Howard N. Shipley submitted a rather confusing petition for a writ of certiorari in a suit over a telephone call routing patent, the high court told him he had 30 days to explain why he shouldn't be sanctioned. The petition used odd phrasing and punctuation, and said that the patent's inventor largely

contributed to the document. The petitioner is represented by Howard N. Shipley of Foley & Lardner LLP. The government is represented by Solicitor General Donald B. Verrilli Jr.

Lawyers for Aetna Inc. couldn't save the insurer from being sanctioned by a Colorado magistrate judge in a patent suit against HealthTrio LLC. Aetna and two of its subsidiaries acted improperly by putting strict confidentiality locks on more than 90 percent of discovery documents in the suit, the judge said. Aetna is represented by Matthew B. Lehr, Neal A. Potischman, Igor Piryazev and Shiwoong Kim of Davis Polk & Wardwell LLP, Steven P. Petersen and John K. Winn of Leydig Voit & Mayer Ltd. and Robert C. Blume and David Glandorf of Gibson Dunn. HealthTrio is represented by Ronnie Fischer of Fischer Law Firm PC and Rick Martin of Patent Law Offices of Rick Martin PC.

--Additional reporting by Melissa Lipman, Ben James, Michael Lipkin, Dan Packel, Andrew Westney, Max Stendahl and Jessica Corso. Editing by Katherine Rautenberg.

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