

ANNUAL REVIEW 2017

February 2018 | TOP TALENT | CLIENT FOCUS | EXCEPTIONAL RESULTS

2017 Awards and Accolades



Benchmark Litigation, the definitive guide to elite litigation firms and attorneys throughout North America, recognized Willenken and five of its partners for their excellence in litigation and advocacy. For 2018, the firm was named to *Benchmark's* highly selective "Recommended" list of firms for litigation in California and was "acknowledged as one of the most prominent litigation boutiques in the U.S." In addition, partners Jason Wilson, William Delgado and Paul Loh were recognized as "Local Litigation Stars," a coveted ranking reserved for lawyers who are recommended consistently as reputable and effective litigators by clients and peers. Partners Eileen Ahern and Megan O'Neill were recognized as "Future Stars," a ranking for select lawyers whom peers and clients consistently reference as litigators who are likely to become "Litigation Stars" in coming editions of the *Benchmark* guide.

Partner Megan O'Neill was selected as Fellow by the Leadership Council on Legal Diversity for 2018, and partner William Delgado was selected as a Fellow in 2017. Michael Chung was named Regional Governor for IAKL (International Association of Korean Lawyers) in September 2017. Partner William Delgado was recognized as a "Class Action Lawyer of the Year" for California by the International Advisory Experts organization.

2017 Victories: Innovating to Win

Major Class Action Victory on Summary Judgment

Led by partners William Delgado and Megan O'Neill, the firm secured a major victory in a significant class action case on behalf of client NBTY, Inc. Plaintiff filed a putative multi-state class action on behalf of consumers of TruNature Ginkgo Biloba, a ginkgo supplement manufactured by NBTY and sold by Defendant Costco. Plaintiff claimed the product labels falsely advertised its benefits and sought a full refund across the entire

six-year class period. On behalf of Defendants, we knocked out Plaintiff's multi-state class and request for injunctive relief at the pleading stage. Plaintiff's remaining claims proceeded through discovery and class certification. We then filed summary judgment, arguing that Plaintiff failed to show that the product labels were "false" because there were over 38 studies showing ginkgo biloba's efficacy. The Court granted summary judgment, finding that Plaintiff had failed to show "falsity." The Court rejected the arguments upon which similarly situated plaintiffs had prevailed in comparable cases. Undoubtedly, this decision will be a useful resource for class action defendants in the future.

Critical Dismissal on *Forum Non Conveniens* for Major Retailer

Partners Eileen Ahern and Paul Loh defended a nationwide retail chain in a product liability lawsuit in which plaintiffs alleged the retailer sold a defective gas can that subsequently exploded, causing permanent, disfiguring injuries to each of them. Despite a legal presumption that California was the appropriate forum for this case because the retailer is headquartered there, the firm filed a *forum non conveniens* motion, arguing that the case should instead be forumed in Georgia. After two hard-fought hearings on the motion, we prevailed on behalf of the retailer, and Plaintiffs had to re-file in Georgia. Plaintiffs are currently appealing the court's ruling. This outcome is significant because of material differences between the two jurisdictions in terms of governing law and access to evidence.

Victory on Demurrer Guts Plaintiff's Key Warranty Claim

Plaintiff sued firm client, 3D Systems, Inc., a leading 3D printer manufacturer, and its reseller for breach of express and implied warranty for the sale of allegedly defective sophisticated 3D printers. Following amendment, the firm, led by partner William Delgado, demurred to the remaining breach of express warranty claim against 3D Systems on the ground that the actual warranty terms named the reseller as the warrantor. Before the demurrer hearing, the Court issued a tentative ruling denying the demurrer on the basis that the warranty language did not appear within the four corners of the complaint and therefore could not be considered. Undeterred, Will argued it would be a waste of party and judicial resources to wait until summary judgment to dispose of an obviously unfounded suit and that the "doctrine of truthful pleading" barred Plaintiff from avoiding demurrer by suppressing truthful facts. The Court agreed with our argument, reversing its tentative and sustaining the demurrer.



Motorola Prevails on Dispositive Motions

Acumen Communications, a vendor of radio communications equipment, filed suit against firm client, Motorola Solutions. The suit alleged that certain radio systems Motorola sold to multiple Southern California municipalities were improperly programmed, causing the Motorola equipment to interfere with commercial radio frequencies. Acumen sued Motorola for the economic and business losses that allegedly resulted from the radio frequency interference. Led by partner Paul Loh and associate Aarti Wilson, the firm filed Rule 12(b)(6) and 12(b)(1) motions on behalf of Motorola, arguing that Acumen's claims for radio frequency interference were preempted by the provisions of the Federal Telecommunications Act, which preclude private actions for damages for alleged radio frequency interference. The Court granted Motorola's motions, forcing Acumen to drastically change its tactic. In its amended complaint, Acumen charged Motorola with bid-rigging, claiming it colluded with the various municipalities to assure that Motorola was awarded contracts for supplying the radio systems in question. The firm then filed another Rule 12(b)(6) motion, this time based on the ground that, as a matter of governing law, bid-rigging requires collusion between bidders – and no such allegation was made in Acumen's amended complaint. After receiving Motorola's motion, Plaintiff conceded defeat and voluntarily dismissed its own claims with prejudice.

Significant Plaintiff's Side Recovery for Firm Client in High-Stakes Contract Dispute

The firm's client, a major national retail chain, typically finds itself on the defense side of litigation. But, in this instance, the client found itself on the plaintiff's side when a key vendor breached an important multi-million dollar contract, causing not only contract damages, but significant lost profits. Defendant denied that it owed any money. The matter was extraordinarily sensitive for the firm's client because it had a highly valuable, ongoing relationship with the defendant's parent company, a multi-national transportation company that ships all of the client's products. Led by partner Eileen Ahern, we filed an

aggressive complaint on the client's behalf and took a targeted approach to discovery, quickly extracting key pieces of evidence that were damning to the defendant's case. The parties then participated in an early mediation, which Eileen dominated. Based upon Eileen's presentation, the mediator recommended that the defendant pay all contract damages plus interest and that the parties focus the remainder of their negotiations on lost profits. Defendant walked out of the mediation. However, just weeks later, defendant agreed to pay the client all contract damages, plus interest, and additional, substantial amounts in lost profits to settle the case.

Decisive Victory for Major Utility Client in Vendor Dispute

Led by partners Paul Loh and Jason Wilson and associate Aarti Wilson, the firm prosecuted a breach of contract, breach of warranty and fraud action on behalf of two of the country's largest investor-owned utilities against a major vendor that supplied critical equipment to the utilities. The equipment, which turned out to be defective, caused the utilities to incur millions of dollars in replacement costs. After we successfully opposed defendant's anti-SLAPP motion against the fraud causes of action, we obtained a highly favorable settlement for the clients.

Highly Favorable Individual Settlement of Multi-State Putative Consumer Class Action

Led by partners Paul Loh and Eileen Ahern, the firm defended a leading business products manufacturer in a putative multi-state class action alleging injuries for payment of delivery charges that purportedly violated the consumer protection statutes of over 30 states. Plaintiffs sought restitution of \$1 billion in ill-gotten profits because defendant supposedly charged more for shipping than its cost for providing said services. We strategically trained our attack on Plaintiffs' class allegations, developing factual arguments demonstrating the wide variability in representations that consumers were exposed to regarding shipping charges, and in the amounts and circumstances under which such charges were imposed. While Plaintiffs' motion for class certification was pending, we negotiated an individual settlement of the case that was highly favorable to the client.





Willenken Secures Order Compelling Arbitration

Led by partner William Delgado, the firm continued its streak of prevailing on motions to compel arbitration by securing yet another such order on behalf of Morgan Stanley Smith Barney LLC and one of its private wealth advisors. Plaintiff filed suit alleging breach of fiduciary duty and other tort claims in connection with an alleged high-value unauthorized investment. In opposition to the motion to compel arbitration, Plaintiff argued that he never received the agreements containing the provisions, the provisions were contained in “boilerplate” contracts of adhesion, and the provisions were otherwise unconscionable. The district court sided with Morgan Stanley in rejecting each Plaintiff’s arguments and stayed the matter pending the arbitration.

Walk Away Settlement In on Behalf of a Major Utility

Led by partner Jason Wilson, the firm defended a major utility in a complex business tort action in which the Plaintiff was seeking a \$75 million dollar recovery. The firm filed a summary judgment motion on its client’s behalf. While the motion was pending, Plaintiff unilaterally dismissed most of its case against the firm’s client. Later, Plaintiff agreed to a “walk-away” settlement on the remainder of the case.



New Talent

Amelia L.B. Sargent joined Willenken in 2017, after practicing for six years at Munger, Tolles & Olson LLP. Amelia has a broad range of complex litigation experience and specializes in trade secret litigation. Amelia also represents museums in matters ranging from discrimination suits to cultural property restitution and is a Board Member of California Lawyers for the Arts. She earned her J.D. from Stanford Law School and has a Ph.D. from the University of California, Berkeley.

On the Road

Willenken: Leading the Pack and Sharing Expertise

Willenken lawyers spent a good deal of time traversing the country during 2017 as they presented on a multitude of CLE topics.

Associate Amelia Sargent presented talks on trade secret protection, litigation and employee mobility before the law department of Red Bull, as well as to the membership of the Association of Corporate Counsel (ACC), South Florida Chapter. Amelia, along with partner Jason Wilson, also traveled north of the border to address the Toronto Chapter of the ACC on strategic ways which Canadian companies can draft commercial contracts with U.S. companies to minimize specified litigation risks.

Jason also presented a CLE before the law department of Pacific Gas & Electric Company about the evolution of a critical defense based on subject matter jurisdiction that is available to California utilities pursuant to Cal. Pub. Util. Code § 1759. Jason is the leading expert on Section 1759 in the State of California.

Partner William Delgado moderated a panel at the MCCA Pathways to Diversity Conference entitled “Mandating Diversity: The Inclusion Clause,” in which the panelists explored historical efforts to increase diversity in the legal profession and discussed best practices going forward. Will also spoke at the 2017 HNBA Annual Meeting, where he was a panelist addressing “What is the Future of Class Action Litigation?,” which included expounding on litigation strategies in class action cases based on recent Supreme Court precedent. Further, Will, along with fellow partner and moderator Paul Loh, spoke on a panel before the ACC, Southwest Ohio Chapter, addressing the topic: “Brave New World in IP: New Litigation Tactics in Light of Recent U.S. Supreme Court Decisions.”

Separately, Paul (in conjunction with other member law firms of NAMWOLF) presented a CLE to the law department of T-Mobile entitled “White Collar Guide for In-House Counsel,” wherein Paul provided an update on key Supreme Court decisions from the immediate prior term dealing with white collar criminal law related issues, including insider trading and qui tam.