

MVP: WilmerHale's Matthew Martens

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WilmerHale's Matthew Martens scored an enormous victory over the U.S. Securities and Exchange Commission this year when he convinced a federal judge to toss the agency's fraud claims against Texas Attorney General Ken Paxton, making Martens one of Law360's Securities MVPs for 2017.

HIS BIGGEST ACCOMPLISHMENT:

Without a doubt, it was winning the dismissal, with prejudice, of the SEC's case against Paxton. In a high-profile lawsuit filed in April 2016, the Wall Street regulator accused the powerful Texas attorney general of fraud, for having allegedly failed to disclose the compensation he was receiving to promote investments in computer hardware company Servery Inc.

Paxton previously was indicted on state criminal charges related to the Servery matter. But for his defense in the SEC case, the Texan turned to Martens as his lead counsel. A former federal prosecutor who joined WilmerHale in 2013 after serving as the SEC's chief litigation counsel, Martens had plenty of insight into his adversaries on the government's side.

Martens' expertise also helped him quickly identify the Achilles' heel in the SEC's argument against his client. While the agency had accused Paxton of securities fraud, its complaint didn't allege that he made any false statements in connection with the sale of a security, Martens said in an interview.

"When I read through the complaint, the thing that leapt out at me was there was no false statement," he said. "I think that just sounds so crazy on its face — a fraud case with no false statement — that it struck me as a particularly effective way to frame the case for the judge."

U.S. District Judge Amos Mazzant III agreed with arguments Martens made in his motion and dismissed

The MVP logo features the letters 'MVP' in a bold, blue, sans-serif font. The letter 'V' is partially enclosed by a red circle with an arrow pointing upwards and to the right, suggesting a 'V' for victory or a 'V' that is being highlighted.

Matthew Martens
WilmerHale

the SEC's claims against Paxton in October 2016. While the judge allowed the SEC to take another stab at its complaint, this too failed before Judge Mazzant, who in March tossed the agency's suit against Paxton — this time with prejudice.

A BIG CHALLENGE:

However, it was far from certain that Paxton would be able to win a motion to dismiss, let alone twice. Martens told Law360 that one of the first things Judge Mazzant told the defense team when they appeared before him was that he didn't give much weight to such preliminary filings.

"When we showed up, he told us, point blank, he routinely denies motions-to-dismiss summarily," Martens recalled. While it's typical that more motions to dismiss are denied than granted, the challenge for Martens "was only compounded in our situation because the judge said he wasn't inclined to give this much attention."

This forced Martens and his team, which also included Bill Mateja of Polsinelli PC and J. Mitchell Little of Scheef & Stone LLP, to focus on how they were going to grab the judge's attention. Ultimately, they decided they had to crystallize what they thought was truly unique about this case — again, there was a fraud claim without a false statement — right in the brief's opening line.

It worked, Martens said.

"The judge seized on that when we got in front of him," he recalled. "That was exactly the effect that we wanted."

WHAT ELSE HE'S BEEN UP TO:

Martens penned a notable amicus brief that paved the way to a major U.S. Supreme Court decision known as *Kokesh v. SEC*.

The case is a landmark one because it greatly limited the SEC's authority to collect disgorgement of allegedly ill-gotten gains in enforcement actions. In a unanimous decision, the high court in June ruled that disgorgement is a penalty and therefore subject to a five-year statute of limitation.

Leading up to that fateful decision, Martens, in November 2016, wrote an amicus brief on behalf of the U.S. Chamber of Commerce urging the Supreme Court to take up the then-pending case, which concerned a \$35 million disgorgement order against investment adviser Charles Kokesh over alleged violations dating as far back as 1995.

While the case was over the SEC's powers, Martens said what he urged the high court to see was the bigger picture of the case.

"What we tried to point out was that this is an issue that goes beyond the SEC, that the government seeks disgorgement in matters brought by other agencies and often does so in extraordinarily high amounts," Martens said.

A MOST MEMORABLE EXPERIENCE:

A former clerk to the late Chief Justice William Rehnquist, Martens has had a storied career ever since graduating, with the highest honors, in 1996 from the University of North Carolina Law School.

He served in distinguished roles at the U.S. Department of Justice under President George W. Bush and later had the honors of trying, and winning, one of the SEC's most famous cases in recent years: against the former Goldman Sachs banker Fabrice Tourre, better known as the Fabulous Fab.

But looking back on his career, Martens said his most memorable experience came when he was a young associate at Latham & Watkins LLP.

At that time, Martens had the good fortune of joining the teams of two courtroom aces — Michael Chertoff, the future secretary of the U.S. Department of Homeland Security, and Beth Wilkinson, the Wilkinson Walsh & Eskovitz LLP co-founder who helped prosecute the Oklahoma City bomber Timothy McVeigh — for several high-stakes trials.

Working directly with both lawyers as a third-, fourth- and fifth-year associate was “just invaluable, and these days unheard of,” Martens said.

And it set him up to be the lawyer he is now.

“I jokingly say, along the lines of ‘everything I needed to know in life, I learned in kindergarten,’” Martens said, “everything I learned in life about trying cases, I learned from Mike and Beth.”

— *As told to Ed Beeson*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2017 MVP winners after reviewing more than 1,000 submissions.

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