

## **Trials Group Of The Year: WilmerHale**

By **Jack Rodgers**

*Law360 (March 8, 2024, 3:14 PM EST)* -- Last year, WilmerHale's trial team worked on some of the most nationally significant cases in the country, successfully arguing for an injunction against an effective abortion ban in Ohio and litigating several cases with billions of dollars at stake, making it one of Law360's 2023 Trials Practice Groups of the Year.

Hallie Levin and Joe Mueller, who lead the firm's trial group, said there were about 400 attorneys who make up the WilmerHale trial team. That number includes any attorney interested in, or having had experience in doing trials, Levin said.

In 2023, the team took about 30 cases to arbitration or trial, Levin said, with the team trying 175 over the last 10 years.

"I'm so proud of it, and I'm so proud of the firm because it's really taken the assets of our community, our people, and brought them together in a way that has ... really taken our practice to the next level," Levin said.

Levin and Mueller were particularly proud that their team worked on obtaining a preliminary injunction in Ohio against the state's six-week ban on abortions, on behalf of Planned Parenthood and other providers. Outside the challenge of working on a case with national attention and impact, the team presented a myriad of patients harmed by the ban during a full-day evidentiary hearing, which Mueller noted had been put together with only three weeks' notice.

Hamilton County Court of Common Pleas Judge Christian A. Jenkins ruled that the ban flew in the face of the state's constitution, and issued a preliminary injunction in September. The Ohio Attorney General Dave Yost has appealed the case to the Ohio Supreme Court, and the case continues there today — but Mueller said the firm was proud to have had the opportunity to work on the litigation.

"We're really, really proud of that case, both because of the merits of the suit itself and the legal work that it took to achieve that victory, but also as just another sign of the commitment to pro bono and public service," Mueller said. "It's really part of what makes the firm what it is."

Levin said she enjoyed watching her colleagues of varying experiences come together and throw themselves immediately into the work to achieve that victory.



"It was so gratifying ... Just the repository of knowledge that we're developing around trial is something people can really turn to and avail themselves of," she said.

The Ohio abortion dispute wasn't the only case in 2023 that brought WilmerHale attorneys with a wide range of experiences together, Mueller noted. On behalf of a group of hearing-impaired inmates, the firm worked with the Massachusetts Department of Corrections to try and make changes to alarm systems for their benefit.

"We did a session the weekend before the trial started just to talk about just nuts and bolts of trial tactics; what do you do with some of the in-court challenges that were posed by the nature of that case, including witnesses that were hearing-impaired and so on," Mueller said. "And we just sort of talked it through, and it was a great example of sharing knowledge across groups, in pursuit of trial objectives."

A good example of the group capitalizing on that combined expertise, Mueller said, was how the team came together to represent Gilead Sciences Inc. in the first government lawsuit against a pharmaceutical company for patent infringement. At issue were two HIV treatment drugs; the government accused Gilead of profiting "from research funded by hundreds of millions of taxpayer dollars," according to the complaint.

A federal jury sided with Gilead and killed the government's claims to ownership and demands for licensing some associated patent rights. Mueller said the firm's deep expertise in government-facing disputes gave them a better understanding of the issues.

"You've got intellectual property, classic contract dispute and a government-facing dispute, and our team reflected that," Mueller said. "We had folks with government expertise, we had folks with intellectual property expertise ... It's just a great example of people from different backgrounds coming together to address these interdisciplinary cases."

He added, "I think we're going to see that trend continue, that the high-stakes cases aren't going to be generic, cut-from-one-area-of-the-law disputes; it's going to be these cases with lots of different threads, and you're going to need a team that's woven together with different skill sets and different backgrounds."

Mueller also was part of the WilmerHale team that defended Apple in a suit brought by Masimo, accusing the tech giant of capitalizing on its trade secrets surrounding pulse oximetry readers on some models of its Apple Watches. The trial put \$1.85 billion at stake for the company, and Mueller said it was about the 20th case that Apple had asked the firm to represent them in.

The team will be retrying the case starting on Halloween, Mueller said. He added that U.S. District Judge James V. Selna ruled in favor of Apple on half of the trade secret claims against them, which Mueller described as "one of the biggest trade secret-defended wins ever in any trade secret case, in terms of the money being sought."

But for Mueller, the trial gave the firm the opportunity to showcase its bench of attorneys and help train and mentor attorneys who were interested in litigating.

"We are really set up for a long, long run of trial success here, and we're just really focused on continuing to give opportunities to younger folks, ranging from training to in-court roles, because it's

really important," Mueller said.

Part of WilmerHale's success in 2023 has been tied to the team's preparation, Mueller said. Early on in litigation, the team tries to visualize exactly what a trial might look like — the potential pitfalls, the narrative of the trial and other aspects — which he said ensures the team has a robust record to support how to conduct the trial.

"To put it another way, if you wait until six months before trial to start to figure out what the trial story is going to be, it's just not going to be as effective if you did it one or two years earlier," Mueller said. "You're going to make a lot of choices along the way that are mindful of the trial objectives that, once made, will either put you in a better or worse position."

WilmerHale also won a \$35 million intricate patent infringement case in 2023, where the trial team represented Dropbox in its first trial. The parties were in court for five days defending technology used by Dropbox to share files between systems.

Motion Offense brought the case against Dropbox, claiming the company had capitalized on ideas of several of its programmers, but a Western District of Texas jury ruled that all four of the company's patents were invalid.

Mueller said the case was another good example of how the trial team pooled its bench of attorneys with a range of experiences in order to be successful. In cases dealing with a swath of technologies or ideas, like in the Dropbox dispute which originally contained over 150 claims, it was important to have the ability to display ideas clearly to jurors.

"The ability to take facts to work with witnesses, to be engaging, to bring life to what could be dry [information]," Levin said. "That's actually the skill that is so much fun to develop and work on and teach. The doctrine of a particular law, or the technology that you're trying to translate and make live and compelling, that's what we get to do."

Mueller said the team probably does more "ultra-high-stakes trials than any firm in the country." Since 2020, the firm has done over 10 cases where, at trial, there are billions of dollars at stake. But the firm was also focused on the future of its trial practice.

"The trial practice is really built for the long run ... And I think that we have succeeded in establishing this platform that is primed for many, many years of success," Mueller said.

--Editing by Dave Trumbore.

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