
WilmerHale 2009 in Review

2010-01-25

Dear Clients and Friends,

The past 12 months tested all of us, as the effects of the economic crisis and global recession touched every one of our clients' industries and each of our practices in different ways. Faced with an unforgiving economic climate that called into question long-held assumptions about the law firm business model, we made decisions that, while very difficult, enabled us to emerge from one of the toughest years on record in a stronger position to be able to respond to our clients' needs. We are tremendously grateful for the support of our clients and friends and the dedication of our lawyers and staff throughout this extraordinary time. We greet the new year with cautious optimism, with the knowledge that the rigors of the past year have left us better equipped to meet the challenges that still lie ahead.

In 2009, we sought to be more responsive, efficient and disciplined as an organization. We embraced the new paradigm of alternative fee engagements and focused on increasing cost efficiencies, while reinforcing the exceptional legal work, service and professionalism that are our hallmarks. We launched a robust new model for the training, mentoring and competency-based career advancement of our attorneys, and laid the groundwork for the implementation of a state-of-the-art electronic discovery and document hosting capability that will bring about process improvements critical to the firm's future and the value we deliver to our clients.

We have always maintained that our practice success is the leading indicator of our performance, and, in 2009, our lawyers distinguished themselves in all of our major practice areas.

Litigation/Controversy. It was a busy year for our litigators, [who drew accolades for their performance in complex international disputes](#) and tried 13 cases across the United States, securing victories from Washington DC to California.

- [The Lawyer](#) ranked our litigation practice among the top 10 dispute practices globally, recognizing the work of our International Arbitration Group in [the successful pro bono representation of the Sudan People's Liberation Movement/Army in unprecedented oral hearings at The Hague](#).

- We argued five cases before the US Supreme Court, including one involving sophisticated bankruptcy issues, and another in which we played a leading role in persuading the Court to hear a potentially far-reaching antitrust class arbitration dispute.
- Our appellate group filed more than 50 Supreme Court briefs, made 50 appellate arguments—including eight in the Federal Circuit, of which five took place in the same week, and three on the same day—and handled 31 federal court appeals, across 10 of the 13 judicial circuits.
- Our intellectual property litigators racked up 11 consecutive wins at the US International Trade Commission (ITC) and the Federal Circuit, including an important Federal Circuit victory for Procter & Gamble and its blockbuster osteoporosis drug Actonel®.
- We helped achieve one of the most significant litigation settlements in recent years on behalf of Broadcom, successfully concluding an intense four-year IP battle with Qualcomm that involved six trials and four Federal Circuit appeals.
- Our government and regulatory litigators successfully represented Shell Oil Company in resisting recognition and execution of a Nicaraguan court judgment exceeding \$90 million.
- Our Business Trial Group played a key role in representing both the "new" and "old" Chrysler in distribution and franchise matters related to the Chrysler bankruptcy.

Securities. Our securities practice expanded its reach in 2009, handling matters ranging from US securities class actions to regulatory proceedings in South Asia.

- We began our representation of the Indian member firms of the PricewaterhouseCoopers network in civil litigation and regulatory investigations arising out of the alleged billion-dollar accounting fraud at Satyam Computer Services.
- On the US front, we had multiple successes for Medtronic: In March, we persuaded a district court to dismiss a putative securities fraud class action, and in May we obtained dismissals of separate derivative and ERISA suits.
- We achieved a major victory—along with our co-counsel at Morvillo Abramowitz—when federal prosecutors filed a *nolle prosequi* dismissing criminal securities fraud and other charges against former congressman David Stockman in connection with his tenure as CEO of auto parts maker Collins & Aikman.
- Our lawyers obtained the dismissal of a putative securities class action against EnerNOC, a clean energy solutions provider, and certain of its officers and directors.

- We represented two of eight defendants in persuading the Second Circuit to affirm the ground for dismissal of a case alleging that prime brokers had committed violations of the Sherman Act by conspiring to charge artificially inflated borrowing fees on short sale transactions.
- Our securities regulatory practice advised clients on the creation and/or material expansion of nine broker-dealers and counseled Citadel in connection with its registration as an investment adviser and its expansion into investment banking and institutional sales and trading.

Regulatory and Government Affairs. In a shifting regulatory and business landscape, our regulatory and government affairs practice represented various banks in US agency and congressional inquiries arising out of the financial crisis, and helped companies address financial institution regulatory reform, among many other matters.

- We assisted alternative energy clients with grant applications for renewable energy projects.
- We helped private equity firms navigate the regulatory aspects of acquisitions in the defense and national security area.
- Our lawyers continued to represent media companies contending with net neutrality issues before the FCC and fielding challenges related to the effort to create an interoperable public safety network.
- Our antitrust and competition practitioners earned recognition for a particularly active year in which they:
 - were heavily involved in litigating the FTC's administrative complaint against Intel alleging FTC Act and antitrust violations relating to microprocessor and other computer-related markets;
 - achieved favorable outcomes for clients ensnared in criminal antitrust investigations and litigated against the FTC, direct and indirect purchasers and a competitor on behalf of Cephalon in a case challenging a so-called reverse payment settlement;
 - prosecuted antitrust claims and counterclaims in IP disputes involving standards-essential patents on behalf of a number of clients, including Broadcom; and
 - successfully handled the merger control clearances for Lufthansa's acquisition of three EU-based airlines.

- We provided strategic advice to clients on intellectual property issues arising in international

climate change negotiations.

- Our lawyers continued to advise Boeing on ongoing US WTO challenges to European subsidies to Airbus.

Transactional. While continuing to face the challenges of the foundering economy, our transactional team actively participated in the resurgence of the equity capital markets.

- We completed high-profile IPOs for LogMeIn and A123 Systems, and handled more than 25 other public offerings raising more than \$14 billion.
- We handled more than 55 M&A transactions, including the \$2.9 billion acquisition of Starent by Cisco Systems, the \$2.6 billion acquisition of Sepracor by Sumitomo Chemical, and two acquisitions and one disposition in the energy sector totaling €4 billion (\$5.6 billion) by our client Energie Baden-Württemberg, Germany's third-largest energy company.
- Working with the firm's IP and litigation practices, we negotiated technology licensing deals for Kodak and Intel, as well as transactions in connection with Silver Lake's investment in Skype.
- We handled \$5 billion in debt financing transactions and represented various parties in numerous bankruptcies and bankruptcy-related litigation, including Constar International and Frontier Airlines, in the restructuring of more than \$15 billion of debt.

Intellectual Property. Our IP practitioners enjoyed a busy year on the patent prosecution and trademark front, and collaborated extensively across departments, conducting pre-litigation analysis in many high-stakes matters and providing due diligence in connection with mergers and acquisitions and public offerings.

- We filed more than 1,550 patent applications, secured more than 300 high-quality patents, and provided strategic patent advice to clients ranging from major universities and research institutions to rising innovators in a wide range of technologies, including cleantech, nanotech, pharmaceuticals and medical devices.
- Buoyed by the efforts of our Frankfurt office, which opened in late 2008, our trademark practice filed more than 1,400 applications, registering more than 1,100 trademarks, and serving clients such as Deutsche Bank, Ghirardelli, Honda, Lindt, LSG Sky Chefs, Pfizer, WebMD, Yankee Candle and Zipcar.
- We tailored patent reexamination and interference strategies for dozens of clients seeking cost-effective alternatives to litigation in the down economy.
- Working with our litigators, we continued our involvement in *In re Bilski*, filing an amicus brief on behalf of a group of financial services industry clients as the closely watched case

—which could have far-reaching implications for business method and medical diagnostics patents—moved to the Supreme Court.

Pro Bono and Community Service. In an economic climate that left many vulnerable, [we focused on charitable giving and volunteer service](#), and were honored to be named one of [the top 10 pro bono firms in the AmLaw 100](#). Our pro bono efforts spanned the spectrum, from victims' rights and veterans' rights, to land rights on behalf of American Indians.

- We handled [a case in Richmond, Virginia, that paved the way to make all public schools accessible to people with disabilities](#).
- We obtained the release of Dewey Bozella, a man who spent the past 26 years in prison, wrongfully convicted of the 1977 murder of an elderly woman in Poughkeepsie, New York.
- In the culmination of our efforts on behalf of a group of six Algerian-Bosnian men detained at Guantánamo Bay, we [secured the release of Lakhdar Boumediene](#), the lead petitioner in the Supreme Court case [Boumediene v. Bush](#).

In the wake of a turbulent year, we are more grateful than ever for your support and for the opportunity to perform the challenging legal work that is the essence of who we are as a firm. We thank you and look forward to helping make 2010 a successful year.

[William F. Lee](#) and William J. Perlstein
Co-Managing Partners | WilmerHale