
WilmerHale 2010 in Review

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Dear Clients and Friends,

We want to take this opportunity to thank you for your support and report to you on some of our key practice successes of 2010, and on recent developments that we believe will enhance the high quality and valued service that you have come to expect from our firm. We submit this report to you for the last time as the firm's co-managing partners. This past November—[with the election of Susan Murley and Robert Novick as co-managing partners for a three-year term beginning January 1, 2012](#)—we began the process of handing over to talented new leadership a vibrant firm that we have been proud to lead since the merger of our predecessor firms in 2004.

This year, we implemented and expanded market-leading new programs and offerings designed to increase the range, efficiency, value and cost-predictability of our services. With the launch of WilmerHale Discovery Solutions, we met the challenge of establishing a [state-of-the-art e-discovery and document review service](#) that is already transforming the discovery process for large, contested matters and substantially reducing costs for our clients. [Reaffirming our commitment to an aggressive alternative fee arrangement program](#), we instituted a variety of creative billing arrangements across almost every one of our legal departments. [We opened a Business Services Center in the Dayton, Ohio, region](#), centralizing certain of the firm's finance, human resources, information services and operations functions in one cost-effective location. And, with a move to larger premises in Silicon Valley, we celebrated a new milestone in our extraordinary growth on the West Coast, where, in the space of just five years, we have developed a thriving practice of close to 60 attorneys serving clients from our offices in Palo Alto and Los Angeles.

In 2010, we were grateful to be entrusted with the challenge of addressing many of the most important legal and business problems to arise nationally and internationally. A firm-wide team led BP's response to unprecedented congressional inquiries in the Deepwater Horizon matter—including 15 hearings and investigative demands by more than 90 committees and members—and represented the company in investigations by the Department of Justice, the SEC, the National Oil Spill Commission, the Chemical Safety Board, and the National Academy of Engineers. We represented Intel in the settlement of one of the biggest antitrust cases of the year. Complex matters handled for Cisco, HSBC, and our many clients affected by the Dodd-Frank Wall Street Reform and Consumer Protection Act also drew on the talents of our lawyers across offices and legal

disciplines. We sketch out below a few highlights of what was a very challenging and professionally rewarding year.

Litigation/Controversy. Our litigators tried seven cases in 2010, securing wins across the United States, from Washington DC to Massachusetts to Arizona, and conducted close to 80 arbitrations. Our highlights were many:

- Capping off a year that included 44 appellate arguments in 17 different courts, two Supreme Court arguments and more than 40 Supreme Court briefs, we obtained a [remarkable December victory for former McAfee CFO Prabhat Goyal](#), with the Ninth Circuit's unanimous reversal of convictions and entry of judgment of acquittal on charges of accounting and financial fraud.
- We secured victories in four Federal Circuit patent appeals in April alone, including an [important ruling upholding the import ban on products that infringe six Broadcom patents for GPS navigation chips](#), and the vindication of Nintendo in a suit alleging that its Wii, WaveBird and GameCube controllers infringed an Anascape patent.
- Our International Arbitration Group handled 47 international arbitration matters, taking nine cases to hearing on three continents and securing a number of major victories and favorable settlements.
- In arbitration matters tried in the United States, we obtained a \$100 million award for Boston Scientific and defended Chrysler Group in more than 65 arbitrations with former dealers whose franchise agreements had been rejected by the bankruptcy court in "Old Chrysler's" bankruptcy case—winning approximately 75% of these cases and negotiating beneficial settlements in over 100 more.

Securities. Clients turned to our securities lawyers for help in navigating the contours of a shifting financial and regulatory landscape:

- Combining the strengths of our Securities practice and our Broker-Dealer, Investment Management, Financial Institutions and Corporate groups, the firm's Financial Regulatory Reform Working Group counseled clients on the full spectrum of developments related to the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- Our bankruptcy and securities litigators took the lead in defending against claims filed by the creditors of Adelphia Communications Corporation against our client Credit Suisse and a host of other financial institutions, narrowing the claims so dramatically with targeted summary judgment motions that the case settled for a tiny fraction of the plaintiff's estimated damages shortly before trial.
- We represented a major accounting firm in a successful motion to dismiss in a securities class action in the Western District of Texas, in which plaintiffs had alleged that the auditor turned a blind eye to insurance and accounting fraud being committed by the client's former management.
- We achieved a significant victory that substantially cut back the scope of a large securities class action against our client Royal Bank of Scotland when a district court granted our motion to dismiss all claims brought by purchasers of "ordinary shares" pursuant to the

Supreme Court's recent decision in *Morrison v. NAB*, and to dismiss the claims of ADR purchasers on standing grounds.

Regulatory and Government Affairs. Our regulatory and policy practices were instrumental in many of the firm's most significant matters of the year:

- WilmerHale served as lead or co-counsel for a wide range of financial institutions, hedge funds, accounting firms and individuals in connection with the Financial Crisis Inquiry Commission's review of the causes of the financial panic and market challenges of 2008.
- We counseled several of the world's largest banks on issues arising from federal regulatory inquiries, congressional investigations, bankruptcy proceedings and a 50-state attorney general investigation concerning the foreclosure crisis.
- We represented HSBC in the United States and globally on multiple fronts, in areas including Antitrust & Competition, Litigation, Regulatory (including work before the US Congress and several US government agencies) and Transactional.
- Our congressional investigations practice worked on high-profile US Senate, House, and Office of Congressional Ethics Committee inquiries involving the energy, financial services, technology, communications and media, and defense sectors.
- WilmerHale teams in Brussels and Washington DC obtained [synchronized merger clearances before the European Commission and the US Department of Justice for Cisco's successful acquisition of Tandberg](#) in the video communications sector.
- For Lufthansa, we [obtained the dismissal of a Sherman Act Section 1 price-fixing claim](#) alleging that our client and other defendant air carriers conspired to fix prices and surcharges on certain transatlantic flights.
- We represented Intel in the Federal Trade Commission suit alleging monopolization and unfair methods of competition in computer microprocessor and graphics markets.

Transactional. Our transactional lawyers handled an increasing number of deals for clients as the financial markets began their gradual recovery:

- We completed more than 25 public offerings raising more than \$7.7 billion, including [initial public offerings for Accretive Health, Ameresco, AVEO and SS&C](#), and more than \$5 billion in credit facilities, note issuances and receivable securitizations.
- We handled more than 80 M&A transactions with an aggregate value in excess of \$11.2 billion, including the [\\$1.9 billion sale of Netezza to IBM](#) and the [\\$1.2 billion sale of Skillsoft to SSI Investments III Limited](#).
- Our lawyers negotiated more than 40 significant technology transactions and licensing deals in information technology and life sciences with a disclosed value in excess of \$2.0 billion, and we ranked second in BioPharm Insight's table of pharmaceutical drug licensing agreements.
- We represented the second-largest holder of secured bank debt in connection with the restructuring of Tribune Company and successfully represented a steering committee of financial institutions that hold more than \$250 million in the restructuring of the secured debt in RJ O'Brien, one of the largest commodities futures trading institutions in the United

States.

Intellectual Property. In 2010, as ever, our intellectual property practice—which now numbers [approximately 150 lawyers and technology specialists with scientific and technical degrees](#)—functioned as the center and core of the firm's technical capabilities. It was a busy year for our IP Department:

- We filed more than 1,230 patent applications and secured close to 380 patents for inventions ranging from health care delivery systems to biomarkers for prostate cancer; and for clients including nanotechnology trailblazers Nantero and A123 Systems, technology leaders Red Hat and STEC, and life sciences innovators such as Columbia University, among many others. Our trademark practice filed 2,000 applications and obtained 1,440 trademark registrations.
- We filed a dozen new reexamination requests, bringing our roster of active reexamination matters to 45, and served as patent interference counsel for clients pursuing patents relating to stem cells, cancer treatments and other biotechnology areas.
- We conducted IP due diligence in connection with asset purchases, IPOs, stock offerings and acquisitions in diverse industries and regions.
- We developed our global IP presence, continuing to grow our international trademark practice, participating in IP initiatives in South Asia, and expanding our patent prosecution practice in Japan and China.

Pro Bono and Community Service. The energy and productivity of the year were echoed in diverse pro bono efforts in areas ranging from [civil rights](#) to [economic justice](#) to veterans' issues. We ranked #12 for pro bono among the Am Law 200, and [were honored to receive the American Bar Association's John Minor Wisdom Award](#) for our work on behalf of [Martin Tankleff](#) and [Dewey Bozella](#)—an accolade presented to only four firms since its inception in 2001.

- We achieved an important victory on behalf of the American Psychological Association and other mental health organizations when [the US Supreme Court, citing our amicus brief, held, in *Graham v. Florida*, that sentencing a juvenile to life in prison without parole for crimes other than murder violates the Eighth Amendment's ban on "cruel and unusual" punishment.](#)
- On behalf of the Coalition for the Homeless and a group of homeless men and women, we—together with Legal Aid co-counsel—succeeded in enforcing a consent decree that obligates the City of New York to provide sufficient shelter, of an adequate standard, to those in need.
- Among other international efforts, we [helped obtain the release of an American aid worker detained in a Haitian prison](#); assisted Sierra Leone in negotiating the development of a 50-acre Special Economic Zone near Freetown to boost employment and spur economic growth; and [advised nonprofit GALVmed in setting up a manufacturing and distribution chain for a cattle vaccine vital to the livelihood and food security of millions in Tanzania.](#)

As always, we are tremendously grateful to our firm community, our clients, and our friends, whose support has made it possible for us to embrace the challenges and opportunities of the past 12

months. We look forward to next year, when our new co-managing partners report to you on what we trust will be a successful 2011 for all.

William F. Lee and William J. Perlstein
Co-Managing Partners | WilmerHale