Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Trials Group Of The Year: Weil Gotshal & Manges

By Bill Wichert

Law360, New York (January 26, 2017, 8:21 PM EST) -- Led by attorneys skilled in breaking down complicated matters for juries, Weil Gotshal & Manges LLP notched victories for Morgan Stanley at an insider trading trial and for Philip Morris USA in a medical-monitoring case, earning it a spot among Law360's 2016 Trials Groups of the Year.

In securing verdicts in favor of those companies in late 2015 and early 2016, Weil attorneys said they were tasked with boiling down complex ideas in ways that were presentable to jurors in New York and Massachusetts federal courts without being condescending.

“You've got to figure out what's important and what isn't,” said Jonathan D. Polkes, who represented Morgan Stanley in the insider trading case, adding that lawyers have to break down a case so that “no matter how complicated it is, underneath it there's a story that people can understand.”

Preparing for the Morgan Stanley trial, Polkes said he used the concept of an “elevator pitch” that sums up why the bank should win the case.

“Everything you do — from the presentations you make to the judge beforehand, your in limine motions that you're bringing, your opening statement, the evidence you choose to present, the experts you put on and your closing — all of it has to be reinforcing the elevator pitch,” said Polkes, a Weil partner and co-chair of the firm's global litigation department. “That is the unifying principle of the whole trial.”

“Everything has to be on message,” Polkes added.

The lawsuit against Morgan Stanley was filed by Russian aluminum mogul Oleg Deripaska’s company Veleron Holding BV, which accused the bank of short-selling shares in auto parts maker Magna International Inc. in 2008 after learning that Veleron was unlikely to meet a $93 million margin call on a loan Veleron had used to invest $1.5 billion in the auto manufacturer.

Morgan Stanley denied wrongdoing, claiming it had no duty to refrain from trading in Magna stock and characterizing the short-sales as a legitimate hedge against market risks.

In November 2015, a New York federal jury found that Morgan Stanley was not liable for insider trading.

Jurors determined that the bank traded Magna shares while knowingly in possession of inside information and had a duty to keep the information confidential, but did not act with fraudulent intent.

Polkes noted that the case was groundbreaking for going to trial at all, saying trials involving a bank as a party are rare and that he was not aware of another private insider trading case that went before a jury.

“I think the fact that private insider trading cases are so rare and unusual in and of itself means ... in that respect, it's a groundbreaking case,” Polkes said.

Similarly, the Philip Morris case was unique for being “one of the rare class action cases that actually went through trial to verdict,” said Weil partner Diane P. Sullivan, who represented the tobacco company in the medical-monitoring trial in Massachusetts federal court.

In its February 2016 verdict, the jury decided that Philip Morris did not need to pay for annual lung screenings for a large class of currently healthy Marlboro smokers. The case was initially filed in December 2006.

The class of tens of thousands of healthy Massachusetts Marlboro smokers wanted the company to pay for annual scans using low-dose computed tomography, or LDCT, a relatively new technology that can pick up cancer signs much earlier than a chest X-ray. The scans cost $500 each, and a Philip Morris spokesman previously said that the annual screening program would have lasted 28 years and cost the company $190 million.

Philip Morris had maintained it could not be held accountable for the cost of the screenings. Sullivan said in her opening arguments that there was no safer alternative to the Marlboros Philip Morris made because the market rejected a low-tar product that the company promoted heavily in the 1980s.

Sullivan recently noted that the case was challenging in part because Massachusetts has the most difficult case law in the country for tobacco companies. Massachusetts also is one of the few states that recognize medical-monitoring claims, Sullivan said.

Given how the claims against Philip Morris failed in the most plaintiff-friendly jurisdiction in terms of case law after roughly a decade of litigation, plaintiffs' attorneys may now reconsider bringing similar claims against tobacco companies, Sullivan said.

“It'll cause plaintiff's lawyers to think twice before investing in this kind of a case again against the tobacco industry since ... they ended up not getting a penny after all that time and effort,” Sullivan said.

While Sullivan said she was given a year to prepare for the Philip Morris trial, sometimes clients have tapped Weil attorneys to handle cases just a few months before heading to trial.

“We get brought in because clients are worried it's going to go to trial and ... they want to add firepower,” said David J. Lender, a Weil partner and co-chair of the firm's global litigation department, adding that “telling a story to a jury is very different than what most litigators do.”

--Additional reporting by Max Stendahl, Carmen Germaine and Cara Salvatore. Editing by Jill Coffey.