

Law360's Weekly Verdict: Legal Lions & Lambs

By Andrew Strickler

Law360, New York (January 23, 2014, 8:16 PM ET) -- It was a big week for constitutionally minded legal lions, with a Mayer Brown LLP attorney winning a First Amendment case and others scoring a key ally in a challenge to Virginia's gay marriage ban. Our flock of legal lambs are led by a former Paul Hastings LLP partner with some questionable academic credentials, and a Florida attorney who committed a line foul on a visa application.

Legal Lions

Eugene Volokh of Mayer Brown LLP tops the lions with his First Amendment win in the Ninth Circuit, which reversed part of a lower court decision that found Obsidian Finance Group LLC did not need to show fault to establish liability against blogger Crystal Cox. Cox had accused Obsidian of tax fraud and was hit with a \$2.5 million defamation verdict. Cox had argued that the distinction between bloggers and traditional media has blurred. Obsidian is represented by Steven Wilker, Robyn Aoyagi and David Aman of Tonkon Torp LLP.

In another constitutional win, Virginia Attorney General Mark Herring said he will side with plaintiffs suing the state over a law restricting gay couples from marrying. Herring said he changed the state's position after deciding that the Virginia Marriage Amendment, enacted in 2006, violated the 14th Amendment and unlawfully discriminates on the basis of sexual orientation and gender. The plaintiffs are represented by Thomas Shuttleworth II, Charles Lustig, Robert Ruloff and Erik Porcaro of Shuttleworth Ruloff Swain Haddad & Morecock PC; David Boies of Boies Schiller & Flexner LLP; and Theodore Olson of Gibson Dunn.

Meanwhile, attorneys from Robins Kaplan Miller & Ciresi LLP and WilmerHale got a unanimous high-five from the U.S. Supreme Court with a ruling for Medtronic Inc. finding that patent owners bear the burden of proof when a licensee files suit alleging invalidity and noninfringement. The decision is a boost for companies seeking to challenge the validity of patents they have licensed. Medtronic is represented by Martin Lueck, Jan Conlin and Stacie Oberts of Robins Kaplan and Wilmerhale's Seth Waxman, Paul Wolfson, Brian Fletcher, Carolyn Chachkin, Weili Shaw and Mark Fleming.

Counsel for video game giant Electronic Arts Inc. set a high score when a California federal judge nixed a \$3.6 million copyright infringement verdict related to the company's marquee "Madden NFL" franchise. The judge said a jury didn't have sufficient evidence to support the verdict and incorrectly decided that EA illegally ripped off early versions of the game from a former programmer. The programmer is represented by Stuart Paynter, Jennifer Murray and Sara Willingham of The Paynter Law Firm

PLLC and Robert Carey and Leonard Aragon of Hagens Berman Sobol Shapiro LLP. EA is represented by Susan Harriman, R. Adam Lauridsen and Tia Sherringham of Keker & Van Nest LLP.

Dealmakers representing Anheuser-Busch InBev SA, along with lawyers for KKR & Co. LP and Affinity Equity Partners Ltd., popped the top on a \$5.8 billion buyback deal for South Korea's Oriental Brewery Co. Ltd. this week. The price dwarfs the \$1.8 billion price tag AB InBev attached to Oriental Brewery when it sold the unit in 2009 to KKR and Affinity Equity. AB InBev is represented by a Sullivan & Cromwell LLP team including Michael DeSombre, Joonkeun Yoo, Frank Jin, Victoria Yue, Tim Ruan and Frank Aquila. KKR is represented by a Simpson Thacher & Bartlett LLP team led by Mark Pflug.

Legal Lambs

Topping our list of legal lambs is former Paul Hastings LLP partner Dennis O'Riordan. The finance and banking specialist, who has also practiced at Cadwalader Wickersham & Taft LLP, was disbarred in London for fudging most of his academic credentials, including multiple phony degrees from Oxford University and Harvard University, neither of which he ever attended. An independent disciplinary board had recommended a three-year suspension.

Florida attorney Donnette Sonya Russell-Love is also facing suspension for falsifying visa documents for a Bahamian tennis player trying to travel to the U.S. to play in a tournament. A ruling from the state supreme court found a referee's recommendation of a 10-day suspension too light; in addition to a 91-day suspension, she was also ordered to pay \$2,855 in costs. Russell-Love's client was charged with violations of the Immigration and Nationality Act and could be banned from the U.S. Russell-Love represented herself.

Lawyers for Abbott Laboratories were also found to have behaved badly when they excluded a gay man from a jury pool for an antitrust trial with GlaxoSmithKline PLC over an HIV drug. The Ninth Circuit ordered a new trial after finding the matter a "prima facie" case of intentional discrimination. GSK is represented by Lisa Blatt of Arnold & Porter LLP and Brian Hennigan, Andrew Ow, Trevor Stockinger, Lillie Werner and Alexander Wiles of Irell & Manella LLP. Abbott is represented by teams from Munger Tolles & Olson LLP and Winston & Strawn LLP.

Counsel for a group of major U.S. accounting firms also found themselves among the lambs when a U.S. Securities and Exchange Commission administrative law judge said their Chinese units were barred from auditing companies that do business in the U.S. The reason: Their lawyers' refusal to reveal their clients' documents to SEC investigators. BDO China Dahua is represented by DLA Piper. Ernst & Young Hua Ming is represented by Orrick Herrington & Sutcliffe LLP. KPMG Huazhen is represented by Sidley Austin LLP. Deloitte Touche Tohmatsu is represented by Latham & Watkins LLP and Sidley Austin. PricewaterhouseCoopers Zhong Tian CP is represented by Davis Polk & Wardwell LLP.

In the latest tale of law firm layoffs, Missouri-based Husch Blackwell LLP, seven months out from a significant merger with Texas' Brown McCarroll LLP, let go 25 staffers in recent days, with the chairman citing the need to do "more with less." The firm joins a score of other BigLaw firms who have made similar staff-targeted layoffs since early 2013.

Benchslap of the Week

And for our benchslap of the week, Manhattan Civil Court Judge Frank P. Nervo laid into some Mayer Brown LLP lawyers for requesting \$126,026.88 in fees for representing plaintiffs in a case against their

landlord, saying the fee request was filled with items that were redundant, unnecessary or simply “egregious.”

That included 4 1/2 hours Mayer Brown associate Bridget Kessler billed for researching civil rules and drafting a recovery complaint, tasks the judge said “even were they necessary, could have been performed within minutes.” Another \$1,620 was then billed for a nearly identical set of tasks, followed by 4 1/4 hours more for revising the draft complaint.

Judge Nervo declined in full the firm’s request to recover fees from the defendants, noting in particular the seven hours the firm billed for reviewing documentation related to a onetime security deposit for which the plaintiffs had a receipt.

"This is a grossly unnecessary amount of time for such a simple matter," he said. "Indeed, the basis upon which any attorney can actually occupy himself or herself over seven hours reviewing this nominal and uncomplicated material, in a simple case like this, defies imagination."

--Additional reporting by Michael Lipkin, Ryan Davis, Karlee Weinmann and Carolina Bolado. Editing by Jocelyn Allison and Edrienne Su.