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Daily Journal's Top Defense Verdicts 2023 - In Re: HIV Antitrust Litigation

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The allegation sounded serious: defendant Gilead Sciences was accused of having struck an anticompetitive pay-for-delay patent deal with a generic manufacturer that harmed people with HIV. The plaintiffs sought $3.6 billion.

But lawyers from Proskauer Rose LLP, Kirkland & Ellis LLP and Goodwin Procter LLP — making up a trial team led by Proskauer's Bart H. Williams — came back with a successful, aggressive defense that convinced federal jurors that the 2014 patent settlement between Gilead and Teva Pharmaceuticals actually promoted competition that worked to benefit businesses and consumers alike.

"It's rare for pay-to-delay cases to go all the way to jury verdict," Williams said. "There have only been two such cases prior. So, we were in somewhat unknown territory. Most of these settle because the stakes are so high."

But after a six-week trial, the jury delivered a full defense verdict.

Also key to the team: Kirkland's Devora W. Allon and Goodwin's Christopher T. Holding. *In re HIV Antitrust Litigation,* 3:19-cv-02573 (N.D. Cal., filed May 14, 2019).

"We felt really good about our story, but how were we going to come across to a San Francisco jury that was hearing we overcharged for AIDS medications?" Allon said. "The plaintiffs tried to advance a narrative that they were on the side of AIDS activists, but we showed nothing could be further from the truth."

Holding, representing Teva, said one plus for the defense was Teva's decision to waive attorney-client privilege so it could show its internal deliberations at the time the deal with Gilead was negotiated to end Teva's suit. "It's a long shot when you sue over patents like this. Our documents showed we calculated we had only a 17.5% chance of winning, so the plaintiffs' narrative that this was a sweetheart deal didn't ring true. The fact is, the deal put us and our generics on the market three years earlier than it would have been otherwise."

In the end, jurors were convinced that the Gilead-Teva settlement was a win-win for the people living with HIV and the physicians who prescribe the medicines. "It's the way the patent ecosystem is supposed to work, and that came across:' Williams said.

Lawyers for the plaintiffs did not return messages seeking comment on the case.

Related Professionals

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