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Covington Wins Trade Secrets Trial with \$500M on the Line

By Jenna Greene

February 13, 2017



Courtesy photo

Clara Shin

With only five months before trial, a team of litigators from Covington & Burling parachuted into a trade secrets case against a division of McKesson Corp. with half a billion dollars at stake.

Covington partner Clara Shin led McKesson's defense, delivering an across-the-board win at trial in New York state court on Friday.

The largest pharmaceutical distributor in North America, McKesson was sued in Supreme Court of the State of New York in 2007 by PSKW over the idea for a drug loyalty card that used pharmacy payment technology to process real-time prescription discounts.

The two companies originally worked together on the concept, but couldn't come to terms and parted ways.

Represented by David A. Robinson, a partner at Hodgson Russ, PSKW accused McKesson of "stealing" the idea. It sought nearly \$250 million in damages, more than \$200 million in disgorgement, nearly \$40 million in lost profits, and \$2 million for tortious interference. PSKW also wanted McKesson's patents assigned to it.

After a bench trial that went on for a year (although with only about two weeks of actual court days—there

were long pauses due to the court's schedule and the plaintiff's request for a mid-trial deposition), Justice Saliann Scarpulla in an 18-page decision sided with McKesson all the way.

Scarpulla found that the trade secret claim failed because the supposedly original co-pay method wasn't actually all that novel. "Instead, the credible evidence showed that the elements of the [new co-pay method] were known in the pharmacy adjudication services industry at the time," she wrote. The evidence also showed other companies were busy developing their own prescription drug loyalty cards at the same time PSKW laid claim to the concept.

The Covington team replaced Orrick, Herrington & Sutcliffe in representing McKesson.

"I'm proud of the fact we came in five months before trial and took a fresh look at the record," Shin said.

One key: the team found a new batch of exculpatory documents. "In addition to showing [PSKW] was not able to prove their case, we used documents we found to tell an affirmative story that [McKesson] developed" the co-pay method on its own, she said.

The Covington team also included senior counsel Robert Haslam, partners Nathan Shafroth and Christopher Yeung, and associates Hyun Byun, Ethan Forrest, Wallace Lee and Chris Zirpoli.

Contact Jenna Greene at jgreene@alm.com. On Twitter @jgreenejenna.