

LITIGATION DEPARTMENT OF THE YEAR

2017

CLARA SHIN,
COVINGTON & BURLING
WINNER, COMPLETE
DEFENSE VERDICT

GAME CHANGER:
CLARA SHIN,
COVINGTON & BURLING

BY ROSS TODD

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Shin won a complete defense verdict for McKesson Corp. in a long-running trade secret case after subbing in for prior counsel five months before trial.



Clara Shin, Covington & Burling.

McKesson Corp. was staring down nearly half-a-billion dollars in potential damages and interest claims when the company brought on Covington & Burling's Clara Shin to handle a long-running case accusing it of using stolen trade secrets to develop the LoyaltyScript co-pay discount program.

With just five months until trial, Shin reoriented the case and her team found a new batch of exculpatory documents, which led to a complete defense verdict for McKesson in New York state court. Shin recently told *The Recorder* about how she approaches cases where she has to come from behind to secure a win for a client.

What were the things that had previously gone against McKesson in the case before you came aboard? What sorts of hurdles were they facing heading into trial? The case faced some challenges when Covington was brought in five months before trial. McKesson and its prior counsel had suffered a loss at the Appellate Division of the New York Supreme Court, First Department, which overturned a summary judgment victory. The reversal dramatically expanded the scope of trial by leaving the plaintiff's claims fully intact, including allegations that McKesson misappropriated 22 broad categories of alleged trade secrets and confidential information.

The age of the case was another significant and complicating factor—the plaintiff filed suit in 2007, and the

claims involved events that took place in 2004 and 2005. We had to track down witnesses who had departed the company, piece together dimming memories, and reassemble the case materials.

How were you and your team able to turn the tide? Eight years into the case, McKesson brought Covington in to reformulate its litigation strategy and take the case to trial. We looked at the case with fresh eyes and double-tracked our approach: we conducted a systematic review of the factual record while preparing for trial.

We also secured live trial testimony from an important third-party witness who helped to establish that the alleged trade secret was already known in the field and we identified critical omissions in the plaintiff's case, including the absence of any documentary evidence that the plaintiff had shared the alleged trade secret with McKesson before McKesson independently developed the disputed concept.

At the same time, we uncovered documents establishing that it was McKesson who first shared the disputed concept with the plaintiff, and not the other way around.

What sorts of skills does a litigator need to have in order to score a come-from-behind victory for a client? While it is important to respect prior counsel's handling of the case, you must aggressively re-vet all potential legal theories and trial themes. Developing a strong partnership with the client is also critical.

McKesson counsel had an unrivaled knowledge of the dispute, weighed in on all strategic decisions, and located material information and witnesses, including former employees, who were critical to turning our case around. Most importantly, we assembled a trial team who sweated the details, was comfortable with unpredictability, outworked the other side, and enjoyed each other's company.

How does playing from behind differ from getting out to an early lead in a case? You have to spend time figuring out why your legal theories and factual narrative are not getting traction with the court or jury, and pivot as necessary.

Who is a litigator outside your own firm that you admire and why? Sarah Good, co-leader of Pillsbury's securities litigation and enforcement team. Sarah is an exceptional attorney who is brilliant on substance and practical on execution. She is also tireless in advancing young attorneys and ensuring they get early stand-up experiences.

Sarah let me argue a summary judgment motion in my first year of practice and gave me my first jury trial. I credit the lawyer I am today to her mentorship and advocacy.

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