

LEGAL & LITIGATION DEPARTMENTS OF THE YEAR



Greenberg Traurig, Class Action Litigation Practice. Left to right are: Louis Smith, David Jay, Ian S. Marx, Jason Kislin, Rebecca Garibotto Zisek, Paige Nestel, Philip Sellinger, Geoffrey S. Berman, Lori G. Singer, Jaclyn DeMais, Eric Wong, Yangho Charles Shin and Theodore J. McEvoy. Other members of the team not pictured include: Roger B. Kaplan, David E. Sellinger, Helen E. Kleiner, Todd L. Schleifstein and Aaron Van Nostrand.

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GREENBERG'S CLASS ACTION GROUP TACKLES HIGH-VALUE CASES

BY CHARLES TOUTANT

Class action litigation is a major focus at Greenberg Traurig's New Jersey office, with half the roughly 75 attorneys being litigators, many of whom specialize in class action defense. In that capacity, the lawyers are called upon to defend numerous significant class actions in New Jersey and throughout the country.

The firm's strength in class actions was demonstrated in a string of victories in cases in New Jersey and elsewhere in 2015. Philip Sellinger, co-managing shareholder of Greenberg Traurig's New Jersey office—who served as founding chair of the New Jersey State Bar Association's Class Action Committee—was lead counsel on several of those cases.

In June 2015, the firm prevailed before the U.S. Court of Appeals for the Second Circuit on behalf of Verizon Wireless in a case seeking more than \$10 billion in damages, in *In Touch Concepts d/b/a Zcom v. Cellco Partnership d/b/a Verizon Wireless*. The case arose after Verizon Wireless sought to terminate its agreement with ZCom, a sales agent with locations throughout the Northeast and Texas. After several years of litigation, the U.S. District Court for the Southern District of New York dismissed the case, and the Second Circuit affirmed the district court's decision in its entirety.

In the following month, firm client Marriott Ownership Resorts settled a case—for a nominal amount, according to Greenberg Traurig—after a federal judge in the Central District of California dismissed a significant portion of a class action suit lodged on behalf of 12,000 owners of timeshare interests at the company's resorts. In *Abramson v. Marriott Ownership Resorts*, potential exposure was in the hundreds of millions of dollars, and plaintiffs sought significant declaratory and injunctive relief that would have a major impact on the company's business model, the firm said. But the plaintiffs' unconventional approach

of moving for class certification at an early stage in the proceeding failed when the motion was defeated.

September 2015 brought a ruling defeating a class action against client Live Nation Inc. focusing on the alleged practice of withholding concert tickets from sale, in violation of New Jersey statute. In *Forst v. Live Nation, Inc.*, the court granted Greenberg Traurig's motion to dismiss based on the vagueness of the ticket-withholding claims, among other reasons, and the firm also won dismissal of a New Jersey Consumer Fraud Act claim. The plaintiffs' motion for reconsideration was denied.

In *Marchak v. J.P. Morgan Chase & Co.*, Greenberg Traurig defeated a claim against client HSBC Bank on behalf of victims of a \$40 million Ponzi scheme. The case was first filed in Kings County Supreme Court in New York, but the firm—concerned about the venue, it said—removed the case to U.S. District Court for the Eastern District of New York, withstanding the plaintiffs' motion to remand the case to state court. Following significant motion practice, Greenberg Traurig obtained dismissal of the suit.

Also last year, Greenberg Traurig beat back a consumer fraud claim against client Whole Foods Market Group Inc. in a class action accusing several food store chains of selling bread that was falsely touted as baked in-house, in *Mladenov v Wegmans Food Markets, Inc.* The firm won an order dismissing the claims in their entirety, including class claims, on the basis that the proposed class definition was invalid because of an inability to establish any ascertainable, out-of-pocket loss.

In *Bello v. Beam Global Spirits & Wine*—one of the first cases to implement recent Third Circuit rulings regarding ascertainability of putative classes under Rule 23—the plaintiffs withdrew the action.

Greenberg Traurig represented SGC Global—maker of Skinny Girl Margarita, a low-calorie cocktail mix—which was sued for its advertising claims that the product was “all natural.” The plaintiffs' motion to certify three classes was denied, and a revised motion for certification was also denied in June 2015, prompting dismissal of the case.

And in *Cottrell v. Alcon Laboratories*, the firm successfully defended a suit over eye drops whose dispensers allegedly produced oversized eye drops that were larger than a human eye could absorb. The class members said customers had to buy additional eye drops because of waste, but the case was dismissed for lack of Article III standing, according to Greenberg Traurig.

Greenberg Traurig clients benefit from the firm's technology investments, including LawDRILL.net, which provides detailed financial information for every case, and is used under license by other law firms. The firm's litigators also are able to collaborate with clients through the firm's eRoom—a secure, web-based virtual desktop that can be tailored to any case or project. The firm also offers a legal project management department, which focuses on using standardized project management principles, tools, processes and customized software to plan the efficient delivery of legal services to clients. ■