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## Law360's Weekly Verdict: Legal Lions & Lambs

By Andrew Strickler



Law360, New York (August 27, 2015, 6:31 PM ET) -- Teams from Sullivan & Cromwell LLP and Williams & Connolly LLP ripped up several suits involving high-frequency trading, a practice spotlighted in Michael Lewis' "Flash Boys," leading this week's pride of legal lions. Our lambs include a lawyer who came empty-handed to oral arguments and Dole Food Co. executives who got some bad news from a Delaware judge.

### Legal Lions

Lawyers for **Barclays PLC** and several exchanges **slowed the roll** for plaintiffs who filed suits targeting high-frequency trading. A New York federal judge dismissed five cases leveling accusations that Barclays and several exchanges let high-frequency traders get an unfair advantage by allowing them to obtain trading data marginally faster than others. The judge said the exchanges are self-regulatory organizations performing regulator-like functions, and are immune to claims over those functions just as other regulators would be. Barclays is represented by **Jeffrey Scott, Brent McIntosh, Matthew Schwartz, Andrew Reynard**, and **John Hughes III** of **Sullivan & Cromwell LLP**. The defendant exchanges are represented by **Gibson Dunn, Murphy & McGonigle PC** and **Williams & Connolly LLP**.

The Seventh Circuit this week split from the Ninth Circuit's interpretation of the Class Action Fairness Act and largely upheld \$1.6 million in attorneys' fees in a class settlement for **Southwest Airlines** fliers holding expired drink vouchers. Objectors had argued the 2012 deal didn't justify the fees; an appellate panel disagreed and said a **Iodestar calculation** was allowed. The class is represented by **Joseph Sipurut, Gregg Barbakoff** and **Gregory Jones** of **Sipurut PC**. Objectors are represented by **Theodore Frank** and **Melissa Holyoak** of the **Center for Class Action Fairness**. Southwest is represented by **Michael Drumke** of **Swanson Martin & Bell LLP** and **Huey Wells Jr.** of **Maynard Cooper & Gale PC**.

Teams from **Paul Hastings LLP** and **Kaye Scholer LLP** grappled with the **Coalition for Affordable Drugs LLC** — the group has close ties to hedge fund manager **Kyle Bass** — and **came out on top** at the Patent Trial and Appeal Board. PTAB declined to institute two inter partes reviews of patents covering **Acorda Therapeutics Inc.**'s multiple sclerosis drug Ampyra, saying the coalition failed to show a reasonable likelihood it would prevail with at least one claim challenging petitions. Acorda is represented by **Gerald Flattmann** and **Naveen Modi** of Paul Hastings and **Aaron Stiefel, Dan DiNapoli** and **Sylvia Becker** of Kaye Scholer. The Coalition for Affordable Drugs is represented by **Skiermont Puckett LLP**.

Oilfield services company **Schlumberger Ltd.**, led by **Baker Botts LLP**, **sealed a deal** worth \$12.7 billion for Houston-based **Cameron International Corp.** Schlumberger will

pay \$14.44 plus 0.716 of a share per share of Cameron, valuing each Cameron share at \$66.36. Together, the companies had \$59 billion in revenue in 2014. The Baker Botts corporate team included **David Kirkland, Tull Florey, A.J. Ericksen, Travis Wofford, Daniel Gottschalk, Christopher Masrach, Derek Green, Jon Lobb, Rob Fowler, and Derek McDonald. Gibson Dunn** acted as Schlumberger global antitrust/competition counsel.

A Tennessee state court jury awarded **Opry Mills Mall Limited Partnership** and **Simon Property Group LP** \$204 million, ending a five-year dispute with insurers including **Zurich American Insurance Co.** over coverage after a Nashville mall was flooded. While a judge had already granted summary judgment that Opry Mills and Simon were entitled to up to \$200 million in flood coverage, the jury came back with a verdict award for the **highest possible amount** following a six-week trial. Plaintiffs are represented by **Gregory Cashion** and **Kenneth Schrupp** of **Smith Cashion & Orr PLC** and **Andrew Detherage, Charles Edwards, Christian Jones** and **Lindsey Dates** of **Barnes & Thornburg LLP**.

### Legal Lambs

**Dole Food Co. Inc.** CEO **David Murdock** and general counsel **C. Michael Carter** are liable to investors for \$148 million for fraud intended to drive the company's price down ahead of a go-private deal, a Delaware Chancery judge ruled this week. Murdock and Carter's conduct "demonstrated that their actions were not innocent or inadvertent, but rather **intentional and in bad faith**," the judge said. Dole and individual defendants are represented by **Bruce Silverstein** of **Young Conaway Stargatt & Taylor** and **Theodore Boutrous, Andrea Neuman, Colin Davis, Meryl Young** and **William Dawson** of **Gibson Dunn**.

**Wyndham Worldwide Corp.** lost in the Third Circuit this week as the court affirmed the Federal Trade Commission's **authority to regulate companies' data security**. The appellate panel rejected Wyndham's position that Congress had never intended for the commission to be able to use its unfairness authority to police such practices. The dispute over the scope of the commission's data security authority was sparked in 2012, when the FTC filed its complaint alleging Wyndham had violated both the unfairness and deception prongs of Section 5 by failing to maintain security, leading to massive data breaches. Wyndham is represented by **Eugene Assaf, Christopher Landau, Susan Davies** and **K. Winn Allen** of **Kirkland & Ellis LLP**, **Douglas Meal** and **David Cohen** of **Ropes & Gray LLP** and **Jennifer Hradil** and **Justin Quinn** of **Gibbons PC**. The FTC is represented by **Joel Marcus, David Shonka Sr.** and **David Sieradzki**.

A Manhattan federal judge overseeing a massive antitrust multidistrict litigation related to gaming of the London Interbank Offered Rate tossed a plaintiff and her lawyer, **Craig B. Sokolow**, out of court after they came **unprepared to court**. During oral arguments, **U.S. District Judge Naomi Reice Buchwald** put pressure on plaintiffs to justify remaining in the MDL, and dismissed plaintiff Fran Goldsleger and Sokolow for failing to show up with any documents to support their claim that mortgage payments had gone up due to rate rigging.

Lawyers representing Nebraska factory workers against **Tyson** saw verdicts totaling \$24 million from donning-and-doffing class action trials **tossed by the Eighth Circuit**. The appellate court held that claims by employees that they were entitled to additional compensation under the Fair Labor Standards Act for time spent taking on and off protective gear weren't properly supported and can't be raised through an action under the Nebraska Collection Act. The classes are represented by **Daniel Arciniegas, Candis McGowan** and **Robert Wiggins Jr.** of **Wiggins Childs Quinn & Pantazis LLC**, **Michael Hamilton** of **Provost Umphrey Law Firm LLP**, **Brian McCafferty** of **Kenney & McCafferty PC**, **Jay Smith** of **Smith & McElwain Law Office** and **Roger Doolittle**.

Tyson is represented by **Baird Holm LLP**, **Hunton & Williams LLP** and **Bryan Cave LLP**.

**Dominick's Finer Foods LLC** went **one on one** with His Airness this week and couldn't find the basket. The grocery store chain will to pay basketball legend Michael Jordan \$8.9 million for using his image in a Sports Illustrated ad without his OK. The jury needed just one day to determine the amount, overriding defense arguments that Jordan's image was worth a mere \$127,000. Dominick's is represented by **Stephen Rosenfeld**, **Steven Mandell** and **Rebecca Edwards** of **Mandell Menkes LLC**.

A Texas federal judge slashed Houston firm **T. Wade Welch & Associates'** \$9 million fee request, ordering **OneBeacon Insurance Co.** to **fork over \$4 million** following a \$30 million judgment requiring the insurer to indemnify the firm in a malpractice suit. The judge said the firm isn't entitled to a lodestar adjustment based on the contingent nature of a case stemming from an antitrust suit it handled for **Dish Network Corp.** The judge also rejected T. Wade Welch's request for more than \$400,000 in conditional fees in the event of an unsuccessful appeal by the insurer. T. Wade Welch is represented by **David Miller** and **Diane Burgess** of **Miller Scamardi & Carrabba PC** and its own **T. Wade Welch**. OneBeacon is represented by **Strasburger & Price LLP** and **Gordon & Rees LLP**.

--Additional reporting by Cara Salvatore, Jody Godoy, Erin Coe, Chelsea Naso, Peter Hall, Pete Brush, Jessica Corso and Shayna Posses. Editing by Chris Yates.

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