

Class Action Group Of The Year: Covington

By Jennifer Doherty

Law360 (December 1, 2020, 4:34 PM EST) -- Covington and Burling LLP helped Paycheck Protection Program lenders navigate \$3 billion in claims, thwarted a federal judge's bid to bypass arguments in a massive opioid litigation and steered Facebook through accusations that it misled advertisers, earning the firm a place among Law360's 2020 Class Action Groups of the Year.

Co-chairs Sonya D. Winner in San Francisco and Andrew Soukup of the firm's Washington, D.C., office credit much of their 58-person group's success to their deep commitment to collaboration, both within and across teams. That same commitment to teamwork has advanced them to the front of some of the biggest class actions of the year.

"We tend to find ourselves leading those joint defense groups a lot of the time, because we know how to do it," Winner told Law360 in October. "We know how to work collaboratively to be respectful of other people's views, but to still keep moving forward."

One such group was made up of counsel representing six lenders including JPMorgan Chase, who handed out COVID-19 relief funds to businesses amid the economic downturn in 2020. More than 80 accountants have filed 100 suits nationally against PPP lenders, claiming the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, that created the PPP also required lenders to pay referral and application preparation fees. The claims initially totaled about \$3 billion.

Soukup and Covington partner Ashley M. Simonsen led the firm's delegation to the joint defense group before Judge Jed S. Rakoff in the Southern District of New York. In September, Soukup was tapped to deliver oral arguments defending the lenders' position that they couldn't be required to pay fees to entities they never entered into contracts with.

Based on those arguments, Judge Rakoff dismissed all six of the proposed class actions against the New York cohort, setting a precedent that other lenders have since used to shake similar claims.

"It's just a matter of finding the right expertise to put on a particular case, because we all are very, very good at working with each other," Soukup said of his group, adding that he and Simonsen also worked



closely with Covington's regulatory team to go one step further and "made sure we didn't just win this case, but also set the stage for moving the law the way we wanted to."

Winner highlighted the group's bi-coastal presence as another asset in the PPP case and others, endowing the team with a broad view of the national judicial climate that has led to victories in an array of jurisdictions.

She credited a similar approach to Soukup and Simonsen's work on the PPP lender defense to the team's success appealing the creation of a "negotiation class." As counsel to McKesson Corp., Winner and her Covington team became the leaders of a coalition of pharmaceutical firms facing 3,000 suits in multi-district litigation — possibly the largest civil action in history, Winner said — for their alleged roles in the nation's opioid crisis.

The companies challenged an Ohio federal judge's decision to certify a new breed of class "not to litigate the cases, but rather a class of every city and county in the entire United States that would somehow collectively negotiate with various defendants," Winner said.

In September, the Sixth Circuit accepted Winner's arguments that the Federal Rules of Civil Procedure did not allow for such a thing as a negotiation class, removing it from the lower court's toolbox.

Simonsen said she considers Winner, who founded the firm's San Francisco office and was a driving force behind creating its class action practice, a mentor.

"I still think every day when I'm making a decision about something, 'What would Sonya do here?'" she said. "She taught me really 90% of what I know about being a class action lawyer."

That training served Simonsen well in August, when she persuaded a California federal judge to dismiss a claim accusing Facebook of owing refunds dating to 2013 to a national class of advertisers.

According to the complaint, advertisers, who pay Facebook based on the number of clicks their ads receive, were entitled to refunds for clicks from fake accounts that slipped through the social media giant's filtering systems.

Just two weeks after a different judge allowed a parallel suit against Twitter to proceed, Simonsen and fellow Covington partner Kathryn Cahoy successfully argued that the plaintiffs failed to show they relied on a statement in Facebook's Business Help Center saying the company would not charge for "invalid" clicks, but that all advertisers agreed to Facebook's terms, which include a disclaimer on ad fraud. But the judge allowed the plaintiff to amend their complaint, so Simonsen was gearing up for another hearing in early November.

Taking cues from Simonsen's gratitude toward Winner, Soukup told Law360 his mentor, Covington partner Robert D. Wick, taught him the importance of bringing out the best in others.

"We may be the ones in court arguing a particular issue, but we're doing so, in many cases, based on the strength of the research done by other members of our team, based on discussions that we might've had in team meetings about what is the right argument to make and what is the right way to make the argument," Soukup said. "And that collaborative process is really essential."

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