

Law360's Weekly Verdict: Legal Lions & Lambs

By **Andrew Strickler**



Law360, New York (July 23, 2015, 7:32 PM ET) -- Lawyers facing off against Neiman Marcus won the first federal appeals court opinion addressing whether the U.S. Supreme Court's "certainly impending" standard applies in a data breach suit, leading this week's pack of legal lions. Meanwhile, the Second Circuit revived a putative overtime class action against legal lamb Skadden Arps Slate Meagher & Flom LLP.

Legal Lions

Neiman Marcus Group LLC customers whose credit card information was hacked **can sue for fraud prevention expenses** as well as bogus charges, the Seventh Circuit said this week. A three-judge panel said the U.S. Supreme Court's decision in *Clapper v. Amnesty International USA* does not bar claims by a proposed class of 350,000 customers affected by 2013 data breach. The decision overturned a district court ruling and set circuit precedent on a hotly debated issue affecting millions of consumers. The plaintiffs are represented by **Robert Ahdoot, Theodore Maya** and **Tina Wolfson** of **Ahdoot & Wolfson PC** and **Joseph Sipur** of **Sipur PC**. Neiman Marcus is represented by **David Hoffman, Daniel Craig** and **Tacy Flint** of **Sidley Austin LLP**.

A slow-growing class action over moldy dishwashers **bloomed this week** when an Illinois federal judge granted class certification to a group of consumers suing **Sears Roebuck & Co.** over alleged design defects and mold odors. The initial filing was made a decade ago; the court denied class certification four years ago, finding that questions of law common to class members didn't predominate over individualized questions. But after the Seventh Circuit reversed, the U.S. Supreme Court asked it to reconsider in light of the damages theory of its *Comcast Corp. et al. v. Caroline Behrend* decision. The plaintiffs are represented by **James Rosemergy** of **Carey Danis & Lowe LLC**, **Steve Schwartz** of **Chimicles & Tikellis LLP** and **Jonathan Selbin** of **Lieff Cabraser Heimann & Bernstein LLP**. Sears is represented by **Wheeler Trigg O'Donnell LLP** and **Barnes & Thornburg LLP**. **Whirlpool Corp.** is represented by **Bartlit Beck Herman Palenchar & Scott LLP**.

The legal team representing former Major League Baseball star **Barry Bonds** rounded home this week and threw up some high fives. Federal prosecutors said Bonds **will not face a Supreme Court appeal** of the ruling that vacated his obstruction of justice conviction. In April, the Ninth Circuit appeals court found that Bonds was improperly convicted on the basis of a single answer before a grand jury regarding his suspected steroid use. Bonds is represented by **Dennis Riordan** and **Donald Horgan** of **Riordan & Horgan** and **Allen Ruby** of **Skadden Arps Slate Meagher & Flom**.

Many of BigLaw's premier lobbying shops got a second-quarter boost, as **Akin Gump Strauss Hauer &**

Feld LLP continued to **pull ahead** in the revenue race. Akin Gump's reported revenue from federal lobbying in the second quarter was \$10.23 million, up from \$9.6 million in the first three months of the year. **Brownstein Hyatt Farber Schreck LLP** saw a solid quarter-to-quarter gain of more than 7 percent as **Squire Patton Boggs LLP**, **Holland & Knight LLP**, **K&L Gates LLP** and **Williams & Jensen PLLC** all enjoyed smaller bumps.

Lawyers representing **HTC Corp.** will see their **legal bills paid** by the opposition in a federal patent case. An Illinois judge said **Niro Haller & Niro Ltd.** and former client **Intellect Wireless Inc.** were on the hook for nearly \$4.1 million in fees HTC incurred while defending claims it infringed a patent that was found to have been fraudulently obtained. The judge rejected Niro's argument that HTC shouldn't receive any fees incurred after September 2014 because that time was devoted to pursuing legal fees, and Niro's stance that HTC had double-billed some expenses. HTC is represented by **Stephen Korniczky**, **Martin Bader**, **Gray Buccigross** and **Matthew Mueller** of **Sheppard Mullin Richter & Hampton LLP**, and **Paul Korniczky** of **Leydig Voit & Mayer Ltd.** The Niro attorneys are represented by **Norman Hanson & DeTroy LLC**. Intellect Wireless is represented by **Kulwin Masciopinto & Kulwin LLP**.

Legal Lambs

One of BigLaw's elites — **Skadden Arps Slate Meagher & Flom LLP** — **lost a big round** in an overtime class action case this week. A Second Circuit appellate panel backed a lower court's ruling to look to North Carolina law in determining whether plaintiff **David Lola**, who did temporary document review work for the firm, was practicing law under the meaning of the Fair Labor Standards Act. The panel said the trial court erred in concluding that document review "per se constitutes practicing law," and vacated a September ruling granting a motion to dismiss from Skadden and fellow defendant **Tower Legal Staffing Inc.** Skadden and Tower are represented by **Stephanie Aranyos** and **Brian Gershengorn** of **Ogletree Deakins Nash Smoak & Stewart PC**. Lola is represented by **D. Maimon Kirschenbaum** and **Denise Schulman** of **Joseph & Kirschenbaum LLP**.

Nelson Mullins Riley & Scarborough LLP partner **Sarah Buffett** was **arrested by federal authorities** after allegedly disrupting a London-bound flight, causing the aircraft to be diverted to Philadelphia. Buffett, an immigration lawyer in the firm's Charlotte, North Carolina, office, was seated in first class when she became "physically aggressive" after takeoff, federal officials said, resulting in her being bound with plastic ties and tape. The firm suspended Buffett and issued a statement saying it was "sympathetic" to the inconvenience caused to her fellow passengers.

Ten **Dickstein Shapiro LLP** attorneys, including insurance group head **Kirk Pasich**, are headed to **Liner LLP** in Los Angeles. **Sandra Smith Thayer**, **Fiona Chaney** and **Michael Gehr** and others will form a **new insurance recovery practice** at Liner, according to a source familiar with the move. Two months ago, **Cozen O'Connor** welcomed 10 other Dickstein lawyers a state attorneys general practice to form a new Cozen practice group focusing on consumer protection, antitrust, environmental and other issues. **Arent Fox LLP** and **Kaye Scholer LLP** have also taken in Dickstein lawyers this year in New York and California.

A San Francisco judge **dissed** Los Angeles firm **Initiative Legal Group APC** for cutting a side deal with **Wells Fargo Bank NA** for fees coming from a wage-and-hour settlement. San Francisco Superior Court Judge Mary Wiss ordered the firm to give six years' worth of fees to class members — all \$5.4 million of it. The fees came via a deal made between Wells and ILG that settled individual actions for 600 ILG clients who were encouraged to join an overtime class action brought by mortgage consultants. The judge found the firm had improperly kept the deal from the court and collected the fees without approval. ILG is represented by **Natalie Vance**, **Gregory Fayard** and **Leah Plaskin** of **Klinedinst PC** and

Sean SeLegue of Arnold & Porter LLP.

A Philadelphia jury **banged the gavel** on retired **Philadelphia County Court of Common Pleas Judge Willis W. Berry Jr.** The jury needed barely an hour to find Judge Berry guilty of both theft of services and conflict of interest by running a real estate business out of his chambers. The charges stemmed from allegations that his former judicial secretary had routinely handled work for his rental properties during business hours. Judge Berry was released awaits sentencing. He is represented by **Nino Tinari** and **Fred Harrison**.

--Additional reporting by Jody Godoy, Ben James, Y. Peter Kang, Kurt Orzeck, Dan Packel, Cara Salvatore and Beth Winegarner. Editing by Katherine Rautenberg.

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