

Government Contracts Group Of The Year: Latham & Watkins

By Bryan Koenig

Law360, Washington (January 7, 2016, 7:56 PM ET) -- Major appellate wins in 2015 against False Claims Act suits combined with an important victory over a patent used in work for federal agencies helped earn Latham & Watkins LLP a spot among Law360's Government Contracts Groups of the Year.



Practice head David R. Hazelton says the victories — including getting the Sixth Circuit to nix an eventual \$664 million FCA judgment against client United Technologies Corp. — are as much about the firm's ability to bring all its resources to bear on a case as it is about the two dozen lawyers working in the government contracts practice group itself.

“One of the distinctives of Latham's government contracts practice is our ability to tap into the expertise of other practices that overlap with ours,” Hazelton told Law360, pointing to the 100-plus attorneys in Latham's broader aerospace and defense and government services industry group and the ability to handle cases on its own where other firms might have to seek help.



David Hazelton

According to Hazelton, Latham's core government contracts team has about four senior partners and another dozen associates out of a firm of more than 2,200. In defending UTC, that team was joined both by Latham's large white-collar practice as well as its appellate resources, Hazelton said.

UTC subsidiary Pratt & Whitney had been accused of lowballing cost estimates for F-15 and F-16 fighter engine contracts but the Sixth Circuit sent the case — first filed in 1999 — back to the district level in April with a finding that the government never provided an accurate damages estimation and would need to account for how competition with fellow contractor General Electric Co. affected prices in order to seek any payout.

The UTC decision was in fact the case's second turn in front of the Sixth Circuit after the appeals court initially sided with the government when the judge awarded no damages the first time around. After the first appeals ruling, the judge awarded the government \$664 million, which is when Latham came in for the second appeal.

“It was a very large judgment against a very significant and valued client,” Edward J. Shapiro, who worked on the case, told Law360.



Edward Shapiro

Latham also in 2015 successfully defended another \$50 million FCA, this time from a relator, against contractor and client GSD&M Idea City LLC in both Texas district court and before the Fifth Circuit.

Relator Johnny Ray Long had accused GSD&M of inflating costs on an advertising contract with the U.S. Air Force, but the appeals court upheld dismissal in August because the would-be whistleblower didn't disclose the suit in his separate Chapter 13 bankruptcy proceeding. The appeals court stood by that decision in October.

The win, according to Hazelton, stemmed in part from Latham's broad resources in white-collar FCA, government contracts and even bankruptcy.

“We were able to identify that issue and use it as one of the major hooks for getting that case dismissed,” Hazelton said.

Latham also managed to successfully defend Axiomatics Inc. from a patent infringement lawsuit in Texas federal court brought by Jericho Systems Corp., in part thanks to its ability to combine its expertise in both intellectual property and government contracts.

The patent covering computer system access was ruled invalid in May after Jericho accused Axiomatics of parroting it in products purchased by the U.S. Department of Veterans Affairs. Federal involvement meant that Jericho also sued the U.S. government itself in Federal Claims Court; that suit was put on hold pending appeal of the district court invalidation.

In district court, Latham convinced the judge that the patent's access controls amounted to an abstract idea that represented little more than verifying someone's age when selling an R-rated movie ticket.

“The example of buying an R-rated movie ticket is just one example of how this abstract idea currently is and has been applied in society for as long as civilization has existed,” U.S. District Judge Ed Kinkeade said in the ruling.



Larry Gotts

Latham intellectual property partner Larry Gotts believes the Axiomatics win represents Latham's position at the center of developing this kind of intellectual property law, where basic underlying science and abstract ideas are not patentable.

“We've had any number of cases up to the federal circuit and district court level where we've prevailed on these defenses,” he said. “It's an area of very deep expertise for our firm.”

In addition, Gotts argued that the case, and Latham's victory in it, is distinguished by the firm's structure of its intellectual property and government contracts groups. The two work together “as an integrated whole,” he said.

“We are able to bring to these cases a combined team that works together and is able to cohesively address both the government contracts pieces of the issues and the patent/IP pieces of the issues to put together the most effective defense, or offense,” Gotts told Law360.

--Editing by Patricia K. Cole.