

Illinois Powerhouse: Schiff Hardin

By **Lauraann Wood**

Law360 (September 6, 2019, 1:11 PM EDT) -- Schiff Hardin LLP stood out this year by using its distinguished mediation practice to advance a \$300 million O'Hare Airport transit project, defending a century-old real estate market system and bringing a client's new drug to market after defeating a rival's patent claims at trial.

The firm, one of Law360's 2019 Illinois Powerhouses, was also tapped to independently monitor a historic consent decree aiming to boost trust in Chicago's police department, one of its most significant settlements in recent history. Meanwhile, the environmental practice group secured a significant ruling blocking an activist group from using the Clean Water Act to hold Dynegy Midwest Generation LLC liable for allegedly contaminating groundwater that feeds into a nearby river.

The firm's accomplishments in the past year are "very reflective of the commitment and the investment" it has placed in its most dominating practices, which also include its corporate and transactional groups, managing partner Marci Eisenstein told Law360.

"Success builds on success," she said. "They're all very exciting, but they all reflect our focus and commitment to really growing these areas."

Chicago, for example, joined other cities including New York, Denver and Miami when it tapped Schiff's construction team to help resolve disputes surrounding its "people mover" transit project at O'Hare International Airport. As part of larger expansion efforts, the project will extend the current light rail system, connecting passengers and employees from the airport to its new parking facility.

Construction for the project involves building portions of a new rail system that will fit and operate seamlessly with already-existing infrastructure, which Schiff construction group leader Kenneth Roberts told Law360 is a significant challenge in itself.

But the firm's efforts to call on some of the nation's most reputable mediators to help resolve disputes as they arise in real-time between the project owner and its contractors and vendors is what sets it apart from other firms competing for similar work, Roberts said.

"When Schiff is on the project, we're not there to litigate," he said. "The quicker that you get to the issue and show that you're willing to work in a cooperative fashion, in our experience, there's a direct equation to the less those issues have an impact on the job both on schedule and on dollars."

Schiff's intellectual property team has also shined this year as it defeated Pfizer subsidiary Hospira Inc.'s patent infringement lawsuit against Fresenius in a bench-trial showdown.

Hospira had claimed Fresenius Kabi USA infringed two of its patents — one protecting the use of a glass bottle and another protecting the chemical ratio in its intravenous sedative Precedex — in trying to bring a generic form of the drug to market. But an Illinois federal judge sided with Fresenius in December, agreeing with its counsel's argument that the asserted patents were invalid for obviousness.

"What this case showed is how people can use patents creatively and how the patent office is not perfect," said Schiff's intellectual property group leader Imron Aly, who led Fresenius' fight against its rival. The patent office isn't perfect because the examiners can see a particular percentage or ratio in a claim but have no true way to test its validity when reviewing applications, he said.

"They're only looking at documents," he said. "They don't get a chance to look at tests to see if what was newly patented wasn't already there."

Schiff's win in Fresenius' case was one that at least two other companies couldn't pull off. The difference, Aly said, was that "we used a lot more data than they had in the other forms."

"This case is an example of evergreening where a brand company can keep getting patents on old drugs," he said. "We are proud to be a firm that stopped it for this important drug."

On the environmental front, Schiff helped Dynegy cite Seventh Circuit case law from 1994 to win dismissal of Prairie Rivers Network's claims that the company violated its CWA permit when it operated a coal plant for decades with three unlined coal ash pits "as deep as 44 feet in some locations," which seeped out pollutants including barium, lead, manganese and sulfate.

The defeat sets Schiff's client and CWA case law apart from other federal circuits, in which judges have found groundwater to be covered by the statute. But succeeding on this front at all is a significant charge against nongovernmental organizations that have amped up their efforts to push an agenda that doesn't fit within the CWA's jurisdiction and provisions, Schiff attorney Daniel Deeb told Law360.

"At the time, the NGOs were hot off of having victories in the Fourth Circuit and the Ninth Circuit," he said. "I think the NGOs were sensing that they had some momentum for these decisions on their side and were hoping that would continue. What we don't want to do is see environmental laws like the CWA improperly used contrary to Congress' intent to achieve NGO goals."

Schiff's antitrust group has also worked on behalf of trade associations to combat allegations threatening to upset programs that have been in place in some industries for decades.

For example, the firm is representing the National Association of Realtors in two proposed class actions looking to upset the nearly century-old system under which homes are sold in the U.S., Schiff attorney Jack Bierig told Law360.

The NAR's rules require brokers listing a home for sale to also include information regarding the percentage of sale proceeds they're willing to share with buying brokers to incentivize and compensate them for cooperation in a property transaction. Schiff's attorneys filed a motion to dismiss home sellers' claims that the NAR's rules made the commission non-negotiable, prompting them to amend their suit.

Now, the seller groups claim the home buyers should pay the buyers' broker, Bierig said. But Schiff is fighting that claim for the realtors association with another motion to dismiss, arguing the organization's rules are not only lawful, but also beneficial for consumers.

"The nice thing about the system now is the person who pays is the person who gets the money," he said. "The buyer is the one who's paying, so the buyer is better able to afford the house if he or she doesn't in addition have to pay the broker. If the plaintiffs were to prevail in this case, it would be just a very bad thing for home buyers and the whole system of home ownership in the United States."

Schiff is also defending the American Board of Medical Specialties in lawsuits claiming its certification maintenance program suppresses competition from doctors who are not certified but just as skilled and qualified as certified doctors.

The firm's antitrust team has banded together to get these suits tossed out of court as well, arguing the decadesold system serves consumer-demanded informational purposes and doesn't threaten a doctor's practice in any way.

"We're not forcing anyone to do anything. It's entirely voluntary," Bierig said. "All we're doing is giving information to patients and hospitals. What the people do with that information is up to them."

Building on its track record for taking on significant roles in government investigations, Chicago also tapped the firm this year to independently monitor a historic consent decree aiming to promote and build trust between the city, its police department and the communities they both serve.

An Illinois federal judge tapped Schiff partner Maggie Hickey to oversee the five-year decree, which resulted from negotiations between the Illinois Attorney General's Office and the city itself to address extensive civil rights violations found by a U.S. Department of Justice investigation.

Schiff's appointment to monitor the police decree proves people are paying attention to the unmatched investigation work Hickey has brought to the firm since adding her to its roster, Eisenstein told Law360.

"Maggie has an incredible reputation of integrity and deep experience, so bringing her to this law firm and building around all of that has been a really important measure of our success," she said.

With such prominent accomplishments on its record for the year, Eisenstein told Law360 she is excited to continue to build up the firm's most distinguished practices in the city with high demand and competition for legal services.

"We are not trying to be all things to all people," she said. "We are speaking to the market and delivering a message to the clients that we understand their issues, that we know their businesses, and we understand how to solve their problems and find them solutions."

--Editing by Philip Shea.