

LITIGATION DEPARTMENTS OF THE YEAR

IN-HOUSE IMPACT AWARDS

GAME CHANGERS

GIANT SLAYERS

GROUND BREAKERS

WEEK OF APRIL 18, 2016

DAILY AT WWW.THERECORDER.COM

GAME CHANGER

Marcellus McRae, Gibson, Dunn & Crutcher LLP

Parsons-Dillingham, a joint venture between engineering and construction firms, had been fighting a False Claims Act lawsuit brought by the Los Angeles County Metropolitan Transportation Authority for 18 years when it brought on Gibson, Dunn & Crutcher to help fight off the \$100 million complaint. Within six months, a Gibson Dunn team led by partner Marcellus McCrae developed a new litigation strategy, persuaded a judge to allow the defendants to file their sixth summary judgment motion in the case and secured a dismissal of allegations tied to construction of Los Angeles' Red Line rail system.

Did you have any concerns about jumping into litigation that had started in the Clinton administration?

As a trial lawyer, I really relish this role coming into cases that are set for trial. Sometimes it can be as few as three months. I've actually had cases where I've been asked to come in and try cases in a much shorter time frame. And so that's what this was.

As you can imagine, when you have a case with that long of a history and that many judges and that many rules, that many motions, that much discovery, it creates a huge amount of material to digest within a relatively short period.

And you found that appealing?

I was really fortunate. I was able to go to the U.S. attorney's office pretty early on in my career. And I got to experience something that has recurred throughout my career, which is a recognition that the process of preparing for trial can be a very stressful, intense, labor-intensive process. But like everything else, the

more you put into that process in terms of the preparation, really it's like being an athlete. The more you practice, the more you prepare yourself, when it comes down to actually getting out and executing—and if you're an athlete it's in a game situation, if you're a trial lawyer it's in a courtroom—the trial part, that's the fun part.

But you didn't get to go to trial.

I know, but that's the other thing. And this is what I love about being a lawyer. There's so many different ways to win. One of the ways you can win, and you've got to be able to relish it all, is to have a case disposed of before you go to trial, which is what happened here. And what was very gratifying was the methodology, the approach to looking at the case.

And in this case, it got us to looking at the elements again and being able to advance a number of arguments, including the one that there really could not be a False Claims Act violation when the underlying claim involved allegations about rates that were contractually agreed to. In other words, how could I have a violation of any provision when what I've done is in accordance with what you and I agreed to?

To be able to articulate that argument, among other arguments, and to be able to



NICHOLAS KOON

Marcellus McRae

prevail on that argument particularly in a case with this type of history, oh, it wasn't a trial but it was also very gratifying.

Was there any hesitation about bringing yet another summary judgment motion?

Absolutely not. I was thinking, with all the motions that have been filed in this case, surely it's not too late to try to achieve appropriate and efficient results, even after a couple of decades.

If there's a takeaway as a lawyer on this, in terms of representation of your client, and in terms of trying to do the best that you can, don't stifle your own creativity and preempt yourself. You've got to try. You never know. You *never* know.

— Cheryl Miller

Reprinted with permission from the 4/18/16 edition of The Recorder © 2016 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. Contact: 877-257-3382 reprints@alm.com or visit www.almreprints.com. # 501-04-16-06