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‘Bet the company’ attorney knows how to keep his cool

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J. Erik Connolly, a partner at Benesch Friedlander Coplan & Aronoff LLP, has spent his career litigating the high-stakes, high-dollar amount cases that are often known as “bet the company” cases.

Before he joined Benesch in September 2018, Connolly spent more than 14 years at Winston & Strawn LLP where the vast majority of his work was in large-scale, multimillion-dollar disputes.

“That’s one of the reasons Benesch first approached me when they did,” Connolly said in an interview. “They wanted to continue to expand their practice in those nine-figure, 10-figure cases.”

While he was still at Winston & Strawn, Connolly was involved in a high-profile defamation case between a beef producer and ABC News.

Beef Products Inc. sued ABC in 2012 after the news station aired a critical investigative report about low-cost processed beef trimmings, known as lean, finely textured beef. BPI produced and sold the product.

The news report referred to the beef product as “pink slime,” “filler” ingredient, low quality, not beef and not safe for public consumption. A massive decline in the sale of the product led the company to close three of its four plants and lay off about 700 employees.

The case was among the largest defamation cases in U.S. history with BPI alleging \$1.9 billion in damages. That amount could have tripled to nearly \$6 billion under South Dakota’s Agricultural Food Products Disparagement Act.

Connolly was part of the legal team representing BPI. The case finally end in a confidential settlement with ABC during the fourth week of a jury trial in 2017.

The Daily Law Bulletin spoke to Connolly about his experience with “bet the company” cases, including *BPI, et al. v. ABC, et al.*, and how he deals with the pressures associated with those cases.

This interview has been edited for length and clarity.

Law Bulletin: Would you characterize your large-scale, multimillion cases as “bet the company” cases?

Connolly: That’s what everybody calls it... I think what makes the “bet the company” cases very interesting is not only are some of them the high monetary dollar amounts... But the other types of cases that are equally interesting that you would also characterize as “bet the company” cases are the ones that are challenging a fundamental business operation of the company. So that if [the company] loses the case, it may not cost them \$100 million or a billion dollars but it wipes out a business line.

Those cases are just as important because the company invested so much time in commercializing those business lines. I find those cases to be equally challenging and are the ones that we really spend most of our time working on.

Law Bulletin: Can you give an example of a case where the company’s fundamental business operation is challenged?

Connolly: We have cases where the business model of our client is being challenged and the plaintiff is seeking to enjoin that entire business model so that if they don’t prevail in that litigation their whole way of doing business — how they’ve structured their business — gets wiped away.

That puts a lot of responsibility on you to not only make sure you thoroughly understand what it is you are representing — you can clearly articulate the business model — but that puts it on your shoulders to make sure you get it right. I can give you one example that is readily apparent and one that we deal with often: trade secret misappropriation claims.

Right now, we are representing a company in a trade secret misappropriation claim. If we lose the claim, the entire product that they are attempting to launch can be jeopardized because now it can be tainted with a trade secret claim. Winning those types of cases insures that a company has spent millions and millions of dollars developing a product, it insures they get to go to market with that product.

Law Bulletin: Is there a threshold that constitutes a “bet the company case?” Or does it depend on the specific company and case?

Connolly: I think it’s in the eye of the beholder, like you said. A damage amount of \$10 million might not mean much to a Fortune 50 company but if it’s a family-owned company, a \$10 million damage award could mean the difference between a profitable year and unprofitable year. It varies with every client. That’s what is important. You have to understand where the pressure points are for each client. What is a risk that is too much for each client? And that will vary.

Law Bulletin: Did the publicity around the *BPI, et al. v. ABC, et al.* case make it more difficult to litigate?

Connolly: I think it certainly made us aware of the high stakes of the litigation. We also knew the courtroom would have reporters in it on a regular basis, which essentially meant you were always on the record.

Law Bulletin: How do you deal with the pressure of having to win “bet the company” cases? It implies that if you lose, the company will go under.

Connolly: I have an amazing team that I work with... I think that teamwork relieves a lot of the pressure. You look to your left and you look to your right and I know I have people with me that

are going to do anything necessary to get the job done.

I'm just lucky that I get to work with them everyday. That takes a lot of the pressure off. If we do our job right, things should come out the right way. And I've got people around me that I know are going to help me do the job right.

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