



QUICK TAKES

A Two-Week Batch of Litigator of the Week Runners-Up and Shout Outs

Our runners-up at Hueston Hennigan landed a \$175 million damages award against VPX, the maker of the “Bang” energy drink, after an arbitrator found it doesn’t contain creatine.

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🕒 9 minute read

Ross Todd [↗](#)

Editor/columnist

Our first runners-up are **John Hueston, Moez Kaba** and their team at **Hueston Hennigan**. Following a two-week Zoom trial last year, last week they landed a \$175 million damages award against VPX, the maker of the “Bang” energy drink, after [an arbitrator found](#) the drink doesn’t contain creatine. VPX could only use the “Bang” mark on “creatine-based” products or products sold in the vitamin and dietary supplement sections of stores under a 2010 agreement with drink maker Orange Bang, which was represented by counsel at **Knobbe Martens** in the litigation. The Hueston Hennigan team represented Monster Energy Company which took a partial assignment of Orange Bang’s rights under the agreement with VPX to pursue breach of contract and trademark infringement claims. The arbitrator also awarded more than \$9 million in attorney fees and costs and a 5% royalty on all future net sales of VPX’s Bang-branded products. The Hueston Hennigan trial team also included **Allison Libeu, Lauren McGrory Johnson, Sourabh Mishra, Brandon Marsh, Michael Todisco, Julia Haines, Justin Greer, Segun Babatunde** and **Amber Munoz**.

Mike Lyle, Nelly Merkel and **Keith Forst** of **Quinn Emanuel Urquhart & Sullivan** also get a runner-up spot for their summary judgment win for Express Scripts in [a closely watched healthcare dispute](#) where Anthem Inc. was seeking \$14.8 billion in damages. Late last month U.S. District Judge Edgardo Ramos in Manhattan ruled Express Scripts [wasn’t contractually obligated](#) to provide Anthem competitive benchmark pricing for pharmacy benefits services, but only to negotiate in good faith.

Runners-up honors also go to **Eamonn Gardner, Matthew Brigham, Dena Chen, Priya Viswanath, Stephen Smith** and **Jeffrey Karr** of **Cooley**. Late last month U.S. District Judge Paul Byron in Orlando [granted summary judgment](#) of non-infringement to client Qualcomm on the last remaining 11 patents-in-suit in a long-running patent litigation brought by ParkerVision targeting aspects of virtually all the cellular transceiver products Qualcomm sold over a ten-year span.

Gibson, Dunn & Crutcher partners **Orin Snyder, Scott Edelman, Ilissa Samplin** and Brian Ascher get a runner-up spot for keeping up their winning ways for AMC Network in the high-stakes lawsuit brought by executive producers of “The Walking Dead.” After winning on [all seven contract interpretation issues](#) presented at a bench trial in 2020, Los Angeles County Superior Court Judge Daniel Buckle last week [granted summary adjudication](#) to AMC on the plaintiffs’ claim of breach of the implied covenant of good faith and fair dealing. Plaintiff claimed AMC made the terms of its modified adjusted gross receipts, of MAGR, so unfavorable that “The Walking Dead” would never appear to show a profit. “Based upon the evidence provided, defendants met their initial burden to show they did not act in bad faith in crafting the MAGR definition or the imputed license fee and plaintiffs received the benefit of their bargain,” Buckle wrote.

Art Schmalz and his team at **Hunton Andrews Kurth** land runners-up honors for bringing home nearly \$43 million in damages for client Dewberry Engineers Inc. in federal trademark and breach of contract litigation against Dewberry Group Inc., an Atlanta-based real estate development services company. After a three-day damages bench trial last year, U.S District Judge Liam O’Grady Dewberry Group “brazenly rolled out and used four infringing marks and sought federal trademarks for them” in violation of a settlement agreement from prior litigation. The judge’s decision, issued in March and unsealed earlier this month, granted Dewberry Engineers \$42,975,725.60 in damages and awarded attorney fees finding this was an exceptional case under the Lanham Act. Schmalz was joined at trial by **Stephen Demm** and **Brian Wright**. The trial team had additional support from **Meghan Podolny, Jonathan Caulder, Julie Peters, Melissa Romanzo** and **Natalie Harris**.

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Another runner-up spot goes to the **Kirkland & Ellis** team that scored the latest defense win

for 3M in the sprawling multidistrict litigation claiming the company’s combat arms earplugs used by U.S. military personnel were defective. A federal jury in Pensacola last week sided with the company in a bellwether trial picked by the plaintiffs. Although the plaintiff showed significant hearing loss beginning at age 26 after returning from a deployment to Kuwait, the defense team made the case that there were alternative causes for hearing-related injuries besides noise. The Kirkland trial team included **Christa Cottrell, David Horowitz, Saghar Esfandiari, Paul Sampson, Katie Lencioni** and **Erin Johnston**.

Runners-up honors also go to a trial team at **Morrison & Foerster** that won a \$41.8 million verdict last week for client Seagen Inc. in patent litigation in the Eastern District of Texas. The jury found Daiichi Sankyo willfully infringed Seagen’s patent for antibody-drug conjugates through sales of its Enhertu cancer treatment. The trial team included Morrison & Foerster’s **Michael Jacobs, Matthew Chivvis, Bryan Wilson, Matthew Kreeger, Jayson Cohen, Sumaiya Sharmeen** and **Karl Johnston**, as well as **Johnny Ward, Wesley Hill** and **Andrea Fair** of **Ward, Smith & Hill**.

Also landing a runner-up spot is another Quinn Emanuel team, this one led by **Steve Cherny, Raymond Nimrod** and **Brian Biddinger**. Earlier this month after a five-day trial, a federal jury in Delaware awarded more than \$28 million in lost profits and damages to Quinn client PureWick Corp., a subsidiary of Becton Dickinson, in patent litigation against Sage Products, a subsidiary of rival medical device maker Stryker. After about 90 minutes of deliberations, the jury found Sage Products willfully infringed PureWick’s patents for an external urinary catheter for women.

Shout out to **David Bernstein** and his team at **Debevoise & Plimpton**. After a challenge filed on behalf of Debevoise client Kind LLC, makers of Kind Energy Bars, the National Advertising Division this week recommended that Clif Bar & Co. discontinue its claim in an online campaign to have developed “The Ultimate Energy Bar” with “an optimal blend of protein, fat and carbs.” The Debevoise team representing Kind also included counsel **Jared Kagan**, and associates **Justin Ferrone** and **Marissa MacAneney**.

Shout out to **Michael Ehrenstein** of **Ehrenstein/Sager** and **Tom Dupree, Sam Liversidge** and **Ilissa Samplin** of **Gibson Dunn**. The Second Circuit this week upheld the dismissal on *forum non conveniens* grounds of a \$1.1 billion breach of contract claims that power plant developers brought

against Ehrenstein's client, Angola, and claims that Gibson's client, General Electric Co., interfered with contracts and prospective business relations in violation of state law. The appellate court agreed with the defendants that the dispute should be resolved by courts in Angola, not New York.

Shout out to **John O'Quinn, Brent Rogers** and **Nick Ruge** of Kirkland & Ellis. A divided Seventh Circuit panel [last week upheld](#) a summary judgment win for client Safeway Inc. in a False Claims Act case regarding the prices it charged Medicare and Medicaid recipients for certain drugs. The court majority held that the Centers for Medicare and Medicaid "can (and did)" revise the manual that provided guidance on the pricing issue multiple times and guidance based on "a single footnote in a lengthy manual does not support treble damages liability in this case."

Shout out to **Mayer Brown** partners **Keri Borders** and **Dale Giali** and associate **Elisabeth Anderson**. U.S. District Judge Beth Labson Freeman in San Jose [last week dismissed](#) a class action against their client Nestlé USA claiming Nestlé's Toll House White Morsels, labeled "premier" on their packaging, were deceptively advertised as white chocolate. "Nothing about the ordinary and common meanings of the adjectives 'white' and 'premier' would suggest to a reasonable consumer that the product is white chocolate," Freeman wrote.

Shout out to **Scott Schutte, Phil Miscimarra, Stephanie Sweitzer, Kevin Gaffney, Elizabeth Phillipp** and **Heather Nelson** of **Morgan, Lewis & Bockius**. U.S. Magistrate Judge Sunil Harjani last week [denied class certification](#) in a RICO action claiming their client Jones Lang LaSalle Americas conspired with labor unions to force tenants to hire union movers and contractors at commercial office buildings in the Chicago Loop. The judge found the plaintiffs hadn't provided significant proof of common issues as to all 20 JLL-managed buildings in the area.

Shout out to a team at Morrison & Foerster that knocked out a long-running federal securities fraud class action against Farmland Partners Inc., its CEO, Paul Pittman, and president, Luca Fabbri. Last week Tenth Circuit Judge David Ebel sitting by designation in the District of Colorado [granted summary judgment](#) with a nod toward the firm's [earlier win getting](#) a short-seller who authored a report that led to the stock price drop to acknowledge false statements. The Morrison & Foerster litigation team included **Grant Esposito, Jim Beha, Nicole Serfoss, Scott Llewellyn, Michael Birnbaum, Jocelyn Greer, Anna-Lisa Vanzo, Justin Young, Ken MacCardle, Ashley Stephenson** and **Mike Curtis**, with support from corporate partner **Justin Salon**.

Shout out to a team at **Paul, Weiss, Rifkind, Wharton & Garrison** that revived IBM's fraud claim in a \$2.5 billion lawsuit against semiconductor supplier GlobalFoundries. Last week New York's Appellate Division, First Department [reversed a trial court decision](#) dismissing the fraud claim holding that IBM properly alleged "GlobalFoundries knowingly made material misrepresentations of present fact about its business plan and financial commitment that were untrue." The Paul Weiss team representing IBM is led by partners **Bob Atkins**, who argued the appeal, **Jane O'Brien, Richard Tarlowe** and **Jeannie Rhee**.

One last shout out to the lawyers representing plaintiffs challenging Florida SB 90, an election law that included provisions restricting access to vote-by-mail and drop boxes, restricting third-party voter registration organizations and criminalizing activities such as providing voters with water or language assistance. After a two-week bench trial, Chief U.S. District Judge Mark Walker in Tallahassee late last month [struck down portions](#) of the law finding they were enacted with intent to discriminate against Black voters. The **Arnold & Porter Kayer Scholer** team on the case for Florida Rising Together and other non-profits was led by senior pro bono counsel **John Freedman** and senior attorney **Jeremy Karpatkin**. The Arnold & Porter team also included partners **Jeffrey Miller, Daniel Meyers, Aaron Stiefel** and **Elisabeth Theodore**, senior attorney **Daniel Bernstein**, and associates **Janine Lopez, Leslie Bailey, Ryan Budhu, Sam Ferenc, Andrew Hirschel, Dale Kim**,

Colleen O’Gorman and **Archana Rao Vasa**. Also among the plaintiffs’ lawyers challenging the law on behalf of other plaintiffs were a **Covington & Burling** team led by **Ben Duke** and a team from the **Elias Law Group** led by **Lis Frost** and **David Fox**.

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