

THE
AM LAW LITIGATION DAILY

Litigators of the Week: A Bankruptcy Win for Sandy Hook Families Against Alex Jones

By Ross Todd
October 27, 2023

Last year we recognized the good work that litigators at **Koskoff, Koskoff & Bieder** and **Paul, Weiss, Rifkind, Wharton & Garrison** have been doing in Connecticut for families of those killed in the 2012 Sandy Hook Elementary School mass shooting in Newtown.

Part of that work includes litigating against conspiracy theorist Alex Jones, who for years claimed the shooting was a hoax by the government. Last week the Connecticut team and lawyers pursuing parallel claims in Texas got key wins from U.S. Bankruptcy Judge Christopher Lopez in Houston who found that Jones cannot use his bankruptcy filing to discharge debts accrued through “willful and malicious injury” to the families.

Having previously acknowledged the work of the Koskoff and Paul Weiss teams, this week we highlight the Texas team, who in the bankruptcy court have been headed by **Stuart Lombardi** and **Jennifer Hardy** of **Willkie Farr & Gallagher**, working pro bono, as well as **Avi Moshenberg** of **McDowell Hetherington** and **Jarrold Martin** of **Chamberlain, Hrdlicka, White, Williams & Aughtry**.

Litigation Daily: Who were your clients and what was at stake?

Avi Moshenberg: The clients are parents of children murdered in the mass shooting at Sandy Hook Elementary School. They obtained judgments in Texas state court for defamation and intentional infliction of emotional distress against Alex Jones, who claimed the mass shooting was a hoax and that they were crisis actors. In bankruptcy, Jones tried to have those judgments discharged—i.e., erased. The clients argued the



Photo: Chris Pizzello/AP

(Top L-R)Stuart Lombardi and Jennifer Hardy of Willkie Farr & Gallagher, (Bottom-L-R)Avi Moshenberg of McDowell Hetherington and Jarrold Martin of Chamberlain, Hrdlicka, White, Williams & Aughtry.

judgments were nondischargeable under bankruptcy law. And the court agreed.

How did this matter come to you and your firms?

Moshenberg: When the lawyers who sued for defamation and intentional infliction of emotional distress discovered that Jones was siphoning away assets to avoid paying the families, I was added to the team to prosecute fraudulent-transfer claims against Jones. After Jones and his companies filed for bankruptcy, my role expanded to advocate for the families in the bankruptcy process.

Jarrold Martin: Avi and I have known each other for about five years, having worked with each other at McDowell Hetherington prior to me joining Chamberlain Hrdlicka. When Alex Jones caused the first Infowars entities to file for chapter 11 in April of 2022, I followed the cases closely, discussing strategy with Avi behind the scenes. When the primary Infowars entity, Free Speech Systems, filed for bankruptcy, I jumped at the chance to work with Avi and the Sandy Hook families in a more official capacity.

Jennifer Hardy: With respect to Willkie, counsel to the Official Committee of Unsecured Creditors reached out to our firm's co-chairman, who is also a practicing bankruptcy attorney. We put together a team, were interviewed by litigation counsel for the Texas plaintiffs, and were ultimately engaged pro bono.

Who is on the team and how have you divided the work? More specifically, how has the bankruptcy team coordinated with counsel representing these clients at the trial courts?

Moshenberg: The bankruptcy team includes core-bankruptcy attorneys Jennifer Hardy and Jarrod Martin and bankruptcy litigators Stuart Lombardi and Willkie associate **Ciara Sisco**. The trial team consists of **Mark Bankston** and his partners at **Farrar & Ball**. The bankruptcy team and the trial-court team work closely, which was key to the nondischargeability ruling. The bankruptcy court granted summary judgment on nondischargeability without any discovery by applying collateral estoppel to the robust underlying state-court record. That was only possible because of the collaboration by these incredibly talented professionals.

Stuart Lombardi: Avi is on both the bankruptcy team and the state trial court team. So he was the coordination between those teams. That was key.

Within Willkie, we staffed this like any complex bankruptcy litigation. It's a collaboration between the bankruptcy and litigation departments, as always. I lead the litigators, Jenn leads bankruptcy, and we work together and with our partner **Rachel Strickland** on strategy. A team of brilliant, hardworking associates is essential to the team's success, as always. Associates like Ciara Sisco (who was a lead author of our complaint and briefs), **Deanna Drenga** and **Courtenay Cullen** (who were key contributors of research and drafting), and many more in both New York and Houston.

We also coordinated with counsel to the Connecticut plaintiffs, who filed their own complaint and motion and achieved a tremendous win for their clients.

Martin: From my perspective, the coordination between the three firms involved in the bankruptcy and trial counsel in the state court has been seamless. As Stuart mentioned, Avi is on both teams. He is both a fantastic litigator and also had all of the institutional knowledge from the underlying state court litigation. Willkie's retention really helped shift the playing field for us, bringing significant expertise in both restructuring and complex commercial litigation. Chamberlain's role is three-fold. First, we have significant experience appearing in front of Judge Lopez, especially in subchapter V bankruptcy cases. Second, we bring expertise in the subchapter V arena, given my role as a subchapter V trustee. Third, we bring litigation experience in 523 litigation.

Hardy: The bankruptcy and litigation teams have very much acted as a single team. We discuss matters relating to the case collectively at least weekly, and usually more often. We each attend the hearings, review and comment on the various filings, and coordinate on overall strategy.

How often do these issues of "willful and malicious injury" come up in bankruptcy proceedings? Have you ever dealt with anything similar to this matter?

Hardy: Because my bankruptcy work is primarily in the complex corporate bankruptcy space, in which section 523(a)(6) of the Bankruptcy Code tends not to come up, this is not a provision that any of us at Willkie had ever litigated. While there is some case law on the subject, it does not come up very often.

Martin: It's unusual for willful and malicious injury litigation to be litigated in bankruptcy. As Jenn said, it's not commonly litigated. But the Alex Jones bankruptcy is not a common case, so it makes sense that the uncommon would be litigated. When I was a law clerk for a bankruptcy judge, I drafted an opinion on section 523 and willful and malicious injury. I've also participated in a couple 523 lawsuits, but never through summary judgment or trial.

Tell me about the hearing in front of Judge Lopez. Looking back at it with this ruling in hand, does anything stick out?

Lombardi: Three things. First, Judge Lopez gave each side the time it wanted to make whatever points it wanted. Second, that meant that we had to spot for ourselves the

issues we thought the court would have to grapple with most in its opinion, and allocate our airtime accordingly. Third, everyone did a good job tailoring the message to the audience. This is an emotionally-charged case with really gut-wrenching facts, but we knew we had a sharp judge who wanted to focus on the law. It was a much different presentation than we would have given to a jury. I think the same was true for **Kyle Kimpler** of Paul Weiss, who did a great job arguing for the Connecticut plaintiffs. And to their credit, the Jones team really focused on and engaged with the law as well.

Moshenberg: Judge Lopez had clearly prepared for the hearing beforehand by educating himself on the facts, the law, and the parties' briefing. And he gave the advocates the room to advocate. The lawyers for all the parties seized that opportunity, arguing at the highest level.

What now? Where does this leave the existing judgments? And what is left to be determined through further proceedings?

Lombardi: The state court judgments stand, they're entitled to both full faith and credit and preclusive force in bankruptcy, and Jones can't relitigate the findings. He owes nondischargeable debt to each of our movant clients. What's left is to determine the damages that Jones owes our clients and cannot discharge in bankruptcy. More generally, in and beyond the bankruptcies, we are focused on achieving the best outcomes and recoveries for our clients.

Moshenberg: Now we need to hold Jones accountable by making him pay the judgments the families obtained against him. Since the beginning, Jones has tried to defy the law. He defamed the families and intentionally inflicted emotional distress. When they sued, he hid evidence and refused to participate in discovery (and tried to hide his assets). At trial, he lied on the witness stand repeatedly. And after judgments were rendered against him, he went to bankruptcy court seeking to have those judgments discharged. All throughout, the guardrails of the legal system have held. But Jones has yet to do what juries in Texas and Connecticut have determined he must—pay these families for the harm that he has caused.

What can others take from this decision?

Hardy: The biggest takeaway is that those, like Alex Jones, that use their platforms to defame others,

cannot then use bankruptcy as a means to escape from their responsibilities to the people they have injured. Bankruptcy is meant as an escape valve for the honest but unfortunate debtor, but it does not, and should not, provide an unqualified right to get rid of all debt.

Martin: I echo what Jenn said about not being able to use bankruptcy to escape responsibility for his lies. I think from a more practical perspective, practitioners should be aware that collateral estoppel can come into play when trying a 523 action. We obtained summary judgment on the 523 action relying solely on the state court record.

What will you remember most about this matter?

Moshenberg: That lawyers seldom get an opportunity to take on a case of such importance. And that comes with a lot of weight. Weight from knowing who the clients are and what they've been through. Weight from knowing who Alex Jones is and what he's said and done. Weight from knowing about all those watching, listening, and reporting on this—all wondering if Jones will get away with it. And while the burden is heavy, we're honored to have been trusted to carry it.

Martin: The best memories are yet to come. This was one important step toward getting justice for the families, and there are additional battles to fight as the negotiations and litigation shift in light of these rulings. Setting that aside, I'll most remember the initial UCC Zoom calls with certain family representatives in attendance. It was moving to see how much this meant to them.

Hardy: It's rare to have the opportunity to work on cases so personally meaningful. My oldest child was in elementary school at the time of the Sandy Hook shooting, and, like most Americans, I will never forget the visceral horror of that day and others like it. If we are able to bring any amount of comfort to the families that went through that immense tragedy and the subsequent grief and trauma from the way they were portrayed, then that's something I will take with me for the rest of my life.

Lombardi: The community of folks that collaborated to represent the victims in Alex Jones's personal bankruptcy and the bankruptcy of his company, FSS. For the Texas plaintiffs, us four and the Willkie team. For the Connecticut plaintiffs, Paul Weiss and Koskoff. For the Committee, **Akin**.