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DuPont Firm Reaps The Rewards Of Diversity

The Editor interviews Traci Lovitt, Partner-in-Charge of Jones Day's Boston office.

Editor: Please tell our readers about your professional background. What did your experience with the Department of Justice entail? What attracted you to Jones Day?

Lovitt: Immediately after graduating from law school, I clerked for two years: first, for Judge Ralph Winter, the then-Chief Judge of the Second Circuit, and next, for Justice Sandra Day O'Connor of the Supreme Court. I also served as an assistant to the Solicitor General, which was a wonderful experience. The Solicitor General's Office is charged with defending the interests of the United States in the U.S. Supreme Court. As an assistant, I had the ability to brief and argue Supreme Court cases.

In terms of what attracted me to Jones Day, I like to say that I chose Jones Day twice – once as a young associate and then again after my time in the Solicitor General's Office. As a young associate, I was attracted to Jones Day because of the strength of its Issues & Appeals group, which has some of the top appellate and Supreme Court practitioners in the country. Later, I was dedicated to Jones Day as an institution. It is a very special place and a different kind of law firm where attorneys truly work together as a team. Every attorney is very focused on client service – not on business origination credit. As a result, my time is spent entirely on practicing law for my clients.

Editor: I understand that you have been named partner-in-charge of Jones Day's newly opened Boston office. What practice groups will be initially introduced to the office? Will their practices coincide with some of the high-tech, life sciences, healthcare,

intellectual property and financial expertise that characterizes Boston's industrial profile?

Lovitt: The Boston office should over time offer the full panoply of legal services – litigation, corporate/transactional and intellectual property – with lawyers who practice in the industries that characterize the Boston economy. Currently, the Boston attorneys represent a number of practices – healthcare, intellectual property, issues and appeals, labor and employment, product liability, and trial practice. We are also actively recruiting additional talent from the local market in other practice areas. Given Jones Day's one firm worldwide service, every Jones Day client is a client of the firm. That means that even if the Boston office, itself, does not offer a particular practice area, the firm can seamlessly provide the service from lawyers in other offices. That said, our goal is to expand the range of legal services that we offer on the ground in our Boston office.

Editor: Why did Jones Day choose Boston as a venue for one of its most recently opened offices?

Lovitt: Jones Day has always been interested in the area because we have long had many strong client relationships in Boston and throughout New England. The Boston area is a leading center of new technology, continuing to foster new business development in the area and establishing new markets around the globe. From the firm's view, now is the right time to enter the market. We can more effectively serve our existing clients through a formal Boston presence. And, we believe that we can effectively intro-



Traci Lovitt

duce new clients to our seamless reach across the United States, Europe, Asia, the Middle East, and Latin America, providing unparalleled global service to Boston-based and regional clients in an increasingly demanding global marketplace.

Editor: A few months ago we interviewed Laura Ellsworth, managing partner of Jones Day's Pittsburgh office. We have also interviewed Lizanne Thomas, partner-in-charge of Atlanta's office and Nancy McKimm, partner-in-charge of the Houston office. Are more women beginning to take on management roles at the firm?

Lovitt: I highly regard the attorneys that you named as friends and colleagues. They are just a few of the women in the partner-in-charge position. Mary Ellen Powers was the former DC partner-in-charge and is now in charge of Jones Day's entire European and Middle East operations. Patricia Villareal is now the partner-in-charge of the Dallas office and a leader in the firm's SEC Litigation & Enforcement practice. Liza Kessler is the partner-in-charge of the Columbus office; Sophie Hagège is the partner-in-charge of the Paris office; Mercedes Fernández is the partner-in-charge of Madrid; and Sushma Jobanputra is the partner-in-charge in Singapore. They are all exceptional attorneys.

There are several aspects of Jones Day that naturally facilitate the rise of women to leadership positions. For one, we have a very strong managing partner system and an incredible leader in Steve Brogan. He is truly dedicated to locating talent and leadership within the firm and is fully supportive of giving talented women leadership opportunities. Second, I believe that there is a multiplier effect, resulting from the firm's historical support of women. For example, as an associate, I worked

Please email the interviewee at tlovitt@jonesday.com with questions about this interview.

regularly with Mary Ellen Powers, Nancy McKimm, and Laura Ellsworth. For young women, it is inspiring to have such powerful role models, and the elevation and presence of such women in management roles leads to a dedication to the firm and a trust in its management by the young women exposed to such role models. Mary Ellen Powers said of the female talent at Jones Day that success breeds success. As a result, as even more women rise through the ranks, more role models emerge throughout the firm. Third, the firm's compensation system is part of the reason for its success with female leadership. Our partners are evaluated and compensated based on their overall contribution to the firm, not on an origination credit system, which creates a truly level playing field.

Editor: I understand that you were part of a team coordinating motions practice in the representation of Yamaha Motor Company in litigation involving the Rhino. Please tell us more about this work. How do Jones Day's various offices work together on such cases?

Lovitt: The Yamaha representation is a great example of the kind of service that our Issues & Appeals practice offers. In addition to the obvious appellate and Supreme Court work, I&A lawyers frequently work with trial teams to ensure that the most cutting-edge legal arguments are presented at the trial stage, and nothing is waived for appeal. We even take advantage of circuit splits in trial court motions to sow the seeds for a good Supreme Court cert petition if it appears that Supreme Court review may be necessary. Our attorneys also play a coordinating role to assure that a client is taking consistent legal positions nationwide and is truly implementing a nationwide legal strategy. This coordination also saves client resources by eliminating duplicative research and motion work by multiple firms.

Working with many fine law firms across the country, I assumed the traditional I&A role for Yamaha in much of the Rhino litigation, which generally involves product liability claims. Given the nationwide nature of the litigation, I frequently act in a coordinating role and make sure that the best legal arguments are being presented so that the best nationwide legal strategy is pursued.

Within Jones Day this kind of cross-office coordination is simple. Jones Day attorneys frequently work with attorneys from other offices, operating as one team. Thus, staffing and coordination within Jones Day is not an issue on large nationwide cases.

Editor: You were also involved in two cases relating to Sherwin-Williams, one of which is a landmark public nuisance suit over lead pigment before the Rhode Island Supreme Court. Why was this decision precedent-setting?

Lovitt: The Rhode Island lead paint decision truly was a landmark case. It is the kind of case for which a lawyer, in particular one who really loves the study and analytics of law, is enthralled. In that case, the State of Rhode Island, suing as *parens patriae*, sought to hold former manufacturers of lead pigment liable for the presence of lead pigment in paint throughout the state and asked as a remedy that the former manufacturers remove all lead pigment from the state. After several trials and a hung jury, a jury held the former manufacturers liable for public nuisance. The case was appealed to the Rhode Island Supreme Court. The issues before the court were many and complex, and required many briefs. For instance, Sherwin-Williams extensively briefed constitutional issues, including separation of powers, i.e., whether the court could usurp the power of the state's environmental agency because the agency had been charged by the legislature with abating the very lead hazards that were before the court. Had the state suit been successful, it would have greatly expanded the scope of nuisance law by eliminating many traditional elements of a nuisance claim, such as the need for the state to name the situs of a nuisance, the need for a defendant's control over the nuisance, and the requirement of particularized causation. Had the suit been successful, it really would have been a watershed event in terms of expanding the scope of public nuisance laws. The Rhode Island Supreme Court, which vacated the jury's earlier decision, wrote a landmark decision by stopping what would have constituted a dramatic and fundamental shift in the law.

Editor: You are not a technical patent lawyer but have been counsel of record for IBM in two Supreme Court patent

cases. Could you tell me about how this came about?

Lovitt: It was truly a privilege to work with IBM on those briefs. IBM is a great company with an extremely large patent portfolio. Its in-house team includes some of the smartest and most talented lawyers in the country, and some of the best IP lawyers in the nation. Thus, it is somewhat surprising that a company with a bench that deep would turn to a non-patent lawyer for Supreme Court representations, but the U.S. Supreme Court is unique in many ways and the justices truly are generalists. It helps in a patent case to have an attorney who can convert very complex patent-speak and patent ideas into the kinds of legal arguments that the Court regularly entertains. That is exactly how our representation came about. IBM had a wonderful in-house team who reached out to me because they saw the benefit of including a more generalist lawyer on the team who really understood the workings of the Supreme Court.

Editor: You have also served as counsel of record on behalf of Congressman Barney Frank and Christopher Shays in their bipartisan brief to the Supreme Court. Please tell us about the circumstances that made them litigants.

Lovitt: This case involved the constitutionality of the Congressional Accountability Act, which applies numerous civil rights laws to the Houses of Congress. The Act was actually spearheaded by Congressmen Frank and Shays among a number of other senators and representatives, and it had as its goal both to improve the quality of law by forcing Congress to live under its own rules and to improve the quality of Congress by bringing it within the scope of some very important civil rights laws. The law has been subject to challenge in recent years under the Speech and Debate Clause of the Constitution, which insulates certain activities of members of Congress from judicial review – this is why members of Congress can commit slander on the floor of the House or Senate and be absolved of all judicial review and liability. Because of their historic role in passing the legislation, Congressmen Frank and Shays became involved as *amici* when the constitutional challenge was elevated to the Supreme Court level.