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Features:

Mike McConnell

Jones Day

○ Attorney of the Month

Ricardo Nuñez

HD Supply Company

○ General Counsel

PNC Wealth Management

○ Professional Profile

Georgia Trial Lawyers Association

○ Association Profile





Mike McConnell

Going to War for Business Titans

By Jan Jaben-Eilon

If you want to know who Mike McConnell is, look at the big case he's currently enmeshed in. "This is a lot of who I am right now," he says of the complex case that has been pending for five years and is now scheduled to go to trial later this year.

The case, originally filed in April 2008, arises from a stock-for-stock merger between two companies. As with most M&A litigation, this case involves "mountains of documents" and pits the shareholders of a company against its officers and directors who approved the merger. The common thread in these types of cases is that the shareholders "primarily take issue with how the companies were valued," explains McConnell, a partner in the securities litigation practice of the Atlanta office of Jones Day. He added that, in many of these cases, folks engage in valuation by hindsight and tend to overlook "a few interesting events, like the Great Recession that started in the fourth quarter of 2007 and the subsequent credit crisis of 2008." He explained that "one of the challenges for any litigator handling these types of matters is to focus the jury on what was known at the time of the merger as opposed to what is known today."

McConnell has been embroiled in many shareholder and corporate litigation matters over the years. He explained that he enjoys the challenges and opportunities these types of cases present, such as working with his colleagues in other practice groups. Due to the frequency of challenges to mergers recently, he explained that almost all potential transactions are subject to attack in multiple forums. He recently defended a special committee negotiating a tender offer proposal by a controlling shareholder. "Even though the special committee had not even taken any formal action yet, different groups of plaintiffs simultaneously sought injunctions in Delaware, Georgia and New York. Addressing that type of parallel litigation can obviously create uncertainty as to the timing of any transaction and potentially add significant costs. This is an area where litigators and transaction lawyers frequently have to work very closely together."

But, M&A litigation only represents a fraction of the types of litigation facing corporate officers and directors. As McConnell explained, these individuals face potential exposure under a broad spectrum of duties arising under state



and federal law. Sometimes these claims are merely based on an individual's "status" as a director. Even though the directors may have tried their best to exercise proper care, they can still find themselves as a target if their company suddenly fails to perform as expected. "Often, there will be significant downturns in the economy that may devastate particular industries," McConnell added. "That is precisely what occurred in connection with the 2008 credit crisis, which caused many banks to fail unexpectedly due to sudden lack of liquidity. In 2006, long before 'subprime' became a derisive term, many of the directors on the boards of these banks expected the housing market to continue to grow, which was an expectation shared by many regulators. The credit crisis derailed those expectations and now the FDIC and shareholders alike are looking to the directors of these failed banks to pay for that unfortunate turn of events." He explained that this is a good example of how an industry can appear very stable and secure one moment, but suddenly fall out of favor. "In the 1990s we had high-tech companies that appeared to have no ceiling that suddenly crashed to the ground. This past decade we had titans in the financial industry disappear seemingly overnight.

This next decade, who knows?"

It is this dynamic that has drawn McConnell to this type of work: "It is difficult to predict what the next industry target will be or the precise new hot issue they will face." McConnell likes this variety and notes that the issues in his cases typically cut across many different types of disciplines including accounting, investment banking and economics. Also, he noted "this type of work enables you to learn many new industries and to meet many interesting individuals."

You could say that McConnell fell into this area of legal work accidentally. "Early on, I was blessed with fine mentors and this happened to be the type of work they did. On one occasion, we filed several cases against a large North Carolina insurance company on behalf of a

group of shareholders. We won in North Carolina state court, but the appeals court reversed. The North Carolina Supreme Court accepted our appeal and the senior partner asked me to handle oral argument. I was a sixth-year associate at the time, the issue was a matter of first impression, and my opponent literally wrote the book on North Carolina corporate law. It was a pretty big stage for me, but to grow you have to get out of your comfort zone. I have always been very appreciative of the opportunity that the firm offered to me in that case and, fortunately, we prevailed. I was then hooked on corporate litigation. About 70 to 80 percent of what I've done since then has been that type of work."

Looking back, McConnell ponders how he even ended up in law school. Neither of his parents were lawyers. His father was a talented athlete who went into professional baseball and played in South Carolina where he met McConnell's mother. As McConnell was growing up, he worked on his uncle's farm in North Carolina. "I had the luxury of interesting jobs as I was growing up. I picked tobacco in North Carolina, painted boilers for electrical utilities in New Jersey and moved mainframe computers to locations throughout the Northeast. Although I drew a lot of great life lessons from all of these jobs, I also knew I didn't want to do those things the rest of my life."

It's not that he minded working hard. "There are no easy passes," he says. When he was in college, people warned him that law would mean a lot of work. "I didn't see it that way. I think to succeed you are going to have to work no matter what you choose. So, why not choose a profession where you face a new and different intellectual challenge every day you walk in the door?"

McConnell's father instilled in him the importance of facing reality and taking on responsibility. His mother "taught me to believe that if I put my mind to anything, I could achieve it."

But, the real clincher was seeing Stanley Kubrick's "Paths of Glory," starring Kirk Douglas. An American anti-war film set in World War I has Douglas playing Colonel Dax, a commanding officer of French soldiers who refuse to continue a suicidal battle. Douglas elects to defend them against court-martial. "That's when I connected to being a lawyer," says McConnell. "That's what got

me to law school. I thought I'd be in criminal law. When I got to law school, however, I started to expand my legal possibilities, and I have never looked back, never regretted it."

"Your hardest day here is better than the hottest day picking tobacco," he adds, laughing.

He acknowledges that the

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Pace yourself."

legal profession is known as a “jealous mistress,” but says that he has a very supportive, patient wife. “Nancy is beyond terrific,” he declares.

McConnell also has three children, two girls and one boy. He is quite proud of all of them and explained the unique challenges faced by his middle daughter, Morgan. At nine months of age, Morgan was diagnosed with a rare metabolic disorder known as LCHAD, meaning she lacks enzymes that properly break down long-chain fatty acids. Everyday is a battle for her, yet she’s one of the top students in her high school.

“If I had this condition at her age, I’d complain constantly, but she never complains,” he says admiringly. “She just tackles the problem ahead of her and moves to the next one.” Over the years, McConnell has become involved in numerous charitable organizations seeking to help families cope with LCHAD and other rare disorders. The rest of his family has as well. His eldest daughter Meredith will be serving as the public relations chair for March of Dimes at Clemson University this coming fall, and Nancy and Michael, McConnell’s son, also have been very involved with the mission of the March of Dimes.

McConnell has also taken on the commitment of being the next president of the Midtown Atlanta Rotary Club, starting July 1. With a big trial coming up, he’s trying to figure out how to take on this extra responsibility, but he is reminded of The Beatles’ song “With A Little Help From My Friends.” As McConnell stated, “Rotary is a tremendous civic organization and our club is currently supporting the launch of a new school in Haiti.”

When McConnell isn’t volunteering, spending as much time as possible with his family, and serving as a corporate litigator, he also handles certain specialized health care matters. He explains that when companies want to open a hospital or a surgical facility, they must prove that there’s a need for it, and obtain a “certificate of need.” “I enjoy this practice a lot. The life of the case, from start to finish, is maybe four months, and hearings last about three to four days, sometimes a little longer.

There are not that many attorneys who practice in this area so everyone knows each other and is pretty collegial. The hearing officers are skilled and bright. There’s no discovery so it’s trial by ambush. It’s a different type of skill set.”

His most important advice to young attorneys is to “never doubt yourself and always pick yourself back up. Getting knocked down is part of the process. Just view it as a learning experience,” he says. “I try to remind young lawyers the same advice that I received. One is you have to remember that the practice of law is a marathon, not a sprint. Pace yourself. Also, never come to a partner with a problem unless you are prepared to offer a solution. That’s how you start thinking like a partner. That shows leadership.”

Reflecting on his case that’s about to go to trial, McConnell notes that he is blessed to work at a place that has so much talent. “We are very much a team and we all depend on each other. It is a very collaborative atmosphere.” As the lead partner, “you frequently feel like a coach who wants to make sure he has the right collection of players on the field.” He noted he is “very lucky to have such a deep bench.” Certainly his baseball-playing father could appreciate that.



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