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AM LAW LITIGATION DAILY

## Litigator of the (Past) Week: A Defense Win for Google in \$1.3B Ad Tech Trial

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Earlier this month, at the end of more than a month of trial, lawyers for software developer ReactX asked jurors in Los Angeles state court to hit Google with a \$1.3 billion unjust enrichment verdict. That number was based on the revenues of two of the search giant's digital advertising tools that ReactX's lawyers argued drew on their client's highly confidential information. Alternatively, they asked for \$685 million based on what they claimed Google would have paid to license the technology.

But Google's lead lawyer, **Colleen Bal** of **Wilson Sonsini Goodrich & Rosati**, put forward a very different number during her closing arguments.

"The correct damages number is zero," Bal said. "That is what everybody else in the industry would have agreed to pay and we saw that. No one would pay anything."

Earlier this month, jurors sided with Google, Bal, her partner **John Flynn** and their Wilson Sonsini trial team, and awarded ReactX nothing. Bal responded to Litigation Daily's questions about the trial.



Courtesy photos

**Colleen Bal, left, and John Flynn, right, with Wilson Sonsini.**

**Lit Daily: What was at stake here for Google?**

Colleen Bal: Part of what was at stake was Google's reputation. The plaintiff accused Google of stealing the plaintiff's confidential technology and using it to develop Google's digital advertising products. Our job was to demonstrate that the plaintiff's allegations were absolutely false, and that Google had developed its products independently, through the hard

work and ingenuity of its own engineers, product managers, and other employees.

The other part at stake was money. The plaintiff was seeking an extremely large damages award—over \$1 billion.

In short, there was a lot at stake. We were extremely gratified that the jury completely exonerated Google of any wrongdoing.

**How did this matter come to you and the firm?**

We came into the case when Google was looking to bolster its trial team in preparation for trial. We have a long-standing relationship with Google, and Google's in-house counsel reached out at that point.

**Who was on your team and how did you divide the work during the course of this five-week trial?**

We are a very cohesive trial team. John Flynn and I are the senior trial lawyers on the team. We have litigated and tried many cases together, and always work closely to develop overall trial themes and strategy and to run the trial. I handled the opening statement and closing argument, put on senior witnesses and handled significant trial arguments. John conducted the voir dire and the key cross-examinations, coordinated the attacks on plaintiff's technology and damages experts and advised on pretty much everything else.

**Tait Graves** is a subject matter expert in trade secret and confidential information and a very experienced litigator. Tait worked with several of the engineers and experts, helped to construct our independent development arguments, cross-examined one of the plaintiff's experts and coordinated a lot of the trial briefing.

**Josh Baskin** is also an experienced trial lawyer who has worked on many trials with us. He developed mastery of the record, handled some

key witnesses and the damages expert, argued many of the trial motions, oversaw the associates working on the trial team and generally kept the team running smoothly.

**Lucy Yen** has worked on many trials, especially involving patented technology. She prepared some of the key witnesses and was instrumental in the trial briefing and jury instructions.

**How did you and your team narrow the case down to one contract claim in the run-up to trial?**

Prior to trial, we extracted significant admissions from the plaintiff's head of technology and its retained technology expert. That may have contributed to the plaintiff voluntarily dropping its trade secret claim just before trial.

At trial, the plaintiff asserted that Google breached several different contracts, as well as the implied covenant of good faith and fair dealing. We brought motions for nonsuit at the close of plaintiff's case-in-chief, arguing that only one, integrated contract governed the parties' relationship, and that the plaintiff had failed to present sufficient evidence to support its implied covenant cause of action. The court granted those motions at the close of all the evidence.

The result was that the jury only had to consider breach of a single contract, but as noted above, the plaintiff claimed extremely large damages resulting from that alleged breach.

**What were your trial themes and how did you drive them home with the jury?**

One primary theme was that Google did not use any of the plaintiff's information, but instead independently developed its own products. We drove home that theme with testimony from the Google engineers who had developed the products. Among other things, they testified

about how they came up with their ideas, the problems they were seeking to solve, the work they put into the development of Google's products and that they had never even heard of the plaintiff.

Another key theme was that the plaintiff had no success in the market because it had not developed unique or valuable technology. We highlighted the plaintiff's financial records, its lack of success in the market and its failed efforts to sell itself and its technology. The plaintiff's own documents and history helped us tell the story vividly.

**In a trial as long as this one, do you ever get concerned as a defendant that jurors will assume just by the volume of evidence and length of the proceedings that your client must have done something wrong?**

We were confident that the jury was paying attention to the technological evidence and the human story behind it. As noted above, we presented witnesses who had developed the technology and had never heard of the plaintiff. That testimony was powerful, and we believe that its cumulative impact was decisive. We believe our case got stronger as the trial progressed, and the jury got a good look at all

the witnesses and evidence.

**Your damages expert didn't offer an alternative to the extremely large number the plaintiff put forward. Didn't that feel risky?**

It did not feel risky in this case. We felt strongly that Google had not damaged the plaintiff in any way. It would have been inconsistent with our trial themes and evidence to suggest otherwise by putting forward an alternative number.

**What can others take from what Google was able to accomplish here?**

This should give people faith in the jury system. This was a long trial involving complicated technology. The jury was attentive, and it was capable of considering the evidence and reaching a responsible verdict based on the evidence.

**What will you remember most about this matter?**

This was one for the books. It was a challenge and a pleasure to try a six-week case in front of such a conscientious jury. Our witnesses were fantastic—impressive, hard-working and genuine. The Google in-house team, especially **Justin Cohen** who oversaw the matter day-to-day, was great to work with. And we were supported by a stellar group of talented, diligent and enthusiastic associates from our firm.