

Trial Group Of The Year: McKool Smith

By **Matt Fair**

Law360 (February 5, 2018, 12:12 PM EST) -- When renowned music producer Quincy Jones looked to win royalties from the late pop superstar Michael Jackson's estate, he turned to McKool Smith LLP, whose work winning a nearly \$10 million verdict in the case has helped earn the firm a spot among **Law360's Trial Groups of the Year**.



While McKool Smith chairman and co-founder Mike McKool said that the **\$9.4 million he won** on behalf of Jones in July was relatively small compared with, say, the \$131.4 million antitrust verdict one of his colleagues also helped to win last year, the royalty spat with the King of Pop's estate helped to bring national and international attention to the firm's talent for handling high-pressure litigation.

"We've had a number of cases that have had a big impact on certain industries, patent cases with the kind of licensing fees that sometimes run into the several billions of dollars, but I've never had a trial with the general kind of popular renown that this one had," McKool told Law360. "People I play tennis with say they've heard of the case and knew that I was involved with it."

It should be no surprise that Jones turned to the Dallas-based McKool Smith when he planned to take on the Jackson estate. Since the firm's founding in the early 1990s, it has focused exclusively on working cases up for trial and presenting them to juries.

"We don't have a litigation department," McKool said. "We are only litigation."

The firm now boasts 185 attorneys in eight offices across the United States.

The case it handled for Jones centered on royalties the producer said he was owed after songs from three Jackson albums he produced — "Off the Wall," "Thriller" and "Bad" — were used both in a documentary produced after the artist's death and in Cirque du Soleil performances.

A major challenge in trying the case, McKool said, was overcoming latent sympathies he said that many prospective jurors in the case showed for the almost universally known Jackson.

"We knew from jury testing that some people would not vote against Michael Jackson or his estate no matter what, and the other side made a big point of saying the estate was trying to preserve this money from Michael's family, for his mother and his three children," he said.

After a two-week trial in July, however, Jones ultimately prevailed.

The firm notched another major victory **as it won** a \$131.4 million antitrust verdict in April on behalf of more than a dozen companies who accused General Electric Co. of squeezing them out of the market for maintenance of anesthesia equipment.

The plaintiffs said that GE, one of the largest manufacturers of anesthesia gas machines in the country, changed its sales policy to no longer sell parts for the equipment at wholesale prices.

Instead, the companies said, GE appointed a third-party company as the sole source of service parts that charged "highly inflated" prices in an unreasonable restraint on trade that would lead to the complete elimination of any rivals.

"Basically, you can't change the rules of the game once the market's been created," said John Briody, a principal in McKool Smith's office in New York who worked on the case. "You have customers who were buying GE machines understanding they could turn to low-cost options like our clients for maintenance, and then that option gets taken away from them."

The fact that the case even made it to trial, let alone resulted in such a substantial verdict, made it a noteworthy one.

"There aren't a lot of monopolization cases that end up getting tried," Briody said. "A lot of cases settle, or else a lot of them will get knocked out through motion practice, but this was a case where the team litigated hard all the way through and brought it all the way through trial."

A jury ultimately returned a \$43.8 million verdict in April after a week-and-a-half of trial and about four hours of deliberation. Under antitrust law, the award was trebled to \$131.4 million.

"It was particularly gratifying to represent the little guy here and get a win against such a large corporation," Briody said.

McKool Smith also helped TiVo subsidiary Rovi Corp. **score a big win** as an administrative law judge with the U.S. International Trade Commission agreed in May that Comcast Corp. had infringed two of its patents for remote video recording and interactive television guide technologies.

The magnitude of the win was underscored by the fact that it sent TiVo shares spiking nearly 18 percent on the day the ITC announced its initial ruling in the case.

The firm managed to secure the win with a team of attorneys that included several third-year associates who were examining or cross-examining witnesses for the very first time during the ITC hearing.

"That's important for us to foster that kind of trial experience," said Douglas Cawley, a principal in McKool Smith's office in Dallas. "For those of us who have been doing this for a while, it was great to see some younger lawyers get an opportunity. Nothing in this practice energizes you like a chance to actually do your thing in court."

-- Additional reporting by Jess Krochtengel and Melissa Daniels. Editing by Jeremy Barker.