

## Mike McKool's \$145M Birthday Verdict Against Apple

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**By Mark Curriden**

(Aug. 10) – Mike McKool has tried more than 100 cases to a jury during the past 45 years. He's won more multimillion-dollar verdicts than you can count on both hands.

But last week, the Dallas trial lawyer engineered a \$145.1 million patent verdict against the almighty Apple in its home state – a victory that was especially sweet as McKool approaches his 69th birthday next week.

“Beating Apple in California is a tough task and made this case quite special,” McKool says. “We had several iPhone users on the jury. But we kept our arguments to the facts and we did not demonize Apple at all.”

McKool and his team at Dallas-based McKool Smith represent Ottawa-based WiLAN, which claims that Apple infringed on the company's patented voice-over-LTE wireless communications technology in several of its iPhone 6 and iPhone 7 devices.

Lawyers for Apple, led by DLA Piper partners mostly based in California, argued that their client had developed its own similar patented technology.

After eight days of trial, the five-man, three-woman jury deliberated only an hour before finding for WiLAN and awarding \$145.1 million in damages.

“We took a very conservative approach in our allegations and trial presentation,” McKool

says. “In this environment where trial lawyers are viewed as greedy and too aggressive, we made sure that we only made claims that were absolutely provable and we made sure we were transparent.



**Mike McKool**

“In openings, I asked for \$145.1 million, which we based on a royalty of 85-cents per phone,” he says. “We got every penny that we asked for.”

McKool points to the testimony of a key witness – the lead inventor of the technology – as a primary reason for the success at trial.

“The lead inventor was a great witness,” he says. “He was obviously brilliant, but he also showed that he was humble and thoughtful and he never overstated any fact or opinion. The jury loved him.”

Even after four decades as a trial lawyer, McKool says it is still exciting to present cases to a jury. And waiting for juries to deliver their verdicts can be incredibly intense.

“Some of the worst and best feelings of my life were when juries read their verdicts,” he says. “Nearly everyone says that a short jury deliberation means a defense verdict because the jury has to go through all the questions in order to rule for the plaintiff.

“Several members of our team were worried when the jury came back in only an hour,” he



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says. “I was not that surprised. I was confident in our case. I feel very confident about our case on appeal.”

McKool says he feels great satisfaction when he’s standing before a jury announcing its decision, but he says lawyers should not overreact in the courtroom to victory.

“It is not appropriate to jump up and down and celebrate,” he says. “Remember, the people and lawyers on the other side have just lost and they

are usually good people and good lawyers. In our case, the DLA Piper lawyers were exceptionally good lawyers and I have a great deal of respect for them.”

McKool led the plaintiffs team that included McKool Smith principals Steven J. Pollinger, Brett E. Cooper, Robert Cote, Ashley N. Moore, Jonathan Yim, and Seth Hasenour. The firm also had associates Warren Lipschitz, Kevin Schubert, Christopher P. McNett, Drew Hollander and Elisa J. Lee working on the litigation.