

Latham Retains Privilege In White & Case Malpractice Case

By **Aaron Keller**

Law360 (February 28, 2023, 4:00 PM EST) -- Citing the attorney work product privilege, a Connecticut judge has ruled that most of a tranche of Latham & Watkins LLP documents cannot be provided to White & Case LLP as the latter defends itself against a former client's \$2 million malpractice claim.

The complicated privilege dispute is part of a **March 2020 lawsuit** by cosmetics company Shipman Associates LLC, which does business as theBalm, in the Connecticut Superior Court's Stamford/Norwalk Judicial District. Shipman hired Latham in 2017 to handle a company sale that it claims White & Case stymied through years of legal malpractice, according to a Jan. 27 filing by the company and its original complaint.

White & Case moved on Jan. 6 to **compel** Shipman — its former client — to provide any documents the company subsequently obtained from Latham, including internal law firm deliberations and communications. Shipman **objected** to the disclosure on Jan. 27 and said it didn't possess Latham's internal work product. Latham **filed papers** that same day to assert privilege over the material.

White & Case originally subpoenaed Latham for the material. During oral arguments on Feb. 10, Connecticut Superior Court Judge Sheila Ann Ozalis criticized Latham for accepting and responding to the subpoena without immediately moving to quash it.

Latham previously provided the material to Shipman to assert any potential privilege. Shipman disclosed portions of the material to White & Case but did not provide Latham's internal deliberations.

In a **terse Friday order**, Judge Ozalis said she reviewed 211 documents submitted for in-camera inspection and 478 documents Latham previously provided to White & Case. She concluded that 201 of the disputed documents were protected by attorney work product privileges. Only 10 were not protected, she said, because Shipman previously provided them to White & Case or because White & Case had previously created them.

According to the March 2020 **complaint**, Shipman Associates LLC traces its roots to Stamford native Marissa Shipman's sales of cosmetics beginning in 1999. In 2007, Shipman, as CEO of the company, asked White & Case partner Oliver Brahmst to assist for free on several legal matters but promised to hire White & Case should she eventually sell the business. Brahmst allegedly agreed and commenced work without documentation or a formal retainer agreement on myriad issues. Among these was a 2007 warrant agreement that purportedly contained a noncompete clause for a top salesperson who was given an ownership stake in the company as part of her compensation.

Later, during discussion about a Shipman restructuring in 2013, White & Case allegedly noticed that its files were incomplete, and conflicting copies of the warrant agreement were found. One, signed by the warrant holder, did not contain the noncompete requirement. This discovery should have set off "alarm bells" and "an exhaustive factual review," court documents have alleged; instead, Brahmst suggested Shipman and her father, who was also involved in the company, join him for "two stiff drinks and dinner."

Shipman's filings say she attempted to sell the company in 2016 after sales exploded. However, the lack of a meeting of the minds on the 2007 warrant agreement stymied the process and resulted in protracted litigation in Delaware. The company alleged that it had to spend "close to \$2 million in

counsel fees alone, plus additional time and expense incurred by Shipman," to straighten out questions surrounding its own ownership.

Shipman sued White & Case, alleging that it caused the problem in 2007, failed to fix it in 2013, and failed to recommend a standstill agreement during the sale process in 2016.

Shipman filed a **separate lawsuit** against White & Case in 2019 in New York state court. That litigation accused the law firm of wrongly disclosing confidential information.

When contacted by Law360, Shipman's attorney, Eric D. Grayson of Grayson & Associates PC, said he was "pleased to see the court uphold the sanctity of the attorney work product doctrine."

"Win, lose or draw, Judge Ozalis puts in the time and research before making a decision," Grayson added. "I thought White & Case was overreaching to start with, and — of course — they were making arguments against a position they might want to assert in the future."

Attorneys for Latham and a firm spokesperson did not respond to Law360's requests for comment.

A spokesperson for White & Case and the firm's attorneys also did not respond to inquiries. However, during oral arguments surrounding the dispute on Feb. 10, Robyn E. Gallagher, of Wiggin & Dana LLP, told Judge Ozalis while representing White & Case that the dispute was "unique" and that the parties and the judge had probably "never seen anything" like it.

Shipman Associates LLC is represented by Eric D. Grayson of Grayson & Associates PC.

White & Case LLP is represented by its attorney Joshua Berman, and Robyn E. Gallagher and Kevin M. Smith of Wiggin & Dana LLP.

Nonparty Latham & Watkins LLP is represented by its attorneys Joseph C. Akalski and Thomas J. Giblin.

The case is Shipman Associates LLC dba TheBalm v. White & Case LLP, case number FST-CV20-6046192-S, in the Stamford/Norwalk Judicial District of the Connecticut Superior Court.

--Editing by Robert Rudinger.