

White & Case Settles Conn. Malpractice Suit Over Co. Sale

By **Aaron Keller**

Law360 (July 13, 2023, 12:52 PM EDT) -- A cosmetics company has dropped a Connecticut malpractice lawsuit that questioned White & Case LLP's moves during a corporate control matter, ending a dispute that drew another firm, Latham & Watkins LLP, into the fray as privilege matters arose during the long-running litigation.

A **document** filed Wednesday in the Connecticut Superior Court provides few details beyond a checkmark next to a box that says the action "is withdrawn as to all defendants without costs to any party." Eric D. Grayson, a Stamford, Connecticut-based attorney for the plaintiff, told Law360 on Thursday that "the matter settled amicably" but declined to provide details.

A message to a White & Case spokesperson was not immediately returned.

Cosmetics company Shipman Associates LLC, which does business as theBalm, sued White & Case in March 2020. According to an **amended complaint** filed December 2020, Shipman accused White & Case of a "chronic pattern of dishonest conduct."

It further alleged that White & Case used "confidential client information to try to extort its former client."

Shipman said it was forced to spend \$1.8 million in legal fees when it subsequently hired Latham & Watkins in 2017 to correct a company sale that it claimed White & Case stymied through years of mistakes.

Shipman sought that amount in compensatory damages plus "actual and treble damages for its costs and expenses responding to defendant's deceitful conduct."

However, the filing that scuttled the case noted that no costs were awarded.

White & Case had previously denied the allegations against it in an **answer** and series of affirmative defenses.

The dollar amount of the settlement is unclear. It is also unclear which side, if any, paid the other.

According to the March 2020 **complaint**, Shipman Associates LLC traces its roots to Stamford native Marissa Shipman's sales of cosmetics beginning in 1999. Shipman Associates is a Delaware LLC that maintains offices in Nevada and Connecticut, corporate records indicate.

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 them 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 the company's files were incomplete, and conflicting copies of the warrant agreement were found.

One, signed by the warrant holder, did not contain the noncompete requirement.

That discovery should have set off "alarm bells" and "an exhaustive factual review," Shipman alleged in court documents.

Elsewhere, the complaint says Brahmst suggested Shipman and her father, who was also involved in the company, should join him for "two stiff drinks and dinner" after an alleged "wild goose chase" occurred during the search for the correct copy of the agreement.

White & Case denied the allegations of wrongdoing, claiming in **subsequent filings** that several of theBalm's claims were "rife with factual misstatement and misdirection."

According to a memorandum of law attached to a **motion to strike**, "theBalm handled all negotiations with the employee over the terms of the warrant."

"White & Case had no first-hand knowledge as to which versions of the warrant were shared as part of the negotiations nor which version of the warrant was finally executed," that filing continued.

According to court documents, Shipman attempted to sell the company in 2016 after sales exploded.

However, the lack of a meeting of the minds on the 2007 warrant agreement muddied 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 then brought its 2020 suit against 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.

In court filings, White & Case denied that confusion over the warrant caused the sale of the company to fail.

Litigation between the parties also occurred in state courts in New York.

White & Case in 2017 **accused** Shipman of failing to pay more than \$900,000 in attorney fees. A 2023 **opinion** by a New York appellate court determined that the parties entered a valid contract for legal services but left damages for trial. The opinion said it was unclear whether Shipman would have to pay 100% of the fees billed and noted that the relationship between the firm and the client "ended acrimoniously."

The 2017 matter concluded Wednesday, the same day as the Connecticut settlement, with a stipulation of discontinuance.

Shipman **also sued** White & Case in 2019 on **accusations** that the firm engaged in a "campaign of extortion based on repeated threats to disclose client confidences."

A New York judge **dismissed** that matter in January 2020, citing the then-pending 2017 case and a lack of opposition.

Privilege disputes **arose earlier this year** in the Connecticut litigation when White & Case moved to compel Shipman 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.

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

White & Case LLP is represented in-house by Carolyn Pelling Gurland and by 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 s/b/a theBalm v. White & Case LLP, case number FST-CV20-6046192-S, in the Stamford-Norwalk Judicial District of the Connecticut Superior Court at Stamford.

--Editing by Marygrace Anderson.

Update: This story has been updated to include additional details about the Connecticut and the New York litigation.