

Litigators of the Week: Kirkland Duo Delivers Big for Honeywell

Even the judge said the case law was “a mess.” But Kirkland & Ellis partners K. Winn Allen and Craig Primis found a way to deliver a big win on appeal for Honeywell.

By Cogan Schneier

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While appellate litigation always presents challenges, wading into an area of case law that even one of the judges called “a mess” means a whole new set of problems.

That’s what Kirkland & Ellis partners K. Winn Allen and Craig Primis faced defending their client, Honeywell International Inc., against a labor contract challenge in the U.S. Court of Appeals for the Sixth Circuit. But they faced the challenge head on, streamlining their approach to make their legal theory work regardless of inconsistencies in case law, and bringing home a big win for a massive client on Wednesday.

“The interesting fact in this case was, the court was having to grapple with an area of the law that had been overturned, and kind of a new emerging regime of what the law would be,” Allen said.

The story begins in August 2016, when two retired workers filed a lawsuit against Honeywell on behalf of roughly 1,000 retirees of a factory in Fostoria, Ohio, alleging the company broke its collective bargaining agreement by no longer paying for their health insurance. The CBA at issue expired in 2011 and was not renewed.

The Sixth Circuit has been struggling to interpret the law on lifetime benefits under contracts since a



Craig S. Primis and K. Winn Allen of Kirkland & Ellis

2015 Supreme Court decision overturned the court’s precedent on the issue. Still, Allen and Primis said after closely reviewing the contract and case law, they knew right away what to do.

The contract language said Honeywell would pay health insurance for workers’ lifetimes “for the duration of this agreement.” Thus, when the agreement expired and was no longer renewed, Honeywell no longer had to pay, the lawyers reasoned. They quickly filed a motion to dismiss, and, fresh off a six-week trial in Maine, Allen and Primis flew to Ohio in December last year to argue the case. The district judge was so riveted by the hearing, he asked for a second day of argument, something neither lawyer anticipated.

“[The judge said] he wouldn’t hold it against us if we were wearing the same suits and the same shirts,” Allen joked.

He must not have, because U.S. District Judge James Carr in Toledo ruled for Honeywell. Then, it was on to the appeals court.

Allen and Primis were confident about their arguments, and were ready to file their brief even before their deadline on April 24. But, as Primis put it, the court threw out a “curveball.” On April 20, the Sixth Circuit released three very different opinions on benefits and CBAs, turning the Honeywell case upside down. Each case was subsequently appealed and denied at an en banc hearing, prompting the dissent from Judge Richard Griffin in which he referred to the court’s case law as “a mess.”

Primis said that in his 20 years of legal work, he’s never had such a situation.

“It was almost the opposite of an ‘aha moment,’” he said. “It was more like an ‘oh no’ moment, because we had briefed and presented the case one way and then we got three decisions on that very issue.”

But Primis and Allen stayed calm, and they were prepared. After securing more time from the court to rewrite their brief, the lawyers came to the conclusion that no matter which opinion they considered their case under, they were still correct. The plain language of the agreement meant the benefits did not continue for life.

“Our approach was, okay, let’s focus on the language of this specific contract here,” Allen

said. “What does our contract say? We think that the contract, the specific contract at issue in this case, led to an affirmance under any of the [three] cases.”

Allen, just 34, argued in the appeals court for Honeywell last month, and on Wednesday, the Sixth Circuit ruled in Honeywell’s favor.

“The agreement promises healthcare ‘for the duration of this Agreement,’ and this promise means exactly that: Honeywell’s obligation to pay its Fostoria retirees’ healthcare ended when the agreement expired,” Chief Judge R. Guy Cole wrote in the opinion.

While Allen said it’s too soon to tell how much of an impact the opinion will have on the case law in the Sixth Circuit, he said Cole’s opinion did clarify how the law could be applied in some circumstances.

Primis said another satisfying aspect of the case was watching Allen succeed. Honeywell Deputy General Counsel Kevin Covert fully supported the young lawyer, just nine years out of law school, and even appeared at the Sixth Circuit when he argued the case.

“It’s just significant that Winn Allen argued the TRO and Sixth Circuit appeal in a major class action involving a thousand class members with significant financial implications for a company with the profile of Honeywell,” Primis said of his partner. “The client trusted him and his judgement. I think that’s big.”