

TEXAS LAWBOOK

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ON THE RECORD

"You're fighting the largest, most well-heeled and well-armed organization in the entire world: the Department of Justice."

JEFF ANSLEY, a former federal prosecutor who now practices at Bell Nunnally & Martin in Dallas, on how daunting it is for criminal defense lawyers and their clients to go head-to-head with the government. Ansley represented acquitted defendant Steven Kuper in the Tricare fraud trial.

NEWS TICKER

Veteran litigator and civic leader David McAtee has left Hunton Andrews Kurth for the Dallas litigation firm Hedrick Kring.

McAtee, the father of AT&T General Counsel David McAtee II, has joined the 12-lawyer firm as of counsel. He focuses his practice on defending the accounting profession, including for the "Big Four," major regional firms and individual license holders.

McAtee is a 2018 recipient of the Texas Bar Foundation's Outstanding 50 Year Lawyer Award.

Thompson & Knight announced last month that Jessica Magee, the general counsel of firm client The Beneficent Company Group and former SEC trial lawyer, has returned to the place where she started her legal career. Magee joins a white-collar and regulatory group at T&K that has a bench of about a dozen lawyers. She was a litigation associate at T&K from 2002 to 2010 before joining the SEC in Fort Worth.

SAVE THE DATE

The Association of Corporate Counsel's DFW Chapter and The Texas Lawbook will honor finalists and announce winners for the 2019 DFW Outstanding Corporate Counsel Awards. For more information, contact Brooks Igo at brooks.igo@texaslawbook.net.

What: 2019 DFW Outstanding Corporate Counsel Awards

When: Thursday, January 30

Where: George W. Bush Presidential Center

NUMBER TO NOTE

\$3.4T

There have been 11,013 M&A transactions in Texas during the past 13 years with a combined value of \$3.4 trillion, according to Mergermarket and Texas Lawbook research.

WHITE-COLLAR/REGULATORY

Tricare fraud defense lawyers say trial was a 'lesson' to prosecutors

BY NATALIE POSGATE
Staff Writer, The Texas Lawbook

The lawyers who represented the three defendants who were acquitted in December's verdict from the \$100 million Tricare fraud case have mixed feelings about the last two months they spent advocating for their clients in Dallas federal court.

On one hand, they are absolutely elated for their clients, who they say have had their careers destroyed, their reputations damaged and lives overall on hold for the past three years. On a more personal level, they're proud of their own work product for getting these clients the result they felt they deserved.

On the other hand, they are disturbed that this trial even took place – an outcome they say is reflective of a larger trend of government overreach by prosecutors in an attempt to recover public dollars that were lost because of the system's own shortcomings.

"[The government] uses the U.S. Attorney's Office as a debt collector, which is a pretty disturbing pattern that is emerging across the country," said Houston attorney Sean Buckley, who represented defendant Jeffrey Cockerell at trial. "It's what they tried to do here, which is just wrong. I think it was shown by the jury for this case that it was inappropriate."

"I think the lesson is that the government should take great care in evaluating whether the facts would demonstrate the intent element of fraud, and this case wholly failed to evaluate that issue," Buckley added.

Nicole Knox defended Cowboys marketing professional Michael Kiselak, a former player for the Dallas Cowboys. "I think all of these cases are about making the government whole again... I just don't think putting people in prison is the answer to really a debt collection



JAKE DEAN

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problem," she said. "There are other avenues [the government] could explore."

Cockerell and Kiselak were two of three total defendants acquitted last month in a massive case brought by the government in 2016 that alleged a group of doctors, compound pharmacy owners and marketers conspired to run a scheme to defraud Tricare, the U.S. military's health care system, through various kickback payments related to prescriptions for compounded pain and scar creams.

The government alleged the scheme took place between May 2014 and February 2016, defrauding Tricare out of \$100 million.

The other defendant acquitted was pharmacist Steven Kuper.

The overreach is apparent in the outcome, lawyers say. The acquittals are believed to be among the first – if not the first – in a case alleging compound pharmacy fraud involving Tricare.

"By any objective measure the significance is that this doesn't happen very often," Jeff Ansley, who represented

Kuper at trial, told *The Texas Lawbook*. "Part of it was good lawyering and the other part was overreach by the government ... it was criminalizing capitalism, which is completely inappropriate."

Some aspects of the government's case clearly resonated with jurors. Two days after acquitting Cockerell, Kuper and Kiselak, jurors returned a conviction against drug marketer John Paul Cooper on eight counts, including one count of conspiring to commit health care fraud. But the jury also acquitted Cooper on two counts and could not return a verdict on seven other counts against him.

Likewise, jurors deadlocked on charges against two physicians, Walter Neil Simmons of Arizona and William Elder-Quintana, and prosecutors say they plan to retry those cases.

The government's case also resonated with some of the defendants. More than half of the original 13 defendants – seven total – struck plea deals with the government instead of standing trial.

FIRM MANAGEMENT

DALLAS FIRM SETS SUCCESSION PLAN IN MOTION

Joe Coleman, one of the founding directors of Kane Russell Coleman Logan, wants the next 25 years at the Dallas-based law firm to be better than the past quarter of a century. The firm launched by Coleman, Raymond Kane, Gordon Russell and Michael Logan in 1992 expanded to close to 100 attorneys at its largest with offices in Dallas and Houston. KRCL topped \$50 million in revenue in 2018 and inked an agreement this year to relocate its Dallas offices to Bank of America Tower for the next 11 years.

WHAT'S NEXT: KRCL finds itself at an inflection point familiar to several other Texas law firms – identifying, training and empowering the next generation of leaders. To help usher in the next era of the firm, KRCL appointed Karen Cox this month as chair of its board of directors. She is the first woman and non-founder to lead the firm. Coleman says Cox, who has been with the firm since 1993 and has served in a number of management roles, is the "perfect fit."

A NEW MODEL: KRCL also instituted a major change in the way it does business. It has adopted a C-suite model in which non-lawyers will handle the day-to-day operations. The firm has tapped Dallas litigator Jeff Novel to serve as director of administration and work closely with the C-suite to implement the strategic vision set forth by Cox and the board of directors. The KRCL business executive team is led by CEO Mike Demarest, who has been the firm's COO.

INVEST IN THE FUTURE: The firm hired law firm management and business development consultants to develop its strategy. One of the early moves the firm made to invest in its "up-and-comers" was to commission them to lead the firm's various practice groups. KRCL then hired the development consultant to work with these attorneys over two years. Coleman says 10 of the attorneys working with the consultant saw their books of business increase 33 percent from 2017 to 2018.

-Brooks Igo