

Litigators of the Week: Hitting Walmart With a \$100M Verdict in Its Own Backyard

By Ross Todd

April 12, 2024

Our Litigators of the Week are **Brendon DeMay** and **Priyanka Timblo** of **Holwell Shuster & Goldberg** who represented former Walmart supplier London Luxury in a dispute with the retail giant over its deal to buy 72 million boxes of nitrile gloves for resale in the business-to-business market in the first year-and-a-half of the COVID pandemic. Last week federal jurors in Fayetteville, Arkansas hit Walmart with a **\$101 million damages** verdict finding that the company breached its contract with London Luxury.

Litigation Daily: Who was your client and what was at stake?

Priyanka Timblo: Our client was London Luxury, a New Rochelle-based supplier of home goods to big-box retailers which had been successful for 20 years before Walmart's cancellation of the contract in this case destroyed its business. The company was rendered defunct. Whether the business could be revived was dependent on the outcome of this lawsuit.

How did this matter come to you and your firm?

Timblo: The case came to us through a referral, after prior counsel withdrew. The case was nine months in when we took over. We were recommended to the client because it needed lawyers



Brendon DeMay, left, and Priyanka Timblo, right, of Holwell Shuster & Goldberg.

with tenacity and fresh creative ideas, and we're grateful to have that reputation among our friends and clients.

Who was on your team and how did you divide the work?

Brendon DeMay: Priyanka and I had worked as a duo on a small arbitration shortly before the pandemic—we won that one too—and it was great to work together again. I did the opening, the closing, and the experts, and then Priyanka and I split the fact witnesses based on which witness was

a better fit for our personalities. Although I might have been technically first-chair, this has always been Priyanka's case, and to me it felt like we were true partners. I think the jury noticed how well we worked together.

This was also a complete team effort, and our team was absolutely spectacular. Counsel **Karen Sebaski** and associates **Jordan Pietzsch, Ian Miller** and **Ben Allen** each worked on multiple witnesses, plus the opening and closing, not to mention all the evidentiary issues that come up. Those associates, some of whom are fairly junior, took the lead preparing our witnesses, including preparing all our experts almost entirely by themselves. They all did a fantastic job. We emphasized to them that we wanted to hear their ideas and strategies—they delivered, and we listened, and their ideas played a major role in every aspect of the trial. Walmart had more partners on the trial team than we had in total across partners, counsel, and associates, and our tight team came through. Our paralegal **Christine Sun** anticipated everything that needed to be done and made all the court action seamless. Back in New York, our additional attorneys **Laura Lefkowitz** and **Kamran Khan**, plus paralegal **Aayush Jonnagadla**, worked tirelessly. Our Arkansas counsel, **Scott Richardson** at **McDaniel Wolff**, was invaluable, and we couldn't have done the case without him or his paralegal **Kisha Alverson**. We're so proud of this brilliant team.

What were your major trial themes and how did you drive them home with the jury?

DeMay: The transaction broke down because Walmart executives made a bad bet on PPE prices and didn't analyze the risks of committing to buy half a billion dollars' worth of PPE from our client and trying to resell it to a single broker that had no money. When prices dropped, Walmart executives tried to cancel our client's contract and started pointing fingers to avoid accountability for their business decisions. From the start of the trial, we emphasized all the business reasons why

Walmart did everything it did. And when Walmart executives tried to pin the deal's failure on a lower-level employee and accused him of taking bribes, we showed very calmly that they were trying to blame him for things that he obviously didn't do. The executives said things on the stand that were not true, and we hammered home that they were not being straight with the jury and that Walmart was just looking for a scapegoat.

You got access to documents from some of Walmart's in-house lawyers late in this litigation. How did that come about? And how were you able to use those documents at trial?

Timblo: We began to litigate the privilege issue during discovery last summer. Walmart had asserted incendiary counterclaims alleging that the primary contract in the case was unauthorized. However, we had already seen evidence suggesting that Walmart's legal department had approved it. So we filed a sword/shield motion, arguing that Walmart had put the communications with the lawyer at issue. Depositions of Walmart executives later established that Walmart was presenting a misleading and incomplete picture of what the Walmart in-house legal department had said, so we filed another motion seeking a declaration that Walmart had waived privilege over key documents. These motions remained pending for several months. Then, shortly before trial, Walmart made the strategic decision to call their in-house lawyer as a fact witness and chose to voluntarily waive privilege over a cherry-picked selection of documents. We immediately moved for a broader finding of waiver. Our efforts were vindicated when the court ruled, just two weeks before trial, that Walmart's privilege waiver was broader than the scope of its express waiver. Although Walmart produced some documents in response to that order, it took further motion practice before it complied fully with the court's order. By that time, trial had begun and documents were still trickling in throughout the trial. The judge was

even reviewing documents *in camera* after the jurors went home in the evenings and would issue orders after midnight requiring more documents to be produced. Eventually, however, we were able to use some of those late-produced documents to confront Walmart witnesses (including its in-house lawyer) on the stand.

You tried this case just down the road from Walmart’s headquarters. Did you have concerns about that? How did you deal with connections to the company in the jury pool?

Timblo: The truth is, we always had full trust in the jury system and knew that the jury would put aside any “hometown” sentiments toward Walmart and judge the case on the facts. And that is what they did. The judge also conducted a fair and thorough voir dire that ensured an impartial jury.

The jury did award Walmart \$350,000 in damages based on evidence that your client’s CEO was working with his liaison at Walmart to open their own glove factory in Florida. How does that jibe with the damages verdict that you won?

DeMay: That ruling confirms that the jury completely rejected Walmart’s theory of the case. Walmart argued that there was an alleged conflict of interest that supposedly infected and invalidated the contract. The jury didn’t buy it. The jury upheld our contract claim and awarded trivial damages on the alleged conflict of interest. The jury might not have approved of some of what happened, but we made sure to illustrate that it was not a material breach and was not an excuse for letting the Walmart executives avoid accountability for their business decisions.

What can others take from your experience in this case?

DeMay: I think there are three lessons. First, you need to think very hard about a true and compelling story that will resonate with the jury. Second, you have to think very hard about how to address unhelpful facts. Third, you have to work tirelessly to find the evidence that will make your case.

What will you remember most about this matter?

Timblo: The trial was the most fun I’ve ever had as a lawyer. Even with the inevitable ups and downs, I knew that we left it all out on the dance floor every day, with every witness. And that paid off in the most incredible way. The excitement of being in the courtroom and trying a case like this from start to finish reminded me why I do this and why I love this profession.

DeMay: Every moment of the trial was amazing. I loved cross-examining senior Walmart executives and showing they were lying. I loved my rebuttal in the closing argument when I explained calmly and firmly why everything the jury had just heard in the other side’s closing was wrong. But the most memorable moment was my examination of the witness that Walmart had scapegoated. He had been fired from Walmart because of his interactions with my client, and for that reason he was not so happy with my client, but he also felt strongly that he worked hard to protect Walmart’s interests and was being blamed for things he didn’t do. It was a delicate situation; I had to coax helpful testimony out of him even though he didn’t like my client very much. I had to walk him down a very narrow path with little margin for error, and I think we nailed it.