

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOISEASTERN DIVISION

In re: Clearview AI, Inc. Consumer Privacy
Litigation

Civil Action File No.: 1:21-cv-00135

Judge Sharon Johnson Coleman

Magistrate Judge Maria Valdez

**MOTION FOR AN ORDER CLARIFYING THAT THE COURT
INTENDED TO APPOINT LOEVY & LOEVY AS LEAD CLASS COUNSEL,
AS OPPOSED TO THE INDIVIDUAL LAWYERS
WHO AT THE TIME WORKED AT THE FIRM**

Jonathan Loevy
Michael Kanovitz
LOEVY & LOEVY
311 N. Aberdeen, 3rd FL
Chicago, IL 60607
(312) 243-5900

Introduction

The Court's original order appointing interim lead class counsel appointed Mike Kanovitz and Scott Drury of the firm Loevy & Loevy ("L&L"). R.90. The motion that had served as the basis for that order demonstrated the Loevy firm's extensive experience and expertise, and its impressive track record in class action litigation and trials. On that basis, the Court made the appointment.

L&L proceeded to litigate the case diligently and effectively for nearly two years, vindicating the Court's trust in our firm as lead class counsel. Then, with discovery winding down and settlement negotiations picking up, Mr. Drury resigned from the firm and sent notices directing L&L to immediately withdraw from the case. This was presumably so that any resulting attorneys' fee would come to his new firm rather than to L&L. When L&L lawyers urged Mr. Drury to allow them to finish their trial that was ongoing before Judge Kennelly so they could bring the matter to this Court's attention in an orderly way, Mr. Drury responded that if L&L lawyers did not all withdraw within 48 hours, he would accuse them and proceed against them for disobeying a client directive.

The conclusion that Mr. Drury is putting his own economic self-interest above that of the class is unavoidable. Put simply, there is no universe where the class is better served by firing L&L. In addition to all of our other qualifications on which the Court relied in appointing us, our firm just won a \$228 million judgment in the first BIPA case to go to trial. And some of the same defense law firms from Clearview represented witnesses in that trial, such that our continued role as lead class counsel can only benefit the class. Mr. Drury's ill-conceived power-grab should be rejected.

Summary of Relief Sought

By this motion, L&L seeks an order clarifying that the Court intended to appoint the L&L firm as lead class counsel, not the individual lawyers who at the time worked at the firm. *E.g.*, *Hodges v. Bon Secours Health Sys., Inc.*, CV RDB-16-1079, 2016 WL 4447047, at *2 (D. Md. Aug. 24, 2016) (appointing a law firm as class counsel, not individual lawyers).

To be clear, in seeking a declaration that L&L remains lead class counsel, L&L is not asking that Mr. Drury be forced off the case altogether. Mr. Drury is a skilled attorney, who has been very involved in the litigation to date. If he is willing, L&L hopes that he will continue to play the same

role in the same relationship that has essentially characterized the staffing of the case for the past two years: specifically, as an associate and employee of L&L, Mr. Drury took direction from and was under supervision of the senior partners at L&L. While serving in that capacity, there is no dispute that Mr. Drury was very involved in this litigation, and hopefully he will decide to remain so. The class' best interests, in other words, would be best served if the Court entered an order affirming that L&L remains lead class counsel, and continues to be responsible for supervising and directing.

Discussion

As the Court is aware, this case involves allegations that the Clearview Defendants were sweeping mug shot photos from the internet into a database that ran afoul of Illinois' Biometric Information Privacy Act ("BIPA"). The relevant background for the present dispute is as follows.

A. L&L Files This Lawsuit

The case was conceived by an associate in L&L's privacy practice area, Andrew Miller, who had been investigating the issue since at least November 2019 based on documents obtained under FOIA. Senior L&L Partner Mr. Kanovitz was also instrumental in creating the complaint. He was the one who included the novel and creative civil rights claims. *See* Exhibit B.

In January 2020, the *New York Times* published a front-page article describing Clearview's actions. Because L&L attorneys had been working on the case for months, L&L was in position to promptly file a lawsuit, the first firm to do so. After the *New York Times* broke the story and L&L filed its lawsuit, a number of other class action law firms subsequently filed similar cases in the Northern District and other jurisdictions around the country. Those cases were consolidated before this Court by order of the Judicial Panel on Multidistrict Litigation.

B. L&L's Motion To Be Appointed Class Counsel

Multiple class action law firms sought the honor of being appointed lead class counsel. L&L's motion made a very strong case that our firm was uniquely positioned to lead in this important case. The firm's resume, Exhibit 1 to that motion (R.88-1), is worth reviewing. *See* Exhibit A. In nine pages, the firm justifies why its experience and track record justify the appointment. *Id.*

In sum, with more than 40 extremely-qualified lawyers fighting for civil rights and consumer protection, the firm has extensive experience with class actions, BIPA claims, and related privacy issues. L&L has massive class action verdicts and settlements, totally more than \$200mm (before *Rogers* doubled that amount). The representative case results on pages 2-9 speaks for themselves. The firm's resume also demonstrates that its trial experience is of the highest caliber. We have won scores of jury trials and secured hundreds of millions in recoveries for our clients. This extraordinary record of success in difficult cases will help the Clearview class achieve the best possible result. *Id.*

Notably, there is not a single reference to Mr. Drury in the entire supporting exhibit, nor to a single case he had ever worked on. *Id.*

On August 14, 2020, the Court granted L&L's motion. R.90. Per the motion's request, attorneys Mike Kanovitz and Scott Drury of the firm Loevy & Loevy were appointed interim lead class counsel pursuant to FRCP 23(g). See R.90.

C. L&L Associate Scott Drury

Mr. Drury joined L&L in 2019, having served the prior six years as a full-time member of the Illinois House of Representatives. Thereafter, Mr. Drury (who prior to politics was criminal prosecutor with the U.S. Attorneys' Office) rejoined the practice of law. Despite his lack of experience with either civil litigation or class actions, Mr. Drury had worked on privacy issues as a politician, and was thus a good fit to lead L&L's newly founded privacy practice. One of his first assignments was the firm's Clearview case.

D. L&L And The Clearview Litigation

The firm proceeded to litigate. Mr. Drury was assigned the case in terms of responsibility for the day-to-day litigation, but that said, it was a team effort.

For example, co-lead class counsel and L&L Senior Partner, Mr. Kanovitz, has been involved since the earliest stages of L&L's evaluation, beginning in November 2019, supervising Mr. Miller as well as Mr. Drury. When the *New York Times* article came out unexpectedly in January 2020, Mr. Kanovitz drafted sections and edited the complaint so we could be the first to file two days later. *Id.*

Mr. Kanovitz stayed involved thereafter as a supervisor, advisor, and hands-on participant. By way of examples, Mr. Kanovitz participated in: locating and adding additional defendants; identifying sources for discovery; reviewing FOIA documents; strategizing and litigating the multidistrict conflicts among firms vying to represent the class in New York and elsewhere; working with opposing counsel once they appeared; working on the preliminary injunction motion; briefing on the original motion to appoint L&L; drafting the firm's resume to establish the firm's class action credentials; responding to the competing firms' efforts to be appointed in other venues; briefing on motion to transfer; intervening in the New York venue; decision making on adding and dismissing additional defendants; mediation efforts in late 2020, and continuing through 2021; evaluating insurance policies; strategizing for the MDL proceedings; drafting portions of plaintiff's mediation statement and formulating viable programmatic relief as part of a potential resolution; negotiation of the joint prosecution agreement between L&L on the one hand and the Bursor and Hedin firms on the other; research regarding Clearview's patents and its Singapore subsidiaries; formulating information requests in the context of settlement; litigating the lead counsel motions following the JPML ruling; researching the injunction of state court proceedings in aid of the federal court's jurisdiction; and addressing conflict issues and staffing, among other matters. *See* Exhibit B (Kanovitz Declaration).

Former L&L associate Mr. Miller's work at the firm was almost entirely dedicated to the privacy cases. Beyond conceiving/developing the Clearview case, he helped draft the complaint and other pleadings, including a lead role in drafting the motion and the reply in support of preliminary injunction, as well as a lead role in drafting the response to Defendants' motion to dismiss. *Id.*

Scott Rauscher, a L&L partner with class action experience, also drafted pleadings in the Clearview case, including the initial draft of the motion to appoint the firm as lead counsel. When Mr. Drury was too busy with other matters, Mr. Rauscher provided other support, including drafting responses to multiple sets of written discovery. *Id.*

Jon Loevy, too, has worked on the case, including this pleading. While he typically gets involved after discovery and closer to trial, Mr. Loevy is excited to play a bigger role in this important

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.