

# THE AM LAW LITIGATION DAILY

## Litigators of the Week: Getting 23andMe's Bankruptcy Sale Past the Finish Line

By Ross Todd

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Our Litigators of the Week ushered through the \$305 million bankruptcy sale of genetic testing company 23andMe to a newly formed nonprofit led by the company's co-founder, Anne Wojcicki. A team led by Christopher Hopkins at Paul, Weiss, Rifkind, Wharton & Garrison represented the company in its voluntary Chapter 11 proceedings initiated in March. A team led by **Joseph Larkin at Skadden, Arps, Slate, Meagher & Flom** represented Wojcicki and TTAM Research Institute in successfully reopening bidding last month and surpassing Regeneron Pharmaceuticals' initial \$256 million offer for the company.

The teams combined to help whittle objections from 34 states' attorneys general down to five holdouts, secured sign-off on the deal from the bankruptcy court, and fended off requests to stop the deal at multiple levels—including a last-ditch effort by the state of California that the Eighth Circuit extinguished last week.

**Lit Daily: Who were your clients and what was at stake here?**

Chris Hopkins: Paul, Weiss represented 23andMe and its affiliates in their Chapter 11 cases. This litigation was existential to the



Courtesy photos

**Chris Hopkins of Paul, Weiss, Rifkind, Wharton & Garrison, left, and Joe Larkin of Skadden, Arps, Slate, Meagher & Flom, right.**

company—absent a successful sale process and expeditious closing, the company faced an imminent liquidity shortfall and potential liquidation. Although our client could have sought to implement the TTAM sale through other mechanisms (e.g., under a Chapter 11 plan), that process bore risk and would have cost the company an estimated \$20 million or more in incremental costs.

Joe Larkin: We represent TTAM Research Institute and Anne Wojcicki, the founder and CEO of 23andMe. TTAM is a California non-profit medical research organization that was formed by Anne after 23andMe filed for bankruptcy earlier

this year as a vehicle to pursue an acquisition of 23andMe out of bankruptcy.

**How did this matter come to you and your firms?**

Hopkins: 23andMe initially hired our firm to assist in reaching settlements with various groups of claimants arising from a 2023 cyber incident. Although we were successful in entering into those settlements, a confluence of factors impacted the company's ability to effectuate an out-of-court transaction, and our role expanded to preparing the company for its Chapter 11 filing and implementing a strategic transaction through an in-court sales process.

Larkin: Skadden has been counsel to Anne since early 2024, when she initially considered making a takeover proposal for 23andMe. We advised Anne throughout that out-of-court strategic review process for approximately a year before 23andMe filed for bankruptcy.

**Who all was on your teams and how did you divide the work?**

Hopkins: For Paul, Weiss, it was a remarkable cross-disciplinary collaboration involving litigation, restructuring, data privacy, appellate and corporate lawyers working quickly and seamlessly to reach the finish line. My litigation partners Jeff Recher and Billy Clareman led the litigation proceedings along with me. We divided the litigation work evenly among the three of us, and the outstanding outcome we were able to achieve would not have been possible without Billy and Jeff's exceptional courtroom advocacy. I presented opening and closing arguments at the bankruptcy court during the sale approval hearing, while Jeff and Billy presented and examined the witnesses. I argued against the motion to stay in the bankruptcy court, and Billy presented witness testimony on harms that would result from a stay. Jeff argued the stay motion at the district court.

Paul Basta, co-chair of our restructuring department, provided expert strategic advice throughout the process, while Jeff Marell, global co-head of our mergers and acquisitions group, led the corporate team. John Carlin, chair of our cybersecurity & data protection practice group, played a key role in helping us successfully respond to the data privacy concerns raised by the states. And Kannon Shanmugam, co-chair of our litigation department and head of the appellate practice, was instrumental as the case headed to the appellate stage. I also need to acknowledge our outstanding associate group, led by restructuring associates Grace Hotz and Jessica Choi, and litigation associates Lyuba Shamailova, Christine Ray, Anna Lucardi and Vida Robinson.

Finally, it was a great pleasure to collaborate with Thomas Riske, Robert Eggmann and Nathan Wallace of Carmody MacDonald, who served as local counsel to 23andMe.

Larkin: The Skadden team worked seamlessly across the Skadden platform: **Ron Meisler** led corporate restructuring, **Rick West** led M&A and I led the litigation. Ultimately, five different practice groups across Skadden's global platform were synced up to deliver this victory for our client: M&A, litigation, corporate restructuring, intellectual property and tax. **Quinn Emmanuel** and **Bryan Cave** joined the team in June as conflicts counsel and made great contributions on the litigation front, especially in our efforts to reopen the auction after Regeneron was initially declared the winner and the recent efforts to defeat four separate motions by various states' attorneys general to stop the sale.

**How would you describe the pace of litigation from the time this bid came together until the Eighth Circuit decision last week that allowed the deal to close?**

Hopkins: In restructuring, we are used to accelerated timelines. That said, the pace from finalizing the TTAM transaction through the Eighth Circuit's decision that allowed us to close the transaction was extremely fast. Thankfully, the bankruptcy court, district court and Eighth Circuit moved quickly, and our team was able to swiftly file our responsive pleadings—in some cases within a few hours—to help ensure an expeditious resolution of these issues.

Moreover, when we got to the appellate challenges and emergency requests for stays, every day the sale closing was delayed cost the company hundreds of thousands of dollars. Presenting that to the appellate courts that were confronting these complex issues and facts for the first time was critical, as was ensuring we moved as quickly as possible.

Larkin: The pace of litigation was relentless from the time we initially filed an emergency motion to reopen the bankruptcy auction in mid-May through last Friday night, when we successfully defeated California's eleventh-hour effort to block the sale in the Eighth Circuit. We knew after the bankruptcy auction closed on Friday, May 16th that we needed to move as quickly as possible if our client was going to have a chance to win, and that's exactly what we did. It was exciting, and our team was all-in from the outset. Our Delaware litigation practice specializes in expedited deal litigation. Our litigation teams have spent the majority of their careers working on high-stakes, expedited matters in the Delaware Court of Chancery and other courts throughout the country. We function as a unit and we are synced up with our deal teams from very early on in the process. So we know what we have to do, and most importantly, how to do it. No one panics. We

have a plan and we execute. We are built for this. It's the Skadden way.

**There were times throughout this matter where the debtor and the TTAM parties were aligned and other times where you were not. How would you describe that dynamic and how it unfolded?**

Hopkins: As debtors in Chapter 11, the company's primary objective is always to maximize value for our stakeholders. In a large, complex Chapter 11 case like ours, it is inevitable that not every stakeholder agrees with every decision we make in furtherance of that objective. However, both we and TTAM's advisors always remained constructive and looked for ways to find consensual solutions on the issues we disagreed on at earlier stages in the case.

Once TTAM was declared the winning bidder, we worked seamlessly to prepare for and conduct the sale hearing and then to defeat the various motions for stays pending appeal all the way up to the Eighth Circuit.

Larkin: When we initially challenged the outcome of the bankruptcy auction and our client's right to continue bidding, it was tense but always very professional. Our view was that TTAM should have been given an opportunity to continue bidding for 23andMe under the clear precedent in the Eighth Circuit, and we made clear that we were going to fully litigate that issue. Fortunately, we reached the right outcome after an emergency hearing in the bankruptcy court, and the rest is history. Once TTAM was declared the winner, we worked very effectively and collaboratively with Paul Weiss to get to the finish line. In the end, we all shared the common goal of getting the deal closed and delivering a phenomenal outcome for all stakeholders here. Creditors, shareholders, employees and most importantly, 23andMe's millions of customers will all benefit from this transaction.

**What did the two-day evidentiary hearing before Judge Walsh in this case look like? What were the standout moments from your perspective?**

Hopkins: We knew going in that it was going to be a challenge. We faced objections from over 30 states, and the state of Texas sought a temporary restraining order to enjoin the sale hearing. We were also actively working with TTAM to reach a consensual resolution with as many of the objecting states as we could up to—and even during—the actual sale hearing.

Judge Walsh wanted to address the Texas TRO at the outset of the hearing, so we went right into argument on the merits. Our initial success in defeating the TRO helped build momentum for the settlements with all but five of the states. It was also a standout moment because it demonstrated how well-prepared Judge Walsh was going into the hearing.

After the Paul, Weiss litigation team—specifically Billy Clareman and Jeff Recher—did a great job presenting the company's evidence in support of the sale, we had to overcome the major objection that the transaction violated five objecting states' genetic data privacy laws—an issue of first impression. It was a complex argument that required dissecting each statute's language and demonstrating how the sale transaction was permitted under each state's statute. Without any existing case law interpreting the scope of these statutes, we had to work from a blank slate to demonstrate to Judge Walsh that the transaction contemplated here—a sale of the entire business as an equity sale that kept the existing privacy policy in place—was simply outside the scope of those statutes.

Larkin: Contested sale hearings in bankruptcy are expedited trials and all parties involved are

forced to focus on the most critical issues for the court to consider. We had approximately one week from TTAM being declared the winner to prepare the case for the sale hearing, and we worked 24/7 with debtors and our co-counsel to make it happen. The evidence and argument at the sale hearing focused on the objections by the various states' attorneys general to the sale, and I'm proud to say that we were able to resolve virtually all of them by the close of the hearing, with only a handful of states left to object by the end. The court heard testimony from six witnesses in support and against the sale. Ultimately, Anne's live testimony in support of the sale carried the day. In terms of strategy, we thought it was critically important that Judge Walsh hear directly from Anne and she very much welcomed the opportunity to tell her story. Her unwavering commitment to 23andMe's core mission and 23andMe's customers shined through!

**What's important about this outcome—for 23andMe customers, employees and the new TTAM entity?**

Hopkins: 23andMe will remain a going concern and continue to fulfill its important mission and service to its customers under TTAM's ownership. Under the TTAM transaction, every single one of 23andMe's employees received an offer of employment from TTAM, and hundreds of employees have elected to stay on and continue their work with the company. In addition, 23andMe's customers will benefit from even greater privacy protections and enhancements than they had before. From the company's perspective as debtors in Chapter 11, the \$305 million in proceeds generated by the sale will provide material recoveries to our stakeholders. This case is a great example of what Chapter 11 is intended to achieve—preserving businesses as going concerns, saving



jobs and maximizing value for the benefit of the company's creditors and shareholders.

Larkin: From our perspective, we were able to deliver a phenomenal outcome for our client that will benefit all stakeholders involved. That is a rare and gratifying win in litigation, where there are inevitably winners and losers. Here, everyone wins. 23andMe's customers will continue to have the opportunity to learn about and benefit from their DNA with the peace of mind that their information is subject to data privacy protections that were fully vetted by a bankruptcy court. 23andMe's existing employees have also remained with the company.

**What can other companies that handle and store consumers' personal data take from this case?**

Hopkins: There are a few lessons similarly situated companies can learn from this case. First, be proactive. We knew that this case would get a lot of media scrutiny, and that the treatment of our customers' data was going to be a critical issue. We also knew that preserving our commitments to our customers and their trust in the company would be essential to our ability to maximize value through the sale process.

Second, engage with your stakeholders and regulators early in the process. We did so on in this case, engaging with many of the state attorneys general at the outset of the Chapter 11 cases, which allowed us to build the relationships that helped facilitate the settlements we reached with all but five of the objecting states.

Larkin: I think Anne and TTAM have set the standard for data privacy protections in this case, and she is a great example that a company's commitment to data privacy starts at the top. Anne was able to persuade the court

that TTAM's commitment to data privacy was unwavering, in part by presenting the court with a number of significant data privacy protections that exceeded what is otherwise required by applicable law. I think it will be a blueprint that other companies will follow.

**What will you remember most about this matter?**

Larkin: To quote Bo Schembechler, "The Team, The Team, The Team!" This was a herculean effort that required selfless teamwork at all levels and across all firms. We were fortunate enough to have Anne as our leader. She set the tone and tempo from the outset, and it was up to us to match her energy and enthusiasm every day!

Hopkins: For me, what stands out is how Paul, Weiss leveraged resources and expertise across so many practice areas to deliver a phenomenal outcome for the client and for our stakeholders. Without that deep bench of experts, and their willingness and dedication to work on the fast timelines required by Chapter 11 cases, I don't think this phenomenal outcome would have been possible. And it could not have happened for a better client—throughout the process, the board's special committee supervising the restructuring process, the management team and the employees showed incredible dedication and hard work to help get this company into Chapter 11 and run a successful sale process.

I am especially grateful to Paul Basta for all his strategic advice along the way and for my litigation partners—Billy Clareman, Jeff Recher and John Carlin—who provided an incredible amount of guidance and support from the outset of the case, but particularly in connection with the sale hearing and the related appeals and stay motions that followed