

Illinois Powerhouse: Swanson Martin

By **Lauraann Wood**

Law360 (September 4, 2018, 10:49 PM EDT) -- Swanson Martin & Bell LLP has taken Illinois' trial courts by storm this past year — in one streak securing five defense verdicts within 25 days — and, at the appellate level, convinced the Illinois Supreme Court to take its side in a health care dispute.

One of Law360's 2018 Illinois Powerhouses, Swanson, which counts Will County Circuit Court Judge Barbara "Bobbi" Petrungaro and Senior Assistant Illinois Attorney General Thomas Verticchio among its alumni, got its start in Chicago in 1992 and has since expanded its commanding Midwestern presence to six offices between Illinois and northwest Indiana.

Swanson's litigation practice varies across legal areas but boasts depth in product liability and toxic tort defense work. However, managing partner Timothy Nickels said the firm has recently been growing other areas, such as its entertainment practice, which has attracted business from major industry names including Chicago's own Chance the Rapper, and its appellate practice, which this year convinced the Illinois Supreme Court to take its side on certain legal issues surrounding apparent agency between hospitals and clinic physicians.

"Those are exciting to me, and I think the other folks here, because those are newer areas of growth for our firm, and it's just very exciting to be able to offer good, excellent, legal representation in those areas," Nickels said.

Swanson's attorneys have flexed their muscles in several Illinois courtrooms this year, helping to fend off more than \$100 million in claimed damages in several suits rooted in the firm's more institutional areas of practice.

In May, for example, the Swanson duo of Patricia Kocour and Elizabeth Bruer convinced a Cook County Circuit Court jury that the firm's client, Mercy Hospital & Medical Center, had no liability for a woman's 2012 death. The woman's estate had asked for \$11 million over hospital emergency room doctors' alleged failure to diagnose her with toxic shock syndrome and a bacterial infection it claimed caused her death. But the jury sided with Kocour and Bruer, who proved the woman had really died of a viral infection in her heart.



And in December, Swanson attorneys Joseph Switzer and Sarah Ferrill defended a \$32 million lawsuit accusing their doctor client and several other medical defendants of failing to order a cardiology consultation for a man's fever, low blood pressure and poor kidney function, which the suit claimed to be the negligent cause of severe brain damage he suffered in 2012.

Ahead of trial, the judge overseeing the case granted summary judgment in favor of the hospital regarding the apparent agency of Swanson's client. And in securing the full defense win, Switzer and Ferrill helped convince a Cook County jury that a cardiology consultation was not required under the standard of care for the man's reported symptoms.

"The key is to be prepared and be ready, because we also have a story to tell ... and it's a question of credibility," Swanson partner Aiju Thevatheril said.

In a particular show of dominance, five of Swanson's 14 defense verdicts this year came within 25 days of one another, with Thevatheril serving as lead on two.

In one of the trials, Thevatheril helped a cardiothoracic surgeon dodge a potential \$3 million verdict over claims that he lost control during a stroke-prevention surgery and caused his 84-year-old patient to spend extra time undergoing and healing from the surgery. In the other, Thevatheril helped two obstetrician gynecologist clients dodge \$27.5 million in potential liability for ordering a prenatal test blamed for causing a 36-year-old woman's miscarriage.

And even though Thevatheril gets called to the spotlight when the firm mentions those highlights, he told Law360 that "no one gets the glory alone."

"I'm a firm believer in the statement that no man is an island," he said. "We can't do this on our own, without the help of our colleagues and families at home. None of us can do this on our own."

The doctrine of apparent agency was a major focus for Swanson this year, not only in its trial work but also at the appellate level, where a team of attorneys worked to set statewide case precedent regarding the legal relationship between certain hospitals and medical clinics.

An Illinois state judge ruled against Northwestern Memorial Hospital on that issue in 2014 when Swanson was representing the hospital in a woman's suit over her allegedly deficient care from an obstetrician at a separate health facility. Neither the obstetrician nor the other facility were parties to her suit.

The woman's trial judge had extended liability to the hospital, and a state appeals panel affirmed that ruling. But in agreeing with Memorial's Swanson team, the state's high court said in January the hospital shouldn't have been held liable because staff privileges alone aren't enough to trigger apparent agency.

The firm's ability to attack that issue head-on was in large part due to its philosophy of planning a case as far out as possible from the moment it takes on a new client, Swanson partner Catherine Weiler said.

"We planned for an appeal on that issue. We went through discovery planning that this was information that we were going to have to give to the appellate court and explain our position," she said. "When you have that strategy laid out that far ahead, it gives you a framework you can use going forward."

Swanson's prominence has begun to show in the entertainment industry as well, with major artists like

Chance the Rapper calling on its attorneys to help protect their brands both locally and nationally.

Chance, born Chancellor Bennett, recruited Swanson's Jeffrey Becker and Michelle Wahl to ask an Illinois federal judge to preemptively block would-be merchandise counterfeiters ahead of a tour he was kicking off. The judge granted Chance's request, extending the protection nationwide so Chance could safely sell his official merch at all of his concerts.

"We then followed it up with a second suit to protect his second tour as well," Becker said.

Others in the entertainment industry have called upon Swanson as well, such as former Olympic swimmer and journalist Casey Barrett. Barrett was accused in 2017 of defaming Hungarian Olympic gold medal swimmer Katinka Hosszu by publishing a series of articles questioning whether Hosszu's success could have been achieved without the use of performance-enhancing drugs. In December, the Ninth Circuit sided with Becker and Swanson attorney Andrew J. Albright's arguments that the Arizona federal judge who sank Hosszu's lawsuit was right to do so.

"The nice thing about our space is that we sometimes find ourselves as plaintiff and sometimes as defense, and there's no bright line on when either hat will be worn," Becker said.

As Swanson looks toward the future, Weiler said, the firm intends to continue to focus its growth around the younger generation of lawyers who join its roster.

"Recruiting has to be very smart and thoughtful about who we're bringing in and has the long-term vision that our firm has," she said. "'Small and mighty' is probably true here because as we grow, we grow really smart, and that is hopefully going to be what helps us to continue to do this with the next generation in mind."

--Additional reporting by Zachary Zaggar and Matthew Perlman. Editing by Marygrace Murphy.