

THE
AM LAW LITIGATION DAILYLitigation Leaders: Axinn's Denise Plunkett on
the Value of Being Right-Sized and Focused

By Ross Todd

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Welcome to another edition of our *Litigation Leaders* series, featuring the litigation practice leaders at some of the biggest and most innovative law firms in the country.

Meet **Denise Plunkett**, chair of the litigation department at **Axinn, Veltrop & Harkrider**. Plunkett, who is based in New York, joined the IP and antitrust firm in 2021 from **Ballard Spahr** where she had served as the co-managing partner of the firm's New York office. She's previously been a partner at **Dickstein Shapiro** and of counsel at **Weil, Gotshal & Manges**.

Plunkett, who counts MasterCard among her anti-trust clients, recently helped lead the firm's team in a case that captured the attention of the chess world. Axinn represented Norwegian chess grandmaster Magnus Carlsen in fending off antitrust claims from chess prodigy Hans Niemann stemming from Niemann's ban from the Chess.com platform for alleged cheating.

Litigation Daily: Tell us a little about yourself—perhaps even a thing or two your partners would be surprised to learn about you.

Denise Plunkett: I have been practicing for nearly 30 years, but seven years in, I decided to leave the law. I had caught the dot-com bug and wanted to join one of the early internet start-ups in a business role. I resigned from my first law firm, moved to New York City where I had long wanted to live, and took nine months off to travel and look for my new job. This



Denise Plunkett, chair of the litigation department at Axinn, Veltrop & Harkrider.

Courtesy photo

was in 2000 and, unfortunately, the dot-com bubble burst while I was learning how to surf in Costa Rica. Practicalities ultimately prevailed and I ended up joining a large New York law firm and pivoting my practice from general commercial litigation to anti-trust. It was hardly the outcome I had planned, but the transition put me on a new trajectory and I have never regretted sticking with the law.

Coincidentally, about two years later, my new firm acquired my old firm. I have never been so happy to have not burned any bridges and like to share that "small world" story with my mentees. Your path may twist and turn, there will be stumbles along the way,

and you don't know where you will ultimately end up. But it will all work out if you handle things well along the way.

You joined Axinn as a lateral in 2021. What drew you initially to the firm?

In short, Axinn's reputation as an antitrust and litigation powerhouse. Axinn had been on my radar for a number of years because there was so much buzz about the firm in the antitrust bar. It has the largest bench of full-time antitrust lawyers in the country, headline-grabbing matters, and high-profile clients . . . who wouldn't want to be a part of that? Also, importantly to me, since its inception 25 years ago Axinn has stayed laser-focused on three core practice areas—antitrust, IP, and high-stakes litigation—which directly align with my own practice. In addition, Axinn's client base covers many of the industries I had worked in, such as financial services, life sciences and tech. It seemed like a perfect fit, and a platform that would let me take my practice to the next level, which has already occurred.

Balancing leadership roles and practice can always be a challenge. Do you think being a relatively recent lateral into the firm makes striking that balance any more difficult for you than it would be for someone who has been at Axinn longer?

No, but I was careful to focus primarily on my practice during my first two years at the firm. At my prior firms, I held multiple leadership roles, so I have a good working knowledge of law firm management and the business of law. I also know how hard it can be to strike the right balance among (and find enough hours in the day for) law practice, client management, and firm leadership—not to mention personal and family life! I thought it was important to get to know the people here, and what was different about this firm, and collaborate on business development, before taking on a formal leadership role.

That said, I was fortunate to be integrated into the firm quickly and seamlessly through the intentional and thoughtful efforts of multiple leaders in the firm. Shortly after I joined, due to my prior trial experience, I began working on a number of antitrust cases with

a 20-plus-person team that included members of both the antitrust and litigation groups. And only a few months later, I was asked to co-lead the FRAND side of an equally large ITC trial team comprised of antitrust and IP group members. I also was involved in business development collaborations across our practices from the outset. As a result of rolling up my sleeves and working with so many people right away, I got to know our personnel very quickly. This integration positioned me to take on a leadership role, as chair of the litigation practice, earlier this year, despite being relatively new to the firm.

How many litigators does the firm have and where are they located?

Axinn has well over 100 lawyers across four offices: New York, Washington, D.C., Hartford, and San Francisco, and all of our lawyers litigate. The litigation practice that I chair is comprised of nine lawyers who litigate full-time and includes multiple first-chair trial lawyers and members of the American College of Trial Lawyers. Our IP practice focuses on patent litigation, and all of our antitrust lawyers litigate as well, including our deep bench of former government enforcers from the DOJ and FTC. Our firm-wide bench of litigators positions us to handle the largest and most complex matters and to staff case teams across practice groups, allowing our litigators to stay well-rounded and preventing silos.

What do you see as hallmarks of Axinn litigators? What makes you different?

We have significant trial experience, and plan for trial from day one, even in cases that may be expected to settle—because that is how you drive the best results. We pride ourselves on being creative, nimble, and incredibly dedicated to our clients. The size of our firm puts us in a sweet spot in which we have the diversity of experience and brute-force ability to handle the largest and most complex matters, while also being free of the institutional inertia that plagues larger firms. We get to know our clients' business, inside and out, and partner with them over the long haul. In addition, results matter, and we get them. We have an impressive track record of success across

the firm, which I directly attribute to the strength of our very deep litigation bench.

In what three areas of litigation do you have the deepest bench? (I know it's hard, but please name just three.)

Antitrust, patents, and high-stakes commercial disputes.

What were two or three of the firm's biggest in-court wins in the past year, and can you cite tactics that exemplify your firm's approach to success?

Since joining Axinn, I have been fortunate to lead or co-lead multiple high-profile and exciting cases. Even more exciting, my teams have won two trials and secured dismissals in two more of these cases in that short period of time.

Axinn represents one of the world's leading food companies in multiple industry-wide antitrust cases involving class and private-plaintiff claims, as well as state AG actions. While defending these long-running cases, we secured a complete victory in a separate antitrust arbitration brought by a major retailer that opted out of one of the pending class actions. That claimant sought over \$400 million in damages and demanded an arbitration track of less than eight months from filing to hearing. We swiftly assembled a large and diverse team and adopted a multi-pronged, aggressive approach that fought the claim on both procedural and substantive grounds in multiple fora. We formulated our trial themes early and hammered them in every filing, ultimately achieving a complete defense win.

Axinn also prevailed in the trial of an International Trade Commission investigation brought by a leading electronics manufacturer and holder of standard essential patents (SEPs) against multiple manufacturers. The claimant sought an exclusion order prohibiting the U.S. importation of products containing cellular communications technology that allegedly infringed its SEPs. Axinn deployed a large

and diverse cross-practice IP and antitrust litigation team to defend and ultimately win this expedited and complex high-stakes dispute.

And most recently, Axinn successfully represented world chess champion and grandmaster Magnus Carlsen in the headline-garnering \$100 million antitrust and defamation case brought by Hans Niemann against Carlsen, Chess.com, and others. The Axinn team, comprised of members of the litigation and antitrust practices, obtained the dismissal with prejudice of plaintiff's antitrust claims on a motion to dismiss, leading to an out-of-court resolution of the case.

What does the firm's coming trial docket look like?

We have a number of significant cases that are scheduled to go to trial in the next year, including:

Axinn represents Google in multiple antitrust cases challenging its ad technology business, including cases brought by the U.S. Department of Justice and state AGs, as well as multiple class actions and individual cases filed by private plaintiffs. Notably, the Texas AG-led case was named Global Competition Review's 2022 Behavioural Matter of the Year – Americas. The DOJ-led case pending in the Eastern District of Virginia (the "rocket docket") currently is scheduled to go to trial in 2024.

Axinn also represents Tyson Foods in treble-damage class action litigations and state AG actions alleging industry-wide conspiracies to raise the prices of broiler chickens and pork. Both the Broiler Chicken case ("Track 2 claims") and the Pork case are scheduled to go to trial in 2024.

In addition, Axinn is representing Alvogen in a patent infringement action filed by Novo Nordisk Inc. and Novo Nordisk A/S. Alvogen is seeking to be among the first manufacturers to market a generic equivalent of Novo's blockbuster brand semaglutide injection, Ozempic, in the United States. Trial is currently scheduled for 2024.