

Competition Group Of The Year: Cravath

By **Matthew Perlman**

Law360 (February 9, 2023, 2:03 PM EST) -- Cravath Swaine & Moore LLP's antitrust practice group scored major trial wins for clients in a pair of merger challenges, while also securing a crucial ruling for Blue Cross Blue Shield in antitrust litigation, earning the firm a spot among Law360's 2022 Competition Groups of the Year.

Cravath's work on mergers included a victory for DNA sequencing firm Illumina in a challenge brought by the Federal Trade Commission over its completed reacquisition of cancer testing company Grail. The firm also helped Louis Dreyfus Co. defeat a challenge from the U.S. Department of Justice over the company's sale of Imperial Sugar.

The win for BCBS came on a summary judgment motion in a long-running case targeting core aspects of the system's business model.

Timothy G. Cameron, a Cravath partner who worked on the sugar merger case in the trial court and is also defending against the DOJ's appeal to the Third Circuit, told Law360 the firm's accomplishments over the past year show the "breadth and strength and depth of our team."

"These are a varied set of matters, all with varied postural situations, from highly contested trial proceedings to successful dispositive motions," Cameron said.

In the sugar merger case, the first merger challenge lodged by the DOJ under Assistant Attorney General Jonathan Kanter, the agency's top antitrust official, Cameron helped convince a Delaware federal court to reject allegations that U.S. Sugar's acquisition of Imperial from Louis Dreyfus would hurt competition for the supply of raw sugar in the southeastern U.S.

The court ruled against the challenge in September, accepting contentions from the companies that the government's proposed market does not reflect commercial reality, because customers can easily source sugar from other regions in response to a price increase.

Louis Dreyfus and Imperial brought Cravath onto the case in December 2021 to prepare for an April bench trial. Cameron said this made for a "very tight and intense time period" and also said it was important to maintain lines of communication with the other parties to the deal.



"As in all merger cases, communication is key," Cameron said. "It's very important to be communicating with your client, but also communicating very clearly and effectively with the buyer and the other firms involved."

Karin A. DeMasi, managing partner of Cravath's litigation department, is working on a decade-old case for BCBS that alleges the system violates antitrust law through core aspects of its business model, which involves a federation of independently operated insurance companies.

A key issue in antitrust conduct cases is what standard of review applies, either a per se standard that presumes something is unlawful, or a rule-of-reason standard that balances potential harm against benefits.

In August, an Alabama federal judge found that exclusive service areas employed by BCBS, which limit the geographic areas in which members of the association can use its trademarks, are plausibly pro-competitive and need to be judged under the rule-of-reason. This came after the court found previously that the per se standard applied in the case before BCBS agreed to scrap another of its rules in a \$2.67 billion settlement with subscribers in the litigation.

"Service areas are what creates the Blue Cross Blue Shield system, and it's the cornerstone of the system," DeMasi said. "So it was a very significant decision in the litigation, but it also goes to the heart of the business."

Cravath announced the opening of a Washington, D.C., office in June and has also been adding to its stable of attorneys specializing in competition issues, with former FTC Commissioner Noah Joshua Phillips joining as co-chair of Cravath's antitrust practice in October. Of the 38 partners in Cravath's litigation department, more than half advised on significant antitrust matters over the past year.

"Our antitrust group, which was already strong, continues to grow with the kind of credentials and individuals that we think are very positive for our clients," DeMasi said.

--Additional reporting by Bryan Koenig, Jeff Montgomery and Emily Lever. Editing by Linda Voorhis.

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