

Competition Group Of The Year: Cravath

By **Andrew Karpan**

Law360 (February 11, 2020, 4:23 PM EST) -- The competition team at Cravath Swaine & Moore LLP negotiated one of last year's highest-profile settlements and brought a two-year antitrust fight between Apple and Qualcomm to an end, handily earning the practice group a seat among Law360's 2019 Competition Groups of the Year.

The jury had already been selected. Cravath chairman Evan Chesler in his opening argument had just laid out Qualcomm Inc.'s case for being allowed to continue its chip licensing practices.

But a last-minute deal in April, thought unlikely by followers of the case, allowed Qualcomm to preserve its primary source of income, licensing its patents to Apple Inc.'s subcontractors, and landed it a handy payout of at least \$4.5 billion.

The settlement exemplified how Cravath has successfully fought to protect some of the biggest businesses in their respective marketplaces.

"Apple decided that they wanted to force a better deal for themselves," Cravath partner Rick Stark said of the case, which had started when Apple filed suit in 2017 with a 101-page complaint that would eventually balloon into over 80 actions over three continents and broadened to include the contract manufacturers that make Apple's iPhones and other products.

Qualcomm had leveled claims of its own, claiming that one of tech's biggest names compelled those Taiwanese contractors to break their contracts with Qualcomm.

"All told, there were dozens of claims and defenses flowing every which way," Stark said, estimating that at the case's height, Cravath had as many as a hundred people working on the case, including seven partners. Overall, Cravath employs approximately 600 attorneys in its offices in New York and London.

As part of Cravath's competition team preparing for the narrowly avoided courtroom battle, Stark's task was crafting an argument for the value of thousands of Qualcomm patents in the licensing agreements despite Apple's claim that they had little connection to the company's newer innovations.

But Stark believes Qualcomm had laid out an even simpler case.



“One of our themes was, simply put, ‘a deal is a deal,’” Stark added.

If the case had gone forward, Stark says Cravath’s team would have presented Qualcomm as a company of plucky innovators who began right out of founder Irwin Jacobs’ garage and whose work had built the architecture of the smartphone world as we know it.

“And Apple benefited, perhaps, more than anybody else,” because they provided one of the key foundations for the company’s highly profitable iPhone line, Stark says.

Turning Qualcomm’s contract claims into the case’s paramount issue would have forced Apple to argue why it was no longer bound to agreements it signed when it didn’t have the brand power that it has today.

“They deserve to be paid what was agreed upon for all the innovations that went into those patents,” says Stark. “And from what we could tell, it seemed like that was something that would resonate with a jury.”

Another of Cravath’s big wins last year was also on behalf of a digital innovator whose hold on its industry was under attack.

US Airways Inc. had alleged that travel tech business Sabre Holdings Corp. had restrained trade by forcing unfavorable contract terms on the airline.

Unlike Qualcomm’s fight with Apple, US Airways’ fight with Sabre had already gone to a jury and, after a nine-week courtroom fight that the judge warned had left its jury “bored to death,” Sabre lost with a \$15 million bill between its tail.

“Anytime you’re looking to overturn a jury verdict, it’s just a tough ask. We all knew that going into it,” Cravath partner Rory Leraris said of Sabre’s bid to kill the award.

Nevertheless, Sabre prevailed in September when the Second Circuit found that a previous Supreme Court win by Cravath in another antitrust case applied here.

Leraris, one of Law360’s Rising Stars of 2019, was coming off her work in Cravath’s successful defense of American Express in its antitrust fight with the U.S. Department of Justice, in which the Second Circuit vacated a district court judge’s verdict against the credit card giant. The Second Circuit appeals court had agreed with the Cravath team and the high court followed with a ruling in *Ohio, et al. v. American Express Co., et al.* that American Express didn’t violate federal antitrust law when it prevented merchants from steering customers to competing credit cards.

The opinion, authored in 2018 by Justice Clarence Thomas, had pointedly differentiated credit card transactions from ordinary transactions, noting that credit cards were, by necessity, two-sided “transaction” platforms and American Express’ ability to retain customers was dependent on being widely accepted by merchants.

The Sabre and American Express cases were “very similar on the facts,” Leraris says, noting both involved challenges to transaction platforms and, keenly, US Airways had cited the AmEx verdict in its case before the latter had been overturned.

While Leraris felt that applying the AmEx ruling to the Sabre fight was intuitive, it still demanded drawing an original argument, one that could explain that while the prices airlines paid may have looked steep, they could not be considered anti-competitive.

“We are always looking at Cravath to be creative,” Leraris said.

--Additional reporting by Matthew Perlman, Bryan Koenig and Pete Brush. Editing by Bruce Goldman.

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