

Competition Group Of The Year: Cravath

By Eric Kroh

Law360, New York (January 24, 2017, 5:14 PM EST) -- For its wins on behalf of high-profile clients in groundbreaking antitrust litigation, including the Second Circuit's reversal of the U.S. Department of Justice's win against American Express, Cravath Swaine & Moore LLP's competition team has earned a place among Law360's Practice Groups of the Year.

In September, the Second Circuit reversed a DOJ victory in a suit accusing AmEx of violating antitrust laws by imposing rules barring merchants from steering consumers to other credit card brands. The appeals court remanded the case with instructions to find in favor of AmEx, saying U.S. District Judge Nicholas G. Garaufis made an error by focusing on only one side of the two-sided market in his 2015 decision when he concluded the rules were anti-competitive. The rules are beneficial overall when the effects on both cardholders and merchants are taken into account, the panel said.



Cravath said that notching the victory for AmEx on appeal after the loss at the district court was especially significant considering that Visa and MasterCard, which were sued by the DOJ in 2010 over similar rules, chose to enter into consent agreements and change their policies rather than take the issue to court.

Cravath partner Kevin J. Orsini said the case was emblematic of how the group handles high-stakes antitrust litigation. Group members work hard to understand the industries clients work in and their goals in bringing a case into the courtroom, he said.

"We roll up our sleeves and get in there to understand who [clients] are," Orsini said.

The case was not the only recent win the Cravath team secured on behalf of AmEx at the Second Circuit. In November 2015, the appeals court affirmed a judgment in favor of the company in a suit alleging a conspiracy by financial institutions to write class action waivers into consumer arbitration agreements.

In the past year, the group also represented pharmaceutical company Mylan before the Third Circuit, which in September vacated class certification for a group of purchasers accusing Mylan NV and Ranbaxy Laboratories Ltd. of inking pay-for-delay deals with Provigil maker Cephalon Inc. The Cravath team also secured a win for ESPN and ABC in August when the Sixth Circuit affirmed the rejection of a suit by a proposed class of former college athletes over compensation for broadcast sports games.

The firm does not traditionally classify its attorneys according to practice group, as many of them work in multiple areas, but there are at least a dozen Cravath partners who spend a considerable amount of their time on antitrust matters. The firm's prowess in the courtroom on antitrust cases comes from its focus on litigation, which permeates its work at every stage of a lawsuit, Orsini explained.

"We do view ourselves as first and foremost trial lawyers," he said. "We view every case that comes in the door as a case that will potentially go to trial. A lot of people say that, but we live that."

Cravath has also had a banner year on the merger review side, shepherding one of the most noteworthy transactions of 2016 through the approval process: client Anheuser-Busch InBev's \$100 billion acquisition of SABMiller, which closed in October, along with the sale of SABMiller's U.S. and global Miller-branded businesses to Molson Coors.

Partner Margaret Segall D'Amico said that from the very start of a transaction the group's attorneys work to understand what the client is trying to accomplish so they can find a way to get the deal cleared in a way that best preserves the value of the transaction for the client.

"We're always making sure we're taking a step back and thinking: Does this make sense?" D'Amico said. "That pragmatic approach really makes a big difference in terms of getting deals approved in a way clients are happy with."

With its experience getting deals through the merger clearance process, the group has built up a credibility that is greatly valued by clients, D'Amico said. Because of that reputation, clients trust the team to handle their most important transactions, she said.

A case in point: Time Warner Inc. has called on Cravath to represent it on antitrust matters in its proposed \$85.4 billion sale to AT&T Inc., one of the most talked about deals of the new year.

The group also recently represented Starwood Hotels & Resorts Worldwide in its \$12.2 billion sale to Marriott International, which closed in September, and DreamWorks Animation in its \$3.8 billion sale to NBCUniversal, LLC, a division of Comcast Corp., which closed in August.

The group's attorneys are driven by a collective passion for antitrust work, which pushes them to excel, Orsini said.

"We view it as a privilege to do what we do," he said. "We're entrusted by companies to handle their most significant matters where you have billions of dollars on the line. When you're surrounded by a group of people who share that passion, it feeds on itself and it's a tremendously exciting thing to do."

--Editing by Jill Coffey.

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