

How a Latham Team Helped Shut Down the Inductors Antitrust Litigation in the Face of Panasonic's Leniency Application

"This is an important result because we see over and over again instances of the plaintiffs' bar overreaching by attempting to turn narrow, isolated conduct into industry-wide overarching conspiracies," according to Latham's Marguerite Sullivan, Allyson Maltas and Elizabeth Gettinger.

By Alaina Lancaster

An all-women team from Latham & Watkins helped power down the remaining action in a flurry of anti-trust litigation against Japanese manufacturers of electric circuit components.

U.S. District Judge Edward Davila of the Northern District of California last week [dismissed with prejudice](#) allegations that manufacturers Panasonic Corp., Sagami Elec Co. and Sumida Corp. were involved in a market-wide conspiracy to stabilize the prices of inductors between 2003 and 2014.

The [first lawsuit](#) in the inductors litigation, filed in January 2018 by a Bleichmar Fonti & Auld team led by Lesley Weaver, was part of an onslaught of actions accusing industry leaders of forming a cartel to fix prices for inductors, capacitors and resistors. The lawsuits asserted that manufacturers orchestrated the price-fixing scheme through participation in industry groups, such as the Japan Electronics and Information Technology Industries Association.

A [2018 article](#) from MLex reported that the government had subpoenaed Panasonic in connection with criminal investigations into the capacitors and resistors market, and litigation has alleged its public knowledge that Panasonic applied for amnesty under the Department of Justice's Antitrust Criminal Penalty Enhancement and Reform Act of 2004.

The original eight defendants and their subsidiaries in the litigation tapped Morrison & Foerster; Kirkland and Ellis; Arnold and Porter Kaye Scholer; Simpson Thacher & Bartlett; Weil, Gotshal & Manges; Jenner & Block; Morgan, Lewis & Bockius; Pillsbury Winthrop Shaw Pittman; and Kessenick Gamma & Free.

The Recorder caught up with Sumida's counsel from Latham—Marguerite Sullivan and Allyson Maltas in Washington, D.C., and



(l-r) Latham & Watkins' Marguerite Sullivan, Allyson Maltas and Beth Gettinger.

Courtesy photos

Elizabeth Gettinger in San Francisco—who spearheaded the briefing and arguments in the latest dismissal attempt.

The attorneys share, in a joint email response, how they navigated Panasonic's amnesty application and how they see the case as part of a broader strategy of "shakedowns."

Who was your client and what was at stake?

Our client is Japan-based Sumida Corp., a leading global manufacturer of inductive components and modules. Sumida was facing a multiyear class action litigation, with invasive and burdensome

discovery, all of which would have cost millions of dollars in legal fees alone. The plaintiffs asserted damages over a 16-year class period totaling hundreds of millions of dollars.

How did the case come to you and your firm?

We've successfully handled other matters for Sumida before, and their familiarity with Latham's ability to staff a global team, with attorneys in Japan and the U.S., as well as our track record in defeating class certification and defeating meritless cases at the pleading stage were among the selling points that convinced the client that we were the right firm to handle the case.

Who all was on your team and how did you divide the work?

Based on the needs of the client and matter, we fielded a global team made up of a partner and counsel team in Washington, D.C., Maggy Sullivan and Allyson Malts, and associates in California (where the case was filed), and Tokyo (where the client has its headquarters)—Beth Gettinger and Jun Park. [Editor's note: Park recently left the firm to join Linklaters.] We have a deep bench at Latham, and all of our associates live and breathe antitrust. Beth and Jun were no exception. As a team, we worked closely throughout the case, helping each other with brief writing and preparing for the oral arguments. Though Maggy ultimately argued the motions, anyone on our team could have done so.

What was your approach to circumvent any hurdles created by Panasonic's role as an amnes-ty applicant that provided information to the DOJ of price fixing regarding capacitors and resistors?

We worked hard to convince Judge Davila that capacitors and resistors are different products, in different markets, and with different players, notwithstanding the fact that Panasonic sells those products as well as inductors. He agreed. The fact that Panasonic had not applied for leniency with respect to inductors, notwithstanding its other leniency application, was a helpful fact. Ultimately, we won dismissal because the plaintiffs were not able to allege any facts that tied Sumida to the inductors-related conduct that had been reported to the DOJ by another company.

Why do you think this case is important? What do you see as the potential impact of this case on antitrust litigation going forward?

This is an important result because we see over and over again instances of the plaintiffs' bar overreaching by attempting to turn narrow, isolated conduct into industry-wide overarching conspiracies, not based on any actual evidence that the conduct was, in fact, broader, but simply as a strategy to secure as many settlements as possible. The more courts that recognize this strategy for what it is—a shakedown—the better for companies that do business in the United States.

Judge Davila noted that the U.S. Court of Appeals for the Ninth Circuit has found that the "mere participation in trade-organization meetings where information is exchanged and strategies are advocated does not suggest an illegal agreement." Does this case build on that precedent at all?

Yes, very much so. The court noted that allegations that companies participated in industry association meetings and even exchanged information at those meetings are insufficient—particularly where, as here, plaintiffs lack any allegations of parallel conduct, a threshold requirement—and agreed with defendants that information exchange is legal conduct that occurs regularly at trade organization meetings.

Do you foresee this decision affecting any lingering litigation regarding inductors, capacitors or resistors?

We do not believe that there is any remaining litigation involving any of these products. The court has dismissed all inductors claims with prejudice, and all of the defendants have settled and resolved the capacitors and resistors claims.

What will you remember most about this case?

Winning a dismissal with an all-female team, representing an all-male client team, in the face of a leniency application. Challenging circumstances for any lawyer, but Judge Davila absolutely reached the right result.