

2015 LITIGATION DEPARTMENTS OF THE YEAR

ANTITRUST



Latham & Watkins

Belinda Lee of Latham & Watkins had already won the confidence of client Toshiba's codefendants in a pair of antitrust cases targeting the makers of optical disk drives by the time U.S. District Judge Richard Seeborg heard arguments on class certification motions last May. Lee, 41, had been acting as liaison counsel on behalf of all defendants in discovery fights for years by the time the cases were up for class certification.

"Through that process, I got to know everybody in the defense group, and people started to trust me not just to represent my client, but everybody on these common issues," said Lee, who argued against class certification on behalf of all defendants, including industry heavyweights such as Samsung and Sony, which had their own brand-name outside law firms.

That trust proved well founded in October 2014, when Seeborg denied class certification to direct and indirect purchasers, represented by Saveri & Saveri and Hagens Berman Sobol Shapiro, respectively. Seeborg's decision marked only the second time a judge had denied class certification where a parallel

criminal investigation had yielded a guilty plea, and the first time in the Ninth Circuit. With Lee and partners Brendan McShane and Daniel Wall helping head up defendants' appellate briefing, a U.S. Court of Appeals for the Ninth Circuit panel in January upheld Seeborg's class certification decision.

In the complex world of antitrust defense work, where industry competitors can become codefendants, it's not uncommon to see Latham and its clients leading joint defense efforts or making arguments that carry the day. In a case alleging that table-saw makers had conspired not to license SD3 LLC's innovative safety feature or include it in industry standards, Latham's Christopher Yates and Timothy O'Mara helped client Emerson Electronic Co. show the plaintiff that their client had gotten out of the table-saw business by the time the second of two alleged conspiracies occurred. The move forced the plaintiff to amend its complaint in April 2014. Just three months later a federal judge in Alexandria, Virginia, dismissed the lawsuit with prejudice, finding the conspiracy claims implausible.

On the government enforcement

front, Latham partners Niall Lynch and Wall, two of the firm's 13 full-time antitrust partners in California, helped persuade the Federal Trade Commission to close an investigation against client Ferrellgas Partners LP. The FTC had looked into whether Ferrellgas, which runs the Blue Rhino brand of propane tank exchanges, had conspired with a competitor to reduce the amount of gas in its tanks sold at Walmarts to increase profit margins.

"We actually have had pretty good success at convincing the commission not to open investigations," said Alfred Pfeiffer, co-chair of the firm's antitrust and competition practice. "It's rarer to have them take the step that they've actually formally opened an investigation and then walk away from it."

The FTC did just that in October 2014 without forcing Latham's client to pay a fine or admit liability. The firm continues to represent the company in a similar private lawsuit pending in the Western District of Missouri.

—Ross Todd