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Top Antitrust Lawyers 2021

Lee, the vice chair of Latham's antitrust and competition practice, joined the firm in 1998 straight out of Harvard Law School. This year a leading antitrust publication, *Global Competition Review*, named her to its Women in Antitrust honor roll.

"I was an associate doing a hodgepodge of commercial litigation," she said of her early days at the firm. Then she met Latham's veteran antitrust guru, Daniel M. Wall, who recruited her to his practice group. "The most interesting part for me is that this is a multi-jurisdictional practice," Lee said. "There are cross-border investigations, mergers that involve regulators in D.C., Brussels and Tokyo and a good deal of complexity."

Those elements were present in one of Lee's biggest cases, her successful defense of StarKist Co. and its South Korea parent, Dongwon Industries Ltd., in a sprawling, long-running antitrust class action. Her April appellate win is currently undergoing en banc review at the 9th U.S. Circuit Court of Appeals.

Meanwhile, her significant 2020 win for client BMW AG in the so-called "Circle of Five" emissions conspiracy litigation was affirmed by the 9th Circuit in late October. *Audubon Imports LLC v. Bayerische Motoren Werke AG*, 20-17139 (9th Cir., op. filed Oct. 26, 2021).

The StarKist case launched in 2015, when three potential classes of pack-

aged tuna purchasers sued the three largest suppliers of branded packaged tuna: StarKist, Bumble Bee Foods LLC and Chicken of the Sea International following a federal investigation into alleged price-fixing in the packaged tuna market.

Lee and Latham colleagues Christopher S. Yates and Gregory G. Garre persuaded a circuit panel to vacate certification of three large plaintiff classes, including direct purchasers, individual purchasers and companies and others who bought bulk-size tuna from distributors. All alleged price-fixing in the packaged tuna market. Lee's defense—based on the plaintiffs' failure to satisfy the class action predominance requirement—was "ripe for use at trial," but "not fatal to a finding of class-wide impact," ruled U.S. District Judge Janis L. Sammartino of San Diego. The defendants appealed. *Olean Wholesale Grocery Cooperative et al. v. Bumble Bee Foods LLC et al.*, 19-56514 (9th Cir., op. filed April 6, 2021).

The circuit panel, in vacating Sammartino's class certification order, established new circuit law and for the first time held that "a district court must find by a preponderance of the evidence that the plaintiff has established predominance under Rule 23(b)(3)" and that the finding must be made by a district court. It "cannot be outsourced to a jury," the panel ruled.



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LITIGATION AND TRIAL

"This is exactly the way we have thought from the first was the right way to look at the class action mechanism," Lee said.

— John Roemer