Litigators of the Week: Robert Wick of Covington & Burling and Kenneth Gallo of Paul Weiss

By Jan Wolfe
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For most of January, nine attorneys at Covington & Burling were putting in long hours on a price-fixing case that Motorola Mobility Inc. brought against their client, Samsung Electronics Co., and other liquid crystal display (LCD) manufacturers. The stakes were high, with Motorola planning to seek more than $3.5 billion in antitrust damages at a trial scheduled to begin March 10. The head of Covington’s litigation practice, John Hall, stayed a week in Korea preparing witnesses, and he spent the long return flight fully immersed in the case.

When Hall landed in Washington, D.C., on Jan. 23 and regained e-mail access, he realized he might as well have slacked off. While he was up in the air, defense lawyers led by fellow Covington partner Robert Wick and Kenneth Gallo of Paul, Weiss, Rifkind, Wharton & Garrison had pulled off a surprise victory. Ruling on a motion for reconsideration, a judge in Chicago effectively blocked Motorola from recovering any of the billions in damages it sought from Samsung and its seven co-defendants, including Sharp Corp. and Toshiba Corp. In retrospect, Hall joked, “I probably could have watched a movie.”

In 2006 regulators around the world began probing an alleged LCD price-fixing scheme by leading Asian manufacturers. As you’d expect, gadget-makers that incorporate LCDs into their products sued the companies along with other LCD buyers. Motorola opted out of a direct purchaser class and pursued its case individually.

About 99 percent of Motorola’s estimated damages related to LCDs purchased by the company’s foreign affiliates. In her Jan. 23 decision, U.S. District Judge Joan Gottschall determined that those overseas transactions didn’t have a direct effect on U.S. commerce, and therefore fall outside the scope of the Sherman Antitrust Act. Motorola can still pursue antitrust claims relating to a relatively small number of LCDs that were imported to Motorola’s U.S. facilities, but whatever damages the company could hope to win would be offset by a prior settlement between Motorola and a settling defendant, Epson Corp.

Motorola’s case was previously assigned to U.S. District Judge Susan Illston in San Francisco, who’s overseeing multidistrict litigation over the alleged LCD price-fixing. While presiding over the case, Illston rejected the defense argument that the overseas transactions don’t give rise to a Sherman Act claim. In early 2013, she transferred the case to Chicago, Motorola’s home court, for a trial before Gottschall.

The defense group won permission to file a last-ditch motion for reconsideration on the jurisdictional argument. To prevail, they would need to persuade Gottschall to reverse a peer who had been dealing with the case for years. To make matters worse, Gottschall revealed at a hearing that Illston was her former law school classmate. “I so do not want to reconsider this,” Gottschall said, according to a transcript. “But to go into this enterprise without having at least ruled on this question, it really troubles me.”

Though Covington’s Wick represented Samsung, he took a lead role in drafting the motion for reconsideration on behalf of all the defendants. “We had a very firm view that the rulings in San Francisco were not consistent with existing precedent and Supreme Court decisions that show respect and deference to the rights of foreign sovereigns,” Wick told us.

Gallo, who represented Sharp, worked on the brief and drummed up amicus support, including from the Japanese Ministry of Economy, Trade and Industry. Gallo also spoke about the case to Daniel Crane, a professor at the University of Michigan School of Law who is of counsel at Paul Weiss. With Crane’s help, Gallo was able to recruit a dozen law professors to file an amicus brief of their own. They wrote that Illston’s approach would lead to “a distortion in the allocation of antitrust enforcement between different jurisdictions around the world.”

“By having some prominent law professors and a Japanese government agency submit amicus briefs, we could show that this was a truly significant issue that was worthy of reconsideration,” Gallo said.

Even in the mega-litigation over price-fixing in the LCD industry, Motorola’s case was a biggie. Thanks to the latest reversal—and barring another—it doesn’t look so big anymore.