

Antitrust MVP: Gibson Dunn's Joel Sanders

By **Ryan Davis**

Law360, New York (December 05, 2011) -- Joel Sanders of Gibson Dunn & Crutcher LLP has helped Micron Technology Inc. dramatically reduce its potential exposure in a price-fixing case and secured the dismissal of a complex case against shipper Matson Navigation Co., earning him a spot on Law360's list of Antitrust MVPs.

Sanders, who is based in Gibson Dunn's San Francisco office, represents Micron in numerous cases related to allegations of price-fixing in the market for dynamic random access memory, including a suit brought by Oracle America Inc.

Oracle opted out of the DRAM class action and filed an individual suit against Micron in the California federal court, alleging it had paid inflated prices for computer memory. Oracle initially sought \$1 billion in damages, which would be trebled to \$3 billion under antitrust laws, Sanders said.

Sanders argued that Micron is entitled to use the leniency provisions under the 2004 Antitrust Criminal Penalties and Enforcement Reform Act because the company is party to an amnesty agreement with the U.S. Justice Department. Leniency would shrink Oracle's potential damages recovery to \$200 million.

Oracle moved to strike that defense, presenting an issue of first impression for the court: whether the law's leniency provisions apply to a DOJ amnesty agreement that was reached before the law was enacted.

Micron admitted to its role in the DRAM conspiracy in 2002 and provided the DOJ with information, so the government agreed not to bring criminal charges against the company. The 2004 law limits the civil liability of a company that cooperates with the government to actual damages without joint and several liability.

Oracle claimed that the law's leniency provision does not apply retroactively, but U.S. District Judge Phyllis J. Hamilton disagreed and denied the motion to strike Micron's defense in September. Sanders said the case is still being actively litigated and trial is at least a year away.

Without treble damages and joint and several liability, 90 percent of Oracle's damages claim has been eliminated and Micron can be liable for only \$200 million in damages, an amount based on its own sales, Sanders said.

"We always felt we had a strong position, but whenever you're dealing with an issue of first impression, you can't be sure," he said.

The issue was difficult because the complex question of whether a statute applies retroactively "is something that causes the eyes of most judges to glaze over," Sanders said.

"One of our challenges was to get the judge to dig in, and she did dig in," he said.

In another significant victory this year, Sanders was part of a teams that got the Ninth Circuit to affirm the dismissal of all the price-fixing claims against Matson, the largest carrier of goods between the U.S. mainland and Hawaii, and co-defendant Horizon Lines LLC.

The plaintiffs alleged that Matson and Horizon colluded to increase fuel surcharges and divvy up customers on shipping routes to Hawaii and Guam.

In December 2010, U.S. District Judge Thomas S. Zilly found in Washington state that the suit was barred by the filed-rate doctrine, which precludes monetary relief for antitrust and similar claims relating to tariffs or schedules filed with a federal regulatory agency. The Ninth Circuit affirmed that ruling in September.

According to Sanders, the challenge was presenting a complex legal theory based on the rarely used filed rate doctrine, which originated in a 1922 Supreme Court decision and mandates that courts need to step aside and defer to regulatory agencies.

In the Matson case, the courts agreed that the doctrine precluded all of the plaintiffs' claims because the rates at issue were filed with the Surface Transportation Board, which has jurisdiction over shipping rates between the U.S. mainland and American territories overseas.

"We convinced the court to get rid of a very big case at the pleading stage, which courts are reluctant to do, based on a 100-year-old doctrine," Sanders said.

Sanders praised Richard Rappaport and Tammy Adkins of McGuireWoods LLP, who represented Horizon, for their work in crafting the joint defense in the case.

"I give credit to both teams for checking egos at the door and coming up with a winning argument," he said.

In addition to those two wins, Sanders is representing clients in several ongoing antitrust cases, including those involving tomato products and freight forwarders.

One of his high-profile clients is Chunghwa Picture Tubes Ltd. of Taiwan, which he is defending in multiple antitrust cases over LCD screens.

Chunghwa pled guilty to price-fixing and is now facing class actions and suits by state attorneys general, many of whom have settled, and two dozen opt-out cases, most of which are being litigated.

"Trying to navigate a Taiwanese client unfamiliar with the complexities of the U.S. legal system through that thicket has been very challenging but rewarding," he said.

--Editing by Lindsay Naylor.

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