

## Competition MVP: Robins Kaplan's K. Craig Wildfang

By **Abigail Rubenstein**

*Law360, New York (December 18, 2012, 1:32 PM ET)* -- As co-lead counsel for a class of about 7 million merchants, Robins Kaplan Miller & Ciresi LLP's K. Craig Wildfang negotiated a proposed \$7.25 billion settlement to resolve litigation over Visa Inc. and MasterCard Inc.'s alleged collusion on interchange fees, earning him a spot on Law360's list of Competition MVPs.

The settlement — which is believed to be the largest private antitrust settlement in U.S. history — won preliminary approval from U.S. District Judge John Gleeson in November.

"It has been a very gratifying experience to be responsible for what is truly a historic case and to have gotten to the end — or close to the end — with a truly historic settlement that we think is going to provide very substantial benefits in market for competition in payments," Wildfang told Law360.

Although Judge Gleeson's preliminary blessing of the deal leaves the seven-year legal battle challenging the alleged fixing of prices charged by Visa and MasterCard and their member banks to merchants for processing credit and debit card transactions one step away from final approval, there are likely still some tough battles ahead, given the volume of objectors to the settlement. The objectors, which include some of the suit's named plaintiffs, contend that the settlement does not go far enough and maintain that it could harm merchants by giving Visa and MasterCard free rein to impose new fees.

But Wildfang said that while it is frustrating to have some unhappy class members, with such a massive class it was inevitable that there would be some disagreement.

The settlement not only provides a payment of \$6.05 billion to a proposed class of about 7 million merchants that accept Visa and MasterCard, but also calls on the card companies to reduce swipe fees for eight months, a discount expected to be worth an additional \$1.2 billion or so.

"We are very confident that it will get finally approved," Wildfang said. "Ultimately, we have obtained in this settlement really all or almost all of the injunctive relief we could reasonably expect to get at trial."

And Wildfang told Law360 that though it got less press than the announcement of the massive deal, one important result of the litigation came to fruition before the settlement was filed when the banks divested ownership of Visa and MasterCard and the companies became owned by public shareholders with different incentives.

"If someone had told me the day I filed this case that we would be where we are now, I would have been very pleased," he said.

Working on a case on such a grand scale and over such a long time presents unique challenges, but Wildfang, along with his co-lead counsel from Berger & Montague PC and Robbins Geller Rudman & Dowd LLP, rose to the occasion.

"Virtually everything about this case is big, complicated, lengthy and difficult, and that has really been true since we filed the case," Wildfang said. "It has required us to be absolutely at our best all the time and avoid making mistakes."

"It has been just a series of major battles, and when you are an antitrust plaintiff, you have got to win every one," he said.

To fight those battles and achieve those wins, Wildfang drew on both his legal acumen and his 25 years of experience.

That experience includes a stint as special counsel to the assistant attorney general for antitrust at the U.S. Department of Justice from 1993 to 1996, during which time he advised on the DOJ's civil antitrust enforcement priorities, managed several high-profile cases and was involved in the government's investigation of anti-competitive practices by Visa and MasterCard in the credit card industry.

Wildfang was already a seasoned antitrust litigator before joining the DOJ after having discovered his passion for antitrust work through a focus on the legal concerns of the health care industry early in his career.

And he has had the opportunity to pursue that passion at his current firm, where he has been for the last 12 years.

"One of the things that appeals to me most about antitrust law is that there is a lot of room for creativity," Wildfang told Law360.

Moving forward, Wildfang shows no signs of backing down from showing that creativity in other major antitrust cases even as he tries to steer the interchange fee case toward final resolution.

At the moment he is also serving as co-lead counsel in litigation accusing major private equity firms of essentially agreeing to rig bids on companies they were taking private to the detriment of shareholders

--Additional reporting by Brian Mahoney. Editing by Katherine Rautenberg.