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## Q&A With Robins Kaplan's Craig Wildfang

*Law360, New York (July 27, 2009)* -- K. Craig Wildfang is head of the antitrust practice at Robins Kaplan Miller & Ciresi LLP. He has represented parties in many private civil antitrust actions in industries including retail, banking, insurance, and agricultural commodities, among others.

Wildfang has also counseled clients on a wide variety of antitrust and trade regulation issues from mergers and joint ventures to marketing and sales programs. From 1993 to 1996, he served as special counsel to the assistant attorney general for antitrust in the U.S. Department of Justice.

### **Q: What is the most challenging case you've worked on, and why?**

A: By far the most challenging case I have ever worked on is a current case, In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, MDL 1720 (EDNY). I was appointed by the court as co-lead counsel for the plaintiff class of merchants who accept Visa and MasterCard payment cards.

The case involves price-fixing and other horizontal agreements among the nation's largest banks and Visa and MasterCard in the context of joint ventures. The legal and economic issues are exceedingly complex, and the estimated damages to the merchant class exceed \$100 billion, making it by far the largest antitrust case in U.S. history. It has been referred to as the "Super Bowl" of antitrust litigation.

The case has been further complicated by the meltdown in the financial sector resulting in some of the defendant banks being both effectively insolvent and owned by the U.S. taxpayers.

### **Q: What accomplishment as an attorney are you most proud of?**

A: Probably my service in the mid-1990s in the Antitrust Division of the Justice Department as special counsel to Assistant Attorney General Anne Bingaman. It was a

time of renewed and vigorous antitrust enforcement which I think paid significant dividends to the public, and it was very gratifying to be a part of that.

**Q: What aspects of law in your practice area are in need of reform, and why?**

A: I actually think that the antitrust laws themselves are not in need of reform. Since U.S. antitrust law is largely the result of case law developed over many years, and since economic scholarship and improved understanding of markets contributes to the evolution of antitrust law, the law itself is in pretty good shape.

Of course, antitrust litigation is often very lengthy and costly, and so efforts to streamline litigation, to educate judges about the fine points of antitrust and economics, and speeding up the time to trial are all worth pursuing.

**Q: Where do you see the next wave of cases in your practice area coming from?**

A: It is always hard to predict what the future holds, but the Supreme Court has just granted certiorari in the American Needle v. NFL case, and it decided Dagher just a couple of terms ago, both of which involve the application of the Sherman Act to joint ventures.

Often decisions of the Supreme Court stimulate more activity in an area (for example, the court's decision in Kodak in 1992). The Department of Justice has an active investigation into the conduct at issue in In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, which also involves joint ventures. So it wouldn't surprise me to see more cases involving joint ventures

**Q: Outside your own firm, name one lawyer who's impressed you and tell us why.**

A: A lawyer who had a big impression on me when I was just a young lawyer was Vance Opperman. He was about eight years ahead of me in law school, and had been practicing antitrust law when he and I first met. I was very fortunate to have had him as co-counsel with me in my first big antitrust case over 25 years ago, and he taught me a lot. I learned both about the substance of antitrust law, but also about how to be a better advocate, and a better person.

Vance went on to serve as CEO of West Publishing Co., and is no longer actively practicing law, but he continues to be someone I admire and respect.

**Q: What advice would you give to a young lawyer interested in getting into your practice area?**

A: As with any practice area, if you want to be among the best, it will take consistent, determined effort. One of the things that attracted me to antitrust law 30 years ago was how intellectually challenging it is. So I would encourage young lawyers to read the major treatises, study economics and really immerse themselves in antitrust. Find a

firm, or an enforcement agency, that will give you exposure to important cases, and learn by doing, as well.