

Most Feared Plaintiffs Firm: Robins Kaplan

By Joe Van Acker

Law360, New York (October 9, 2015, 4:55 PM ET) -- In March, Robins Kaplan LLP capped off a lengthy antitrust suit by finalizing \$590.5 million in settlements with Goldman Sachs, Bain Capital and other private-equity juggernauts accused of conspiring to drive down the cost of takeovers, adding another chapter to the firm's history of taking on powerful, well-funded defendants.

A Massachusetts federal judge's order granting final approval to the deal capped off nearly seven years of litigation against the biggest names in the industry, during which the firm fended off more than a dozen motions to dismiss, and as many summary judgment motions, cementing Robins Kaplan as one of Law360's Most Feared Plaintiffs Firms.

Last year, the firm won final approval of a \$7.25 billion settlement with Visa, MasterCard and card-issuing banks in multidistrict litigation over a conspiracy to fix interchange fees, and Robins Kaplan has again earned its spot on our list largely because of its antitrust work.

As co-lead counsel in the private equity case, partner Craig Wildfang was instrumental in securing settlements with The Carlyle Group, The Blackstone Group and others accused of colluding to drive down the cost of some of the largest leveraged buyouts from 2003 to 2007.

"The big private equity firms were awash in cash," Wildfang recalled. "But they knew from past experience that if they competed vigorously with each other for any particular deal that the margins on that deal were going to be depressed."

The investors claimed that Bain and the others collaborated in a multipronged conspiracy that started out with so-called "club deals," wherein the private equity firms would join forces to make an offer. Then, the firms behind the offer would cut in would-be competitors after the deal was made, providing debt financing or some other reward for not bidding against them.

FEARSOME FACTS

Robins Kaplan

\$1 billion

Settlement amount surpassed in April in an air cargo antitrust suit

\$590 million

Value of settlement with private equity firms in takeover collusion suit approved in March

\$1.4 billion

Potential value for settlement reached over defective hip implants in November

Serving as co-lead counsel for more than seven years, Wildfang guided his clients through more than a dozen motions to dismiss and as many motions for summary judgment.

Robins Kaplan expected a fight from the outset and quickly defeated a motion to dismiss that was based on the idea that investors' antitrust claims were preempted by securities laws.

"I think in this case the defendants were a bit surprised that they didn't prevail on that motion, but we were confident that we had the better argument," Wildfang said.

Wildfang, who operates out of Minneapolis, said that an inefficient, phased discovery system gave the case a sort of "tortured history," and said that in one sense, the suit was unique because there hadn't been a conspiracy like this in private equity markets before.

However, in a broader sense, the case boiled down to typical collusion.

"There's been bid-rigging prosecution under the Sherman Act for 80 years, for everything from milk to lumber," Wildfang said. "The techniques that the private equity firms used here are pretty common techniques in bid-rigging conspiracies."

The firm is also well on its way to wrapping up longstanding antitrust claims against dozens of air cargo carriers.

Partial settlements in that multidistrict litigation edged over the \$1 billion mark in April when EVA Airways Corp. agreed to pay \$99 million to resolve allegations that it engaged in a global conspiracy to fix prices for transporting goods.

With Robins Kaplan partner Hollis Salzman at the helm as co-lead counsel, the direct purchaser plaintiffs have also reached a \$92.4 million deal with Singapore Airlines Ltd., a settlement worth \$115 million with Korean Air Lines and an \$87 million deal with Air France, among others.

The plaintiffs have claimed that about 50 airlines from around the world have overcharged nearly every U.S. business that shipped goods by air since 2000, a scheme that has also resulted in guilty pleas and criminal fines totaling \$1.8 billion from international competition agencies.

Air New Zealand, Air India and others are now set to go to trial in March after a New York federal judge shot down summary judgment motions this past August, denying motions by Air India, Atlas AirWorldwide Holdings Inc. and Polar Air Cargo Worldwide Inc.

The judge handling the case referred to it as "irrefutably complex," which Salzman attributed to the size of the scheme and the number of participants.

"This was a massive, worldwide conspiracy involving virtually every major airline across the globe," she said.

Salzman is simultaneously serving as co-lead counsel in a separate antitrust MDL, in which end-payors have accused more than 100 companies of fixing the prices of wire harnesses and other car parts, which in turn drove up the prices of new vehicles.

She has helped the plaintiffs obtain more than \$145 million in settlements in the MDL over the past

year, including a \$50 million settlement with Sumitomo Electric Industries Inc. in September.

The firm has also tackled huge cases in the health care industry, with Robins Kaplan's Tara Sutton negotiating an uncapped global settlement with Stryker Corp. that could be worth as much \$1.4 billion as a part of the steering committee for plaintiffs suing over the company's Rejuvenate and ABG II hip implants.

Announced in November, the settlement covers about 3,000 people who suffered complications after receiving their implants, with most of them being eligible for at least \$300,000 per failed implant, according to the firm.

Robins Kaplan is also representing direct purchasers accusing Merck of using its position as the country's exclusive supplier of a vaccine for the mumps to gouge physicians, with partner Kellie Lerner serving as co-lead counsel.

The plaintiffs won a crucial victory in September 2014, when the Pennsylvania federal judge handling the case shot down Merck's motion to dismiss and allowed them to proceed with their claim that the company overstated the efficacy of its vaccine.

Lerner stressed that the case is not an attack on vaccines in general, but about providing more and better vaccines, which she said fits in with the firm's culture.

"It's a firm that sticks its neck out for people who may not otherwise have a voice, and isn't afraid of going against the toughest corporations," she said.

Over the years, Robins Kaplan has built a reputation for backing David against Goliath, representing victims of an environmental disaster in Bhopal, India, against Union Carbide and reaching a \$470 million settlement in 1984.

The firm then pulled settlements totaling \$6.5 billion from Big Tobacco on behalf of the state of Minnesota and Blue Cross Blue Shield in the 1990s, and provided pro bono representation to victims of the 2007 bridge collapse in Minneapolis, resulting in a \$52.4 million settlement in 2010.

It's impossible not to consider these cases and others like them as a continuation of the firm's heritage, which dates back to two Jewish lawyers, Solly Robins and Julius Davis, founding their own firm in the 1930s after being denied work due to anti-semitism.

Despite a name change and expanding to include 220 attorneys in eight offices, Robins Kaplan remains committed to representing underdogs against deep-pocketed defendants.

"That beginning culture inspired the lawyers then and it has stayed with the firm for more than 75 years," Salzman said. "It's important to represent the little guy."

--Additional reporting by Kelly Knaub, Pete Brush, Aebra Coe, Emily Field, Brian Mahoney and Dan Packel. Editing by John Quinn and Kelly Duncan.