

Competition Group Of The Year: Covington

By **Bryan Koenig**

Law360 (February 18, 2025, 4:03 PM EST) -- Covington & Burling LLP helped pull off a stunning interception-touchdown on behalf of the NFL, convincing a California federal judge to reverse a \$4.7 billion jury verdict and carving out a spot for the firm as one of the 2024 Law360 Competition Groups of the Year.

Representing the NFL and its member teams alongside Wilkinson Stekloff LLP attorneys, Covington on Aug. 1 convinced then-U.S. District Judge Philip S. Gutierrez, who has since retired, to throw out the antitrust lawsuit over its Sunday Ticket television package, after the jury had ruled for plaintiffs, by finding that their damages experts presented "flawed methodologies" that doomed the entirety of the case.

"It was basically a question of wearing the court down on this," said Rob Wick, a firm partner who, while not involved in the Sunday Ticket case, said the judge, like those in other courts, had initially been inclined to let the complicated expert evidence go to the jury. "It's getting increasingly clear that that shouldn't always happen," Wick said.

According to Wick, Covington's wins help show the ability of the antitrust practice's 34 partners, 19 counsel and nearly five dozen associates to dive into the meat of complicated expert analysis and boil it, and its flaws, down into something simple and understandable.

"Our litigators have ... brought our expertise and our analytical firepower to these really important cases for clients in multiple industries," said Anne Lee, co-chair of Covington's global antitrust practice.

Most of Covington's wins were on behalf of client JPMorgan Chase & Co. That included its successful Second Circuit defense, alongside other firms, against litigation accusing JPMorgan and other major Wall Street banks of conspiring to rig U.S. Treasury auctions and defend their secondary-market middlemen roles. That early February 2024 decision upheld a district court order tossing the litigation, affirming, among other arguments, that the plaintiffs had failed to turn "inconsequential market chatter" between the banks into illegal information sharing.

"The Second Circuit agreed with us that courts should scrutinize expert evidence and statistical analysis even at the motion to dismiss stage. There can be a tendency sometimes in courts to be very deferential to anything in a complaint that looks like an expert model or a statistical analysis. But the Second Circuit didn't take that route," Wick said. "It agreed with the district court that, when expert evidence is



conclusory, when it fails to distinguish the conduct of one defendant from others, or defendants from non-defendants, that kind of statistical evidence doesn't necessarily help a complaint survive a motion to dismiss."

In also dismissing plaintiff assertions of "parallel conduct" between different companies as evidence of a conspiracy, writing it off here as natural behavior, Wick said the appellate decision will be "a mainstay" of Second Circuit antitrust practice going forward.

Lee said this year's wins make a strong showing for Covington's litigation practice. "We have this excellence across every flavor of antitrust," she said.

Some of Covington's other wins on behalf of JPMorgan, according to Wick, highlight its antitrust litigation success against class certification and plaintiff experts, namely their economic models.

Wick pointed to a New York federal judge's December 2023 decision refusing to certify a class of investors in long-running multidistrict litigation over an alleged plot by the top international investment banks, including JPMorgan, to limit market competition over interest rate swaps, ruling that the proposed class isn't cohesive enough to warrant class treatment.

He also noted the Second Circuit's November 2023 decision rejecting Fujifilm Corp. and Eastman Kodak Co's bid to revive their antitrust claims against Goldman Sachs, JPMorgan and others accused of a scheme to inflate the price of aluminum. There, the appeals court affirmed the rejection of class certification and the case's outright toss on summary judgment, concluding that none of the plaintiffs counted as direct purchasers with standing under federal antitrust law to sue for damages.

In both cases, Wick said, Covington and other defense firms convinced the court that the plaintiff expert models didn't meet the necessary standards for class certification. Covington scored a similar win in the now on-appeal Sunday Ticket case, he said, just at a different phase of the case.

"Taken together, I think those three cases show that we excel at taking a complex set of models, or a complex set of expert arguments, simplifying them, and communicating the central flaws in them, to a court or a jury, in an intelligible and a persuasive way," Wick said. "It's a skillset that requires you both to be able to understand the technical detail of the models, but also to be able to rise above it, boil it down to its essence and explain the key flaws in it to a non-specialist decision-maker."

--Editing by Kristen Becker.
