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Titan Of The Plaintiffs Bar: Berger Montague's Eric L. Cramer

By **Sarah Martinson**

Law360 (May 27, 2020, 4:16 PM EDT) -- The chairman of Philly-based Berger Montague was in California to represent direct buyers accusing capacitor manufacturers of a price-fixing conspiracy when a San Francisco federal court decided to suspend all jury proceedings following the coronavirus outbreak.

Eric Cramer, who is co-trial counsel for direct buyers of capacitors, spent nearly three months prepping experts to testify and be cross-examined by opposing counsel for the now-suspended trial at the federal court in San Francisco.

The trial was scheduled for four weeks in March and could have gone on for longer, Cramer told Law360. But just two weeks in, San Francisco issued a "shelter-in-place" order barring residents from leaving their homes except for essential needs to stop the spread of the novel coronavirus, prompting the court to suspend jury trials until May 1.

"Who knows what is going to happen. It's a very strange time," Cramer said, later adding that the court is considering resuming the capacitors trial in June.

Between January and the start of the trial on March 2, Cramer and his colleagues reached settlements with 18 capacitor manufacturers for a total of **more than \$200 million**, leaving just four defendants standing — Nippon Chemi-Con Corp. and its subsidiary United Chemi-Con Inc., AVX Corp. and Matsuo Electric Co. Ltd. The legal team already steered settlements in 2019 worth nearly \$220 million with nine major capacitor manufacturers including Fujitsu Ltd., Hitachi Chemical Co Ltd. and Rubycon Corp.

South Carolina-based AVX cut a **\$65 million deal** to exit the case on March 12, near the end of the trial's second week.

Cramer said he is open to pursuing antitrust cases to fight companies that may be taking advantage of consumers and workers during the virus outbreak.

The antitrust cases Cramer said he tends to focus on are those involving megacorporations engaging in anti-competitive behavior other than price-fixing, such as sharing information or making agreements that have negative market effects.

"These are cases that have a higher degree of difficulty, but I think are important because they are about large companies



Eric L. Cramer
Berger Montague

Why He Likes Being An Attorney:

"I like that I can use the law and represent clients to right wrongs

using their market power to maintain and enhance that power," he said.

and recompense victims."

To prove that companies are engaging in such anti-competitive behaviors, litigants must show the alleged actions unreasonably limit competition in a market, Cramer said. Companies exchanging information between one another or signing contracts is not in itself illegal. So, litigants must prove the consequences of these actions are unlawful, which is what makes monopolization cases harder to win, he said.

One monopolization case Cramer is working on involves a proposed class of pediatric vaccine buyers accusing Merck Sharp & Dohme Corp. of **cornering the market** on a pediatric rotavirus vaccine. The owner of two medical clinics claimed Merck was bundling its RotaTeq vaccine with other childhood vaccines to sell at a discount, creating a situation in which customers would have to pay more money to buy the rotavirus vaccine from the only competing manufacturer of the drug, GlaxoSmithKline PLC.

In January 2019, a Pennsylvania federal judge handed Cramer and his clients an early-stage victory — later overturned on appeal — by **striking down** Merck's bid to have the rotavirus vaccine buyers arbitrate their claims and refusing to stay the litigation proceedings. The medical clinics that launched the case weren't subject to arbitration agreements signed by physician buying groups, the judge ruled.

Cramer said the rotavirus vaccine case was one of the biggest cases he worked on last year because of how well-positioned Merck is financially. Merck's global sales for all of 2019 totaled \$46.8 billion, according to the company's website.

"Most of the companies on the other side of my cases are large and well-financed," he said.

Even though the Third Circuit **overturned** the district court's ruling in October, Cramer said he is confident the lower court will still find that the buyers don't have to arbitrate their claims.

The circuit court concluded that more findings were needed to determine if an arbitration clause in Merck's contracts with the physician groups also applied to the medical clinics, and the parties are now engaged in discovery to help determine if arbitration is warranted, Cramer said.

His reputation for masterfully tackling complex antitrust cases is recognized among others on his team, as well as by attorneys representing the companies he goes up against.

Dechert LLP partner Steven Bizar, who defended drywall manufacturer National Gypsum Co. in multidistrict litigation accusing 12 companies of fixing prices on drywall, told Law360 that Cramer is pleasant to work with no matter whose side he is on.

"He is quite aggressive and very formidable as an adversary, and is somebody you can take at his word," Bizar said. "If he tells you something, that is how it is."

Cohen Milstein partner Kit Pierson told Law360 he enjoyed working as co-counsel with Cramer in that MDL, and that Cramer has a knack for obtaining necessary and convincing testimony from experts and preparing experts for cross-examination.

"In sports, they sometimes talk about a five-tool player, players that are good at everything, and Eric is good at everything," Pierson said.

The drywall purchasers Cramer and Pierson represented reached a **\$125 million settlement** with National Gypsum and two other manufacturers, PABCO Building Products LLC and American Gypsum Co., in 2018.

Another major win Cramer notched in 2019 was defeating a bid from Tyson Foods Inc., Perdue Farms and Pilgrim's Pride Corp. to compel broiler chicken growers to arbitrate claims that the three companies colluded to suppress the growers' pay.

Cramer and his colleagues also finalized an \$80 million settlement in June for a class of dental practices and laboratories that had accused dental supply distributors of pressuring manufacturers not to do business with competitors.

In addition to representing buyers in antitrust litigation, Cramer has recently started representing workers who have been affected by their employers' allegedly anti-competitive conduct.

In August, Cramer and his team conducted a seven-day hearing in Las Vegas with seven witnesses **to win class certification** for 1,200 mixed martial artists accusing the Ultimate Fighting Championship and its parent company Zuffa LLC of buying out its competitors to corner the market for MMA fighters and suppress their wages.

Cramer said the UFC fighters' lawsuit is one of the most challenging and rewarding cases he worked on in 2019.

"These fighters are people who spent their careers literally getting their heads bashed in the octagon and were in our view mistreated and underpaid for the work that they provided," Cramer said.

So far, Cramer and his team have been able to prove the UFC fighters were paid only 20% of generated revenue from their sport while professional athletes in Major League Baseball and the National Football League receive 50% of generated revenue, he said.

"Even though we don't yet have a ruling on the class motion, we felt like we put on a good case there and the clients were there and pleased with what happened," Cramer said.

Cramer's successes in the courtroom in 2019 followed a major professional advancement at the start of the year. He landed his position as chairman of Berger Montague in January 2019, and Bizar, his opponent in the drywall price-fixing case, said that as chairman, Cramer has grown the firm's practice by taking up cases in consumer protection and employment that the firm previously didn't handle.

"He has been a visionary in that firm broadening their practice and making the firm more of a national player, not just in the antitrust area, or securities law area, which are traditional areas where plaintiffs are active, but in many different areas," Bizar said.

--Editing by Amy Rowe.