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## Competition Group Of The Year: Berger Montague

By **Bryan Koenig**

Law360 (December 4, 2020, 5:33 PM EST) -- Berger Montague played a leading role in some of the year's largest antitrust class action settlements, helping earn its clients hundreds of millions of dollars and earning the firm a spot as one of **Law360's 2020 Competition Groups of the Year**.



Many of the firm's wins were settled on the courthouse steps. That includes **the largest private antitrust settlement of its kind** with a single defendant in history: a \$750 million deal reached in October 2019 with Allergan PLC to get its Forest Laboratories unit out from under a massive antitrust suit in New York federal court accusing the drugmaker of anti-competitive conduct to keep generic versions of the Alzheimer's drug Namenda off pharmacy shelves.

Trial had been set in the Namenda case, in which Berger Montague was one of several firms representing the plaintiffs, the same day the deal was reached. The timing, according to shareholder Caitlin G. Coslett, shows the kind of dedication Berger puts into its cases.

"We're willing to try cases," she said.

Another crucial win in which Berger Montague was co-lead counsel, reached in December weeks before trial was scheduled to start, was the \$120 million direct purchaser piece of the deal **settling allegations** that Allergan subsidiaries Warner Chilcott and Watson Pharmaceuticals worked to sideline generic alternatives of the birth control drug Loestrin.

An important part of that win came about in 2016, when the First Circuit revived claims Berger Montague and other direct purchaser firms that had been nixed by the district court defended. The district court found that so-called reverse payment or pay for delay cases require a cash payment. But the appellate court found that noncash deals can also run afoul of antitrust law.

"It's an example of the sort of hard-fought victory that our firm has won in cases like Loestrin and other pharmaceutical antitrust cases where there are some ... unsettled areas of law that require hard litigation," Coslett said.

Berger Montague has spent years working on cases that helped develop the law on pay-for-delay deals staving off generic competition to brand drugs. That work, including in the most recent cases,

exemplifies the "perseverance" Berger Montague has shown in developing a challenging legal area, Coslett said.

Eric L. Cramer, who headlines Berger itself as chairman and is co-chair for the antitrust department, says that the firm has a deep level of expertise and experience in the economics and legal issues of the pharmaceutical space.

"There's few if any other firms, in this field ... that can match our resume," Cramer said.

The antitrust practice behind that resume is about 30 attorneys strong, including 15 shareholders and 10 associates, representing nearly half of Berger's overall lawyer headcount, Cramer said. Most of that practice is based out of Philadelphia, Cramer said.

Those attorneys were put to the test in the pharmaceutical cases by a variety of factors, including simply dealing with the logistics of massive lawsuits scheduled for trial within three months of each other. "Obviously it puts a lot of pressure on us and co-counsel to gear up for trial in two cases so close to each other," said David F. Sorensen, Berger's managing shareholder and antitrust department co-chair.

But Sorensen said Berger and its fellow plaintiffs' firms met those challenges.

"It's a question of focusing on different cases at different times, with division of workload, and working with co-counsel," he said.

One win came only after trial had commenced, in **the series of settlements** in the hundreds of millions of dollars, some reached before trial kicked off and some after, resolving allegations that Panasonic and others fixed the prices for aluminum, tantalum and film capacitors, which are ubiquitous in common household electronics, including computers, vehicles and smartphones. Berger Montague was one of the firms representing direct buyers in the case that had to be halted after it kicked off in February because of the COVID-19 pandemic.

"We were two weeks into trial when the pandemic caused the trial to shut down. But I've worked on that case for five years," said Cramer, who is Berger's lead attorney in the capacitors case.

Most companies have settled out of the case, with only a few set to return when trial is rescheduled.

A common theme for all its wins, according to Berger Montague's attorneys, is a very strong communal approach applying attorneys where their expertise is most needed.

"I'm very proud of the work that our firm does as a collective team," Coslett said. "I think the sort of team spirit has benefited the cases and our clients across the cases."

That teamwork also extends to how Berger works with other firms, according to Cramer.

"One of the hallmarks of our practice is that we collaborate well with other firms. They want to work with us," Cramer said.

--Additional reporting by Christopher Cole, Dorothy Atkins, Adam Lidgett, Anne Cullen, Matthew Perlman and Nadia Dreid. Editing by Amy Rowe.