

Winston Runs Down the Life of Rechargeable Batteries Class Action in Billion-Dollar Victory

MARCH 6, 2018

Winston & Strawn won a tremendous victory on behalf of client Panasonic in a billion-dollar antitrust case, led by Winston's Co-Executive Chair Jeffrey Kessler. The Northern District of California refused to certify a putative class of consumers alleging that Panasonic conspired with other manufacturers to fix the price of lithium ion battery cells. This result comes on the heels of victory last year in which the court first denied plaintiffs' motion for class certification. In that ruling, the court granted plaintiffs leave to seek to certify a narrower class. In the March 6, 2018 ruling, the court denied class certification again without any further leave to try again. The court's order granted a resounding victory to our client. All the other defendants in the case, besides Winston's clients, had previously agreed to class actions settlements with the consumers.

The case began in 2012 when direct and indirect purchasers began filing a series of class actions alleging a conspiracy to fix, maintain, artificially stabilize, and raise the prices of lithium ion rechargeable battery cells. The indirect purchaser plaintiffs alleged a case involving multiple categories of consumer products that contained the lithium ion batteries at issue, including portable computers, power tools, and digital camcorders, over an 11 and-a-half year time period. As a result, the claimed damages for the entire class were over \$1.7 billion, after trebling.

Winston successfully led the fight against plaintiffs' first attempt to certify their class, and in April 2017, the court agreed with Winston's arguments and denied certification with leave to try again. In the months that followed, every other defendant settled with the indirect purchasers, entering into consumer class action settlements. Panasonic, however, stood firm, believing in the strength of its position that no alleged overcharge on tiny battery cells sold overseas was ever passed on throughout the class who bought a wide variety of finished products like portable computers and power tools, ultimately becoming the last defendant standing. This fortitude paid off. Following extensive briefing, in which Winston systematically dismantled the analysis presented by plaintiffs' experts, and oral argument led by Jeffrey Kessler, the court again agreed that plaintiffs had not presented any reliable method for proving that any alleged overcharges were actually passed-through to the class on a common basis. Finding this deficiency to be "fatal" to plaintiffs' class certification effort, the court granted Panasonic's motion to strike the plaintiffs' expert testimony, which was held to be unreliable, and denied the motion for class certification.

The Winston team was led by Partners Jeffrey Kessler, Eva Cole, and Jeffrey Amato, and included Associates Matt DalSanto, Michael Toomey, Erica Smilevski, and Zachary Sproull.

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