

Competition MVP: Wilson Sonsini's Jonathan Jacobson

By **Melissa Lipman**

Law360, New York (December 13, 2016, 11:11 AM EST) -- After most of the vitamin C makers who claimed China forced them to fix prices settled out of a U.S. antitrust case, Wilson Sonsini Goodrich & Rosati PC's Jonathan Jacobson helped his client fight a \$147 million judgment all the way to a landmark international comity ruling at the Second Circuit, putting him on Law360's list of Competition MVPs for 2016.

Jacobson and Wilson Sonsini joined HeBei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corp.'s defense team as the Chinese companies asked the Second Circuit to review their loss at a jury trial.

At issue in the appeal was a matter that had driven the case since the beginning: Did the Chinese government force the companies to fix prices? And do the U.S. courts have to accept China's description of its own legal mandates?

After the trial judge roundly refused to do so in a controversial ruling, the Second Circuit vacated the judgment against HeBei in September. The court said simply that when the Chinese government showed up in court to explain its laws, international comity required the district court to step aside and drop the case.

"That was a critical issue in the appeal, specifically how much weight do you give the pronouncements of a foreign government," Jacobson said. "Our position basically was it ought to be conclusive absent truly unusual circumstances. The court of appeals didn't go as far as we said, but fundamentally said if the government says something and ultimately appears in the case then the deference has to be conclusive."

Indeed, not only did China's Ministry of Commerce participate in both the district court and the appeal for the first time ever, but the government was so concerned about the ruling that it formally protested the district court's actions to the U.S. State Department in a diplomatic note.

"That never happens," Jacobson said.

Jacobson focused on the international comity issue during the Second Circuit arguments, and one of the



challenges in making the case was dealing with translations from Chinese that are "good, bad or indifferent."

"One of the key points in the case was that language that the plaintiffs had taken from English translations of Chinese documents really had a different meaning in China and Chinese culture," Jacobson said. "That I would say was the main challenge to putting together the appeal ... the cultural differences that make ... the way laws are administered in China really alien to the United States."

Jacobson, who will take over as chair of the American Bar Association's Antitrust Section in August, also helped Live Nation Entertainment Inc. escape a monopolization case brought by a rival concert promoter in Maryland. The Fourth Circuit upheld the dismissal of that case in February.

"What was truly extraordinary about the case was that in his deposition testimony [the plaintiff] acknowledged that he had before suing tried to get Live Nation to stop bidding so aggressively for artists and sought to reach an agreement under which Live Nation would basically leave town and let him take over his operation as well as Live Nation's," Jacobson said. "It's unusual in an antitrust case because he was trying to get the same so-called monopoly he was alleging was unlawful."

The four-decade antitrust veteran is also working on a number of ongoing high-profile cases, including litigation over capacitor price-fixing, and serves as a special master in a monopolization case against News America Corp. over in-store coupons at supermarkets.

Jacobson and his partners originally got involved in the case five years ago to help craft a standard for News America's bundling tactics going forward. They are now assisting the court after Valassis Communications Inc. claimed the company had violated the original settlement.

--Editing by Rebecca Flanagan.