

Daily Journal

February 9, 2022

Top Verdicts

The largest and most significant verdicts and appellate reversals in California in 2021

TOP APPELLATE REVERSALS

Stromberg v. Qualcomm Inc.

Case Info

CASE NAME: STROMBERG V. QUALCOMM INC.

TYPE OF CASE: CONSUMER CLASS ACTION, ANTITRUST

COURT: 9TH CIRCUIT

JUDGE(S): JUDGE RYAN D. NELSON

APPELLANTS' ATTORNEYS: Keke, Van Nest & Peters LLP, Robert A. Van Nest, Eugene M. Paige, Steven A. Hirsch, Cody S. Harris, Matan Shacham, Kristin E. Hucek; Cravath, Swaine & Moore LLP, Gary A. Bornstein, Yonatan Even, Brent Byars; Morgan, Lewis & Bockius LLP, Richard S. Taffet, Willard K. Tom, Geoffrey T. Holtz

APPELLEE'S ATTORNEYS: Susman Godfrey LLP, Kalpana Srinivasan, Marc M. Seltzer, Amanda K. Bonn, Oleg Elkhunovich, Katherine M. Peaslee; Cotchett, Pitre & McCarthy, LLP, Joseph W. Cotchett, Adam J. Zapala, Hagens Berman Sobol Shapiro LLP, Steve W. Berman, Jeffrey D. Friedman



ROBERT A. VAN NEST



EUGENE M. PAIGE

Attorneys for technology giant Qualcomm Inc. persuaded a 9th U.S. Circuit Court of Appeals panel in September to decertify what was one of the largest consumer class actions ever.

Amid the greatest global chip shortage crisis in history, the San Diego company faced a trial where cellphone consumers across the country alleged that it maintained a monopoly in modern chips.

Plaintiffs argued this was because of an excessive royalty that hit consumers in the form of higher prices for newer models.

"We were hired at the very beginning to be the lead lawyers for Qualcomm," said Robert A. Van Nest, a partner with Keke, Van Nest & Peters LLP. "Our job was to litigate and try the case, and the first major challenge was the class certification."

Van Nest and his firm were lead counsel, but they worked closely with Morgan, Lewis & Bockius LLP and Cravath, Swaine & Moore LLP.

The reversal undid then-U.S. District Court Judge Lucy H. Koh's certification of a nationwide indirect purchaser class of users in the multidistrict antitrust litigation

that sought \$5 billion in damages over the alleged monopoly of chips.

"The key principle was that courts can't apply California law to a nationwide class of consumers," Van Nest said.

"In other words, when consumers in a class are located across the United States, state law differences must be respected and the court can't choose a single state's law to apply to the entire class," he added.

9th Circuit Judge Ryan D. Nelson, an appointee of President Donald J. Trump, who wrote for the panel, vacated Koh's order and remanded the case to district court.

"When properly analyzed, California's choice of law rules preclude the certification of the 23(b)(3) class because the laws of other states — beyond California's Cartwright Act — should apply," Nelson wrote. *Stromberg et al. v. Qualcomm Inc.*, 19-15159 (9th Cir., filed Jan. 29, 2019).

Van Nest cited a 2012 9th Circuit ruling, *Mazza v. American Honda Motor Co.*, 666 F.3d 581, 588, "and we persuaded the court to apply it to this situation."

"The Mazza case established in a slightly different context that you can't apply

California law to a nationwide class, and it was based on that precedent primarily that the 9th [Circuit] ruled in our favor," he added.

In the complaint, cellphone consumers alleged Qualcomm maintained a monopoly on three key points.

The first was that Qualcomm sold chips only to manufacturers that paid royalty rates to license its standard essential patents above fair, reasonable, and nondiscriminatory terms, known as FRAND.

The second was not licensing those patents to rival chip suppliers, and the third was entering an exclusive deal with Apple Inc. that prevented rivals from competing.

Plaintiffs contend these practices harmed consumers because the amount attributable to the allegedly excessive royalty was passed through to consumers in the form of higher prices or reduced quality in cellphones.

Attorneys who represent the plaintiffs at Susman Godfrey LLP could not be reached for comment. The case has been remanded to the district court, where it is still ongoing.

— FEDERICO LO GIUDICE



STEVEN C. HIRSCH



CODY S. HARRIS



MATAN SHACHAM



KRISTIN E. HUCEK