

TOP 100 VERDICTS of 2007

FORTY-FIVE

ANTITRUST

Intellectual Property - Patents

Casino company claimed patent lawsuit was a sham

VERDICT	(P) \$39,000,000
CASE	Derek Webb, Hannah O'Donnell and Prime Table Games LLC v. Mikohn Gaming Corp. and Progressive Games Inc., No. 3:02-CV-1838 WS
COURT JUDGE	U.S. District Court, Southern District, Jackson, MS
DATE	Henry T. Wingate 02-07-2007
PLAINTIFF ATTORNEY(S)	Robert A. Rowan (co-lead trial counsel); Nixon & Vanderhye P.C.; Arlington, VA Joseph S. Presta (co-lead trial counsel); Nixon & Vanderhye P.C.; Arlington, VA James W. Craig; Phelps Dunbar LLP; Jackson, MS
DEFENSE ATTORNEY(S)	Neville H. Boschert; Watkins Ludlam Winter & Stennis P.A.; Jackson, MS April D. Reeves; Watkins Ludlam Winter & Stennis P.A.; Jackson, MS Eric L. Abbott; General Counsel's Office, Mikohn Gaming Corp.; Las Vegas, NV

FACTS & ALLEGATIONS Plaintiffs Derek Webb and Hannah O'Donnell are partners in the British-based company, Prime Table Games LLC. The company owned a proprietary casino table game named "Three Card Poker." The game's "rules of play" were patented in England and the United States. Prime Table's market for its game is casinos.

The other two major industry players for these kinds of games were Mikohn Gaming Corp., Las Vegas, with its game, "Caribbean Stud" and Shuffle Master, also from Las Vegas, with a game called "Let It Ride."

In December 1998, Mikohn sued Prime Table, claiming that Three Card Poker infringed on Mikohn's patents. Unable to defend against the infringement lawsuit, Prime Table sold its game to Shuffle Master for about \$3 million, according to plaintiffs' trial counsel, Robert Rowan.

Arguing that the patent infringement suit was a sham designed to force Prime Table out of the casino market in the U.S., Webb, O'Donnell and Prime Table sued Mikohn, which later changed its name to Progressive Gaming International Inc., for anti-competitive behavior. Plaintiffs claimed that the patent case was designed to force them out of the market.

At trial, plaintiffs' counsel argued that the defendants misrepresented the state of their game in relationship to prior art when they filed for their patents with the U.S. patent office. The prior art was a game called "Casino Poker," patented by David Slansky.

In particular, plaintiffs' counsel told the jury, the defendants left out key elements, such as the fact that Caribbean Stud game, like Slansky's games, paid bonuses.

It also came out in discovery that the defendants didn't reveal to the

U.S. patent office that they had an affidavit from Slansky about the rules of his game. According to the plaintiffs, this was evidence that Mikohn willfully and fraudulently obtained its patents and that it knew its patents were invalid when it sued the plaintiffs.

However, plaintiffs' counsel also had to prove that Mikohn had a dangerous probability that it would monopolize the marketplace once Prime Table was no longer a competitor, in order to prevail on their anti-competition claim.

In support of that claim, plaintiffs' counsel argued that Mikohn had more than 50% of the market before it sued them, which would have increased had Mikohn successfully eliminated the plaintiffs' Three Card Poker or if Mikohn had acquired the game.

Plaintiffs' counsel also presented evidence that before Mikohn sued them, it made an offer to buy their table game for cash and a share of the game's proceeds. Once the lawsuit began, however, Mikohn made a much less valuable offer that didn't include sharing in the proceeds.

The defense's position was that its patents were valid, and therefore, its actions to enforce those patents could not have constituted an antitrust violation. The defense also argued that the relevant market for antitrust purposes should also have included public domain games, such as Blackjack. Once those games were included, the defendant's market share was less than 5%, according to defense counsel, far less than would be necessary to support the plaintiffs' attempt-to-monopolize claim. Finally, the defendants argued that the plaintiffs' sale of their game to Shuffle Master was voluntary and that they received a fair price for the game.

INJURIES/DAMAGES Plaintiffs sought \$39 million in damages for lost profits and the value of the business that they sold to Shuffle Master as a going concern.

VERDICT INFORMATION The jury accepted the plaintiffs' definition of the applicable games market for purposes of the attempt to monopolize claim and also found that the defendants engaged in anti-competitive practices. The jury awarded the plaintiffs \$13 million for lost profits, but didn't award damages for a going concern. By law the award is trebled to \$39 million.

POST-TRIAL The defendants' motion for a new trial and judgment as a matter of law were denied. After the motions were denied, the parties agreed to settle the case for \$24.7 million, which included \$20 million in damages and \$4.7 million in attorney fees.

PLAINTIFF EXPERT(S)	Edward Fiorito J.D.; Patent Analysis; Dallas, TX Mr. William Kerr; Economics; Washington, DC
DEFENSE EXPERT(S)	William Shughart Ph.D.; Economics; Oxford, MS Julian Dority J.D.; Patent