

Titans Of The Plaintiffs Bar: Bill Isaacson

By **Melissa Lipman**

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After winning a landmark vitamin antitrust case that a federal judge and one of the world's largest pharmaceutical companies credited with shutting down a massive, decadelong cartel, Boies Schiller & Flexner LLP's Bill Isaacson sat down at his kitchen table, started searching the Web and uncovered another vitamin cartel that would eventually pull the Chinese government into a Brooklyn courthouse.

It started with vitamins. Vitamin A, vitamin E, vitamins B2 and B5, beta carotene. And vitamin C.

The U.S. Department of Justice was already investigating a possible global cartel among some of the world's biggest vitamin producers, but in 1998 the probe was not public. So Isaacson went with his longtime legal partner Jonathan Schiller to a meeting with a would-be whistleblower who had enough information about possible price-fixing in the vitamin industry to make the lawyers file a private antitrust action over the scheme.



Bill Isaacson

"We were told there was nothing to it, and we were dead wrong, and we had the only case," Isaacson said. "A year later, everybody pled guilty and paid billions of dollars, and all of a sudden everybody was in the case."

"That was my introduction to the plaintiffs bar...and then to an antitrust class action," Isaacson added.

Even in his early days as an antitrust attorney, Isaacson's litigation skills were on display. The court in the landmark global vitamin cartel case had barred the plaintiffs from telling the jury, among other things, that a high-ranking officer from one of the vitamin makers had gone to prison because of the case. But when Isaacson took a deposition of the executive in prison, he made sure the camera showed the cell doors behind the well-suited businessman, according to Schiller.

"During the deposition on the record, the cell doors opened and closed, so you not only saw the doors but heard them and understood where this deposition was being conducted," Schiller said. "The other side hadn't noticed that aspect of the deposition, so when Bill went to play this video ... it was admitted into evidence, of course, and there was nothing they could do about it. And you could see the jury

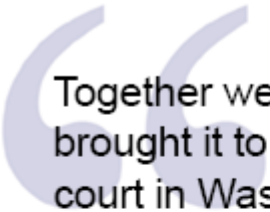
stiffen their backs a little when they heard that jail door slam shut."

Not only did the case lead to the first antitrust class action trial in at least a decade, but it also prompted F. Hoffmann-La Roche Ltd. to take a second look at its operations. Though a first internal probe found no wrongdoing, that second look uncovered evidence that some of the French pharmaceutical giant's highest-ranking vitamins executives were involved in the plot, Franz B. Humer, then the head of Roche's pharmaceutical division, said when the company agreed to pay the DOJ a record-setting \$500 million penalty in 1999.

"Together we uncovered this conspiracy, brought it to the attention of the federal court in Washington, and Judge [Thomas F.] Hogan in one of his opinions recognized that plaintiff class counsel had very quickly stopped a worldwide conspiracy," Schiller said. "He credited us, and I credited Bill."

Vitamin C was only a small part of that first case, which covered a decade's worth of conduct, in large part because an influx of cheap imports from two dozen Chinese manufacturers had broken up the European cartel after five years.

But one of the small Texas companies the firm had represented in the vitamin litigation called Isaacson a few years after the first case wrapped up and piqued his interest in vitamin C by telling him that the Chinese market had consolidated down to just four players that made roughly 80 percent of the world's supply. And, the owner told Isaacson, prices had been going up.



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— **Jonathan Schiller**
Managing partner
Boies Schiller & Flexner LLP

Knowing, even in those pre-Twombly days, that those facts alone weren't enough to go to court, Isaacson started researching the vitamin C market in his spare time, armed with recent price lists from the Texas company.

"I was home one night at my kitchen table and I signed up for a free subscription, a trial subscription to a trade service for imports from China, and I was just looking for information about production of vitamin C," Isaacson said. "All the sudden an article says at a convention ... in China, a man named Qiao Haili made a speech and said he was concerned that vitamin C prices were going down, so he called an emergency meeting of the manufacturers."

So Isaacson consulted his price lists for the month the meeting had taken place. The price of vitamin C

had doubled over the course of the month.

"I went, I said, 'Holy shit,' to my wife," Isaacson said.

When Isaacson couldn't find more information about Qiao Haili's group, he called in an assist from his wife's cousin — an importer of Chinese soccer balls — to track down the Chinese site. The next day Isaacson had the site translated at work and found statements about the cartel, its meetings, its price increases and the fact that its members had reached the agreement without any government assistance.

"[That was] something I didn't attribute any significance to at the time because it didn't occur to me [they would] later [come] in and [say] the government made us do it," Isaacson said.

Isaacson and his team — which also included Hausfeld LLP's Michael Hausfeld and Susman Godfrey LLP's Jim Southwick from the first vitamins case — ultimately defeated the foreign sovereign compulsion argument in the district court and won a \$153 million jury verdict against one producer that is now on appeal to the Second Circuit on the same issue.

While that case wound up being somewhat more complicated than Isaacson had originally anticipated, the University of Virginia School of Law graduate is no stranger to difficult cases. He's now worked on more than half a dozen antitrust class action trials, and not one has targeted a company that had already signed a guilty plea with the DOJ.

Isaacson landed in law school in the first place after time spent on his high school and college debate teams convinced him that he likely had "a skill set that might lend toward the law."

"I knew I was comfortable on my feet, I knew I was comfortable researching, I knew I was comfortable working hard," Isaacson said. "So I put one foot in front of the other, and there I was."

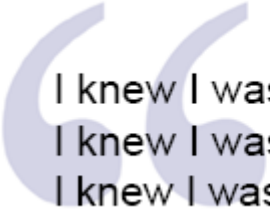
Isaacson originally had notions of becoming a labor lawyer, until, Schiller says, he "talked him out of that."

Schiller likewise led Isaacson from his first job at litigation boutique Rogovin Hugel & Schiller to Kaye Scholer LLP and ultimately to what would become Boies Schiller & Flexner.

"I was Schiller's partner at Kaye Scholer, when one day he said, 'David [Boies] called; he and I are going to set up a firm. Do you want to do that?' and I said, 'Yes,' and that was the complete conversation," Isaacson said. "I went home, said to my wife, 'Interesting day at the office: I'll be leaving the partnership for a new firm.'"

"She completely understood, [but] she asked me, 'Did you ask how much money you would be making?' I said, 'That would have been a good question,'" Isaacson said.

Under-researched though his jump might have been, Isaacson has no aversion to doing his homework when it comes to tough cases. Unlike many senior attorneys, Isaacson is always willing to "be the associate," whether that means poring through a stack of trial exhibits or helping to craft questions for other litigators' witnesses, according to Heins Mills & Olson PLC Renae Steiner.



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Partner
Boies Schiller & Flexner LLP

Isaacson's most recent trial work on the antitrust challenge to the National Collegiate Athletic Association's ban on universities' paying their players put on something of a master class in litigation, hammering home his mantra that "every witness is our witness," said Steiner, who was his co-counsel on the case.

Isaacson got the ball rolling with their first witness, Christine Plonsky from the University of Texas, who was part of the NCAA's strategy to keep anyone with detailed knowledge of its amateurism rules from testifying live in court, according to Steiner.

"We thought, 'Ah, she'll talk about Texas and how great Texas is ... and no way will they go into her committee work at NCAA because then they'll open the door, and we can just go wild with all our documents,'" Steiner said.

But when the NCAA's attorneys made a brief mention of Plonsky's committee work, Isaacson "took that opening, that little crack ... and we put in our entire case about how the NCAA themselves have this malleable definition of amateurism through their own witness," Steiner said.

"I'm not sure that they ever really recovered from that, in my estimation," Steiner said.

Isaacson's cross-examination of Plonsky was so good, in fact, that it left Boies Schiller associate Martha Goodman "leaving the courtroom with adrenaline coursing through my veins."

"What Bill effectively showed during her cross was that it's sometimes less important to draw out what the witness says about the document but is instead very effective to simply show what the document says to the fact finder — in that case, the judge," Goodman said.

Isaacson also proved adept at thinking on the fly during the case, like when he used the last 15 minutes of the day with one of the NCAA's expert economists to undo her testimony about how to analyze monopsonies. The economist testified that any harm to the student athletes was irrelevant, because only the downstream market — the fans — mattered, according to Steiner.

"Bill wrote a note [that] said, 'Find me every Supreme Court case that says in a ... monopsony you look at not just the downstream market, but you look at producers of the market who are injured,'" Steiner said. "And instead of using his outline ... he entirely shifted to this point, because it would have been

terrible to leave the court with the impression for a whole day and night that [the economist] was right."

So Isaacson read the facts from each of those handful of Supreme Court cases to the economist and asked her whether she agreed that under those circumstances the producers were injured under the antitrust laws. Each time she said no.

"He was reading straight from the Supreme Court cases where they had found injury, and the judge knew it, and I believe the NCAA lawyers all knew it, and the only one who didn't know it ... was the witness," Steiner said. "So he completely undid her in 15 minutes and ... that's what the court's thinking overnight."

--Editing by Kat Laskowski.

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