K&L GATES

CONTINUANT CASE HISTORY

K&L Gates represented Telecom Labs, Inc./Continuant (Continuant), an independent provider of maintenance services (ISP), in a ground-breaking jury verdict in the U.S. District Court for the District of New Jersey. The highly publicized case is considered one of the preeminent 2014 commercial disputes cases in the United States and one of the most significant cases in the state of New Jersey. The *National Law Journal* ranked this case 34th among its list of "Top 100 Verdicts of 2014" and second in New Jersey.

Telecom giant Avaya sued Continuant under the guise the ISP had no authority to service Avaya products, therefore infringing on Avaya's intellectual property. Continuant counter sued Avaya for monopolizing the market and conspiring against competitors. The eight-year battle between Avaya and Continuant resulted in two ground-breaking decisions:

- March 2014 - Following a six-and-a-half month trial, a New Jersey federal jury returned a $20 million antitrust verdict (automatically trebled to $60 million) in favor of Continuant. The case was the first antitrust claim of its type (single product aftermarket) to make it to trial and to a successful verdict since the plaintiffs in *Eastman Kodak v. Image Technical Services* tried their case to verdict in the aftermath of the Supreme Court first recognizing this type of claim in 1992. *Eastman Kodak Company v. Image Technical Services, Inc.*, 504 U.S. 451 (1992).

- September 2014 - Hon. Joseph E. Irenas awarded prejudgment interest relief to Continuant. This was the first ever prejudgment interest relief granted in an antitrust case, since the statute was first amended in 1980. Prejudgment interest may only be awarded under federal statute if the court concludes that the defendant -- in this case Avaya -- abused the litigation process for the purpose of delaying the resolution of the case or increasing the plaintiff's costs.

In addition to these two decisions, in July 2014, the court issued a ruling that provided Continuant relief on the main anti-competitive tactic that Avaya used to shut ISPs out of the Avaya PBX maintenance market. Accordingly, Avaya was ordered to allow owners of Avaya-brand PBX systems that were purchased between January 1, 1990 and April 30, 2008 to access On Demand Maintenance Commands on those systems (key part of the Continuant case). Judge Irenas wrote "Purchasers of pre-2008 systems represent a particularly important market for TLI/C. Failure to allow TLI/C to compete for these customers' business may very well severely limit its ability to compete in the Avaya-brand maintenance market."

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