

**RETRACTABLE V.  
BECTON, DICKINSON ET AL.**

Retractable Technologies, Inc., may have finally found a way to puncture the syringe market. After five years of litigation, Retractable, which makes the patented VanishPoint safety syringe, settled its antitrust suit against competing syringe manufacturer Tyco Healthcare Group and the nation's two largest hospital buying groups, Premier, Inc., and Novation, LLC, in April. The other named defendant in the suit, Becton, Dickinson and Company, the nation's largest syringe maker, did not settle. In the suit, Retractable claimed that Becton, Dickinson and Tyco used their exclusive supply contracts with their respective buying groups, Premier and Novation, as well as other monopolistic practices, to block Retractable from gaining a foothold in the market. The terms of the settlement are sealed.

Retractable's VanishPoint needle protects health care providers from accidental pricks with a spring that automatically pulls the needle back into the syringe before leaving the patient's body. The company claims that Becton, Dickinson, which has also developed a

safety syringe device, has almost complete control over many segments of the market and has actively thwarted VanishPoint's gains in the hospital market, which accounts for about 60 percent of the 6.2 billion annual syringe purchases. Becton, Dickinson insists that VanishPoint sales haven't taken off because the syringes are overpriced.

Retractable had first sued the two syringe manufacturers along with three Texas hospitals and the Irving, Texas-based VHA Inc. hospital network, in 1998 in state district court in Brazoria County, Texas. After little activity and with eyes on nationwide damages, Retractable refiled in federal district court in Texarkana, Texas, in January 2001. In the federal suit, Retractable dropped the local hospitals in favor of the buying groups that negotiate the contracts between the manufacturers and about two-thirds of the hospitals around the country.

Though they have settled, Tyco, Premier, and Novation (majority-owned by VHA) all still deny that there were grounds for Retractable's claims of monopolistic practices.

Judge David Folsom has scheduled the trial in the Bec-

ton, Dickinson suit for February 2004.

**FOR PLAINTIFF RETRACTABLE TECHNOLOGIES, INC.**  
(LITTLE ELM, TEXAS)

**IN-HOUSE:** Director of legal and legislative policy and corporate secretary **Michelle Larios.**

**THE LANIER LAW FIRM (HOUSTON):** W. Mark Lanier and associates **Eugene Egdorf** and **Maura Kolb.**

**PATTON, TIDWELL & SCHROEDER (TEXARKANA, ARKANSAS):** **Nicholas Patton.**

**O'QUINN, LAMINACK & PIRTLE (HOUSTON):** **John O'Quinn.**

**GILBERT & GILBERT (ANGLETON, TEXAS):** **John Gilbert.** The firm was involved in the state court proceedings.

**MULLIN HOARD & BROWN (AMARILLO, TEXAS):** **Lawrence Doss** and **Donald Hunt.**

Lanier had been a student of Hunt's at The Texas Tech University School of Law.

**FOR DEFENDANT BECTON, DICKINSON AND COMPANY**  
(FRANKLIN LAKES, NEW JERSEY)

**IN-HOUSE:** Vice president, general counsel, and corporate secretary **Bridget Healy**

and associate general counsel **Bruce Hector.**

**PAUL, WEISS, RIFKIND, WHARTON & GARRISON (NEW YORK):** **Robert Atkins, Les Fagen, Sidney Rosdeitcher,** counsel **Steven Herzog,** and associates **Melanca Clark, Christopher Giampapa, Melissa Harris, Jennifer Lyons, Catherine Montjar, Alice Ristroph, Patricia Ronan, Jacqueline Rubin,** and **Eric Stone.** Paul, Weiss has represented Becton, Dickinson for two decades.

**BECK, REDDEN & SECREST (HOUSTON):** **David Beck, Alistair Byrne Dawson, William Webb,** and associates **Matthew Morrison** and **Mo Taherzadeh.** Paul, Weiss recommended Beck, Redden to Becton, Dickinson.

**MERCY, CARTER, TIDWELL & ELLIOTT (TEXARKANA, TEXAS):** **W. David Carter.**

**FOR DEFENDANT NOVATION, LLC (IRVING, TEXAS)**

**IN-HOUSE:** General counsel and secretary **Gerald Rubin.**

**FOR DEFENDANT VHA INC. (IRVING, TEXAS)**

**IN-HOUSE:** Senior vice president, general counsel, and secretary **Marcea Lloyd.**



W. MARK LANIER  
(LANIER LAW FIRM)



ROBERT ATKINS  
(PAUL, WEISS)



ROBERT SCHWARTZ  
(O'MELVENY)



CHARLES BAKER  
(MUNSCH HARDT)



MICHAEL PAGE  
(KEKER & VAN NEST)



SCOTT BERMAN  
(BROWN RUDNICK)



MARCY HARRIS  
(SCHULTE ROTH)

FOR DEFENDANTS NOVATION, LLC, AND VHA INC.

**MAYER, BROWN, ROWE & MAW (CHICAGO):** Robert Bloch, Michael Feagley, Diane Green-Kelly, Scott Perlman, Mitchell Raup, Gary Winters, and associates **Jay Brown** and **Lisa Levine**. (Bloch, Perlman, Raup, Winters, Brown, and Levine are in Washington, D.C.) Bloch is Novation's regular outside counsel on antitrust issues.

**DUNN, NUTTER & MORGAN**

**(TEXARKANA, ARKANSAS):** Winford Dunn, Jr.

FOR DEFENDANTS PREMIER, INC., AND PREMIER PURCHASING PARTNERS (SAN DIEGO)

**IN-HOUSE:** General counsel, senior vice president—legal affairs and insurance **Jeffrey Maysent**.

**NEAL, GERBER & EISENBERG (CHICAGO):** James Gardner, Phil Neal, Ralph Russell, Jr., and associate **Elizabeth**

**Wright**. Gardner has represented Premier since its inception in 1996.

**ATCHLEY, RUSSELL, WALDROP & HLAVINKA (TEXARKANA, TEXAS):** J. Dennis Chambers and **Robert Weber**.

FOR DEFENDANTS TYCO INTERNATIONAL (U.S.) INC. (PORTSMOUTH, NEW HAMPSHIRE) AND TYCO HEALTHCARE GROUP (MANSFIELD, MASSACHUSETTS)

**IN-HOUSE (TYCO HEALTHCARE GROUP):** Chief litigation counsel **John Griffin**.

**VINSON & ELKINS (HOUSTON):** Bruce Blefeld, John Murchison, Jr., and associate **John DeGeeter**.

**YOUNG, PICKETT & LEE (TEXARKANA, TEXAS):** Lance Lee and **Damon Young**.

—HEATHER SMITH

## TOP OF THE DOCKET GLEESON'S STRONG HAND

# Settling With The Merchant Class

CALL HIM A PARTY POOPER. Call him effective. Any way you look at it, Judge John Gleeson of federal district court in Brooklyn, New York, took the wind out of some lawyers' sails when he successfully brokered a peace between credit card giants Visa U.S.A. and MasterCard International and a class of 7 million merchants this April. "It's like going to the finals at Wimbledon and winning by default," says Lloyd Constantine, lead attorney for the merchants, who admits disappointment that there was no trial.

In the suit, which was first brought seven years ago, merchants led by Wal-Mart Stores Inc. charged that the card issuers attempted to monopolize the debit card market by forcing retailers who accept Visa and MasterCard credit cards to also accept their debit cards, despite excessive transaction fees. The settlement provides that the two credit card companies pay \$25 million immediately to the retailers; in addition, Visa (which has a larger share of the debit card market) will pay another \$2 billion, and MasterCard another \$1 billion, to retailers over the next ten years. The settlement also stipulates that Visa and MasterCard cut fees on future debit card transactions.

By most accounts Gleeson played a pivotal—some might say arm-twisting—role in bringing about the last-minute settlement. Seven days before trial, Gleeson ordered all the parties to federal court in Brooklyn. "It would not be an overstatement," says a lawyer for one of the defendants, "to say that the judge locked everyone in a room until they agreed to settle." Ultimately the tactic bore fruit. After all-night negotiations over the weekend, the merchants and MasterCard reached a settlement at 5 A.M. on Monday, April 28, just hours before trial was scheduled to begin. Two days later, Visa settled with the plaintiffs.

While some lawyers admit to missing a courtroom showdown, the settlement spared everyone an exhausting trial that was projected to last all summer. But did Gleeson overstep his bounds in pushing for a settlement? Constantine and Kevin Arquit of Simpson Thacher & Bartlett, lead counsel for Visa, both (predictably) laud Gleeson for deftly facilitating the process. In fact,



JUDGE JOHN GLEESON

Arquit calls Gleeson a "great judge—he's what you love to see in a federal judge," while Constantine praises Gleeson for being "both tenacious and skillful." (Daniel Tarman, a spokesperson for Visa, declined to comment on Gleeson's role in the settlement.)

And why did Gleeson push so hard for settlement? Gleeson declined comment for this article, but Arquit says that "with stakes so high," Gleeson had "to be an activist." Indeed, Visa and MasterCard had much to lose: Under the trebled damages provision of the antitrust laws, they could have faced an estimated liability of up to \$50 billion—an amount that could have forced a larger settlement down the road. MasterCard general counsel Noah Hanft says Gleeson's proactive stance in the settlement "brought realism to both sides and a sense of reason to the plaintiffs." So perhaps Gleeson wanted to avoid a devastating economic outcome. Or maybe he just didn't want to suffer the long hot summer trapped in a Brooklyn courthouse.

—VIVIA CHEN

## MGM ET AL. V. GROKSTER ET AL.

Napster Inc. may be gone, but the practice of downloading copyrighted material off the Internet is alive and well. In a breakthrough ruling against the entertainment industry this April, Judge Stephen Wilson of federal district court in Los Angeles gave a green light to software distributors Grokster, Ltd., and StreamCast Networks, Inc., permitting the two companies to continue providing software that allows users to download and share music, videos, software applications, e-books, and text files.

The ruling was a blow to the dozens of record labels, motion picture studios, songwriters, and publishers who filed the suit, which blamed electronic copying for hundreds of millions of dollars in declining sales. Unlike Napster, neither Grokster nor StreamCast has a centralized server through which files are shared, Judge Wilson noted, and therefore the companies should not be held responsible for individuals who use their services to download copyrighted material. *Sharman Networks, Ltd.*, which offers the file-sharing software Kazaa, joined the suit as a defendant after it was filed, but *Sharman* was not covered in the ruling. The plaintiffs have begun the appeal process.

FOR ARISTA RECORDS, RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC., AND OTHER RECORD COMPANY PLAINTIFFS