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Who wants to take millions from Disney?

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Wednesday's verdict involving profits from the game show *Who Wants to Be a Millionaire* sent shockwaves throughout the entertainment industry, and not just for its $270 million damages award.

The case challenged the common practice of "vertical integration" — ownership by large corporations both of the production and distribution of programming.

The winner in the case against The Walt Disney Co., parent company of ABC Inc. and the former Buena Vista Television, was Celador Entertainment Ltd., the British originator of *Who Wants to Be a Millionaire*. Celador's lawyer, Roman Silberfeld, managing partner of the Los Angeles office of Minneapolis-based Robins, Kaplan, Miller & Ciresi, told *The National Law Journal* that the case exemplifies how vertical integration can damage third parties who have a stake in a show's profits.

He said the trial, which lasted four weeks, was the first involving a group of lawyers who joined Robins Kaplan last year from the former Dreier Stein Kahan Browne Woods George in Santa Monica, Calif., to create the firm's new entertainment and media practice.

The interview has been edited for length and clarity. A call to a Disney spokesman was not returned.

NLJ: This case got a lot of attention for its challenge to vertical integration in the entertainment business. What is vertical integration?

RS: The core concept revolves around self-dealing between affiliated companies, where the terms of the self-dealing are different than they would be if people were dealing on a fair market value basis. The notion that they deal with each other on less than fair market value terms isn't the problem by itself. It becomes a problem, though, as it did with Celador, when there are third parties who have an interest in the economic arrangements that are made. Celador had a 50/50 profit participation interest in the success of *Who Wants to Be a Millionaire*. ABC and BVT [Buena Vista Television] entered into what is clearly a sweetheart deal that basically said there was never going to be a profit from the production of the show. And they entered into a Byzantine array of agreements among three or four Disney entities that had only one purpose, and that purpose was to shield the profits from the show and keep them away from Celador.

ROBINS KAPLAN'S ROMAN SILBERFELD

NLJ: Why would Disney purposely run a show that wasn't profitable?

RS: Ad revenue. It takes in money by selling air time and it pays out money for the privilege of putting content on the air. In the case of Celador, ABC, according to public reports I've seen, collected $1.8 billion of ad revenue from the ad sales for the program. And yet it paid out a license fee for the content for the program itself to Buena Vista Television that was a fraction, a very small fraction, of what a fair market value license fee would have been. The actual license fee was $800,000 an episode, and our experts at trial testified that it should've been three to four times that much. Based on the jury's verdict, they seemed to agree.

NLJ: But you asked for more than $270 million from the jury. How did you come up with your damage amount?

RS: We had two damage scenarios for them based upon two different license fee figures. We said to the jury, "You can either apply $2.4 million or $3 million per episode to all the episodes of the show — 363 of them — or you can apply it to a lesser number of episodes, approximately 250 episodes, based upon when you decide the show was a success." The first range of numbers was between $202 million and $279 million. And the second range of numbers was between $260 million and $395 million. What I told the jury in closing arguments was that obviously they weren't bound by anything, but I had a right to tell them what I thought the right number was, and I told them the right number was $279 million.

NLJ: What do you think the turning point was in the trial?

RS: The turning point in the case was that we got every single person on our side and theirs to agree that the deal was going to be a 50/50 split of profits. That was the testimony of the witnesses on the ABC side, that's what all the notes people took of meetings said, that's what the memorandum of understanding said, that's what the final contract said: 50/50. Then, my partner Bernice Conn put on all the witnesses of four or five separate contracts entered into between ABC entities. We were not a party to any of those contracts. Most weren't signed. Most were backdated. And none of them were legally necessary to effectuate the purpose of the contract. Their sole purpose was to shield profits away from Celador.

NLJ: This case was filed six years ago. Did you inherit it from the group that came over from Dreier Stein Kahan Browne Woods George last year?

RS: Yes. When they came roughly a year and a half ago now, we were thrilled to welcome the lawyers to the firm because we think their area of practice is a natural fit with our litigation practice. But no client was compelled to come along. Every client had a choice to make. And this particular client, after interviewing us and meeting us, chose to stay with the group early on.

NLJ: You're not an entertainment lawyer, and this was your first trial involving this industry. What's the difference?

RS: The major difference is that there was a certain celebrity aspect, or glitziness to it, because of the entertainment quality of it. It has certainly some unique characteristics to it because it's something of public interest, and there are certainly differences in how the entertainment business operates that are unique. But in truth, it's a breach-of-contract case, and we try those cases all the time.

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