

Winston Attorneys Speak at State Bar of Texas Annual Meeting 2022

JUNE 10, 2022

On June 10, Dallas Partner Scott Thomas spoke at the State Bar of Texas Annual Meeting on the panel “Defending Criminal No-Poach & Wage-Fixing Claims.” Scott was joined by Paul Coggins. Houston Of Counsel Brandon Duke, immediate past chair of the state bar’s Antitrust & Business Litigation Section, moderated the discussion.

Scott and Paul were counsel for individual defendants in the first two cases of their kind to go to trial since the Antitrust Division announced their intent to criminally prosecute these wage-fixing and no-poach agreements: *United States v. Jindal* (E.D. Tex) and *United States v. DaVita Inc. and Kent Thiry* (D. Colo.). Scott represented Mr. Thiry along with Dallas Partner Tom Melsheimer and Associate Alex Wolens.

Both trials resulted in not-guilty verdicts on the antitrust charges. Scott and Paul discussed their strategies leading up to trial, moving to dismiss these cases of first impression, defending against evidence of agreement and the *per se* standard, and the jury’s response to the government’s case, including the role of cooperating “co-conspirators.”

KEY TAKEAWAYS

- The Antitrust Division has committed to continuing to prosecute these cases despite initial trial losses. Following the verdicts, a DOJ official stated that they should not “be taken as a referendum on the Antitrust Division’s commitment to prosecuting labor market collusion, or on [its] ability to prove these crimes at trial.”
- With more cases proceeding to trial, and more trial experience, the chances increase for the government to ultimately secure a guilty verdict. However, practitioners should consider more closely how the *per se* standard is practically applied at trial by courts and juries. The courts’ rulings on the motions to dismiss and the jury instructions used in both cases are particularly instructive and should be used as a guide for future cases and counseling.
- Finally, the results in these cases provide additional data points for parties looking at the overall balance of interests under the Division’s Leniency Program. Potential leniency applicants and the government should be asking: what is the risk of a guilty verdict for these charges as compared to the positives and negatives of cooperation, and what benefit do cooperating witnesses actually provide the government at trial?

Learn more about this event [here](#).

Read more about Winston & Strawn's antitrust practice [here](#).

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