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Top Boutiques IN CALIFORNIA 2019

ANTITRUST AND COMPETITION LAW

MoginRubin LLP

**SAN DIEGO,
WASHINGTON DC**

In 2017, veteran antitrust practitioners Daniel J. Mogin and Jonathan Rubin agreed to merge their separate firms.

Rubin, a former Patton Boggs LLP partner, worked in Washington, D.C., at his Rubin PLLC. Mogin had long been in San Diego at The Mogin Law Firm PC. The pair bonded over a case.

"I came up as a plaintiff lawyer," Mogin said. "Then Jonathan persuaded me to get involved in the ATM litigation," he added, referring to a long-running effort to hold accountable for alleged price-fixing the credit card giants Visa Inc. and Mastercard Inc.

Rubin filed the Sherman Act complaint in 2011. Then came a dismissal at the district court level; a reversal by the U.S. Circuit Court of Appeals for the D.C. Circuit; a cert grant following the defendants' petition to the U.S. Supreme Court; and, in 2016, a dismissal of the grant by the justices "as improvidently granted" that allowed Ruben to proceed at last in district court. *Automated Teller Machine Surcharge Antitrust Litigation*, 11-cv-01803 (D. D.C., filed Oct. 12, 2011).

"That's when things got serious and the plaintiffs were able to begin discovery," Mogin said. He and Ruben filed their class certification motion in September 2019. It's



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From left, partners Jennifer Oliver, Jonathan Rubin and Daniel Mogin of MoginRubin LLP

currently pending before Senior U.S. District Judge Richard J. Leon of Washington, D.C.

Rubin, who holds an economics degree and has long worked in the antitrust field, said he wanted to get the case away from several big firms involved on the plaintiff side.

"I didn't go through all that economics training to have some frickin' associate at a big firm tell me how to run my case," he said. "I've done the giant firm thing and the solo thing. I was able to convince a careful, smart lawyer like Dan that the case is solid, and now we are a two-man shop."

Mogin and Rubin said that a lot of cases have flowed to their partnership from other lawyers. One, that has so far reaped \$378 million in partial settlements, is based on Sherman Act claims of price fixing and supply restriction against the

largest makers of containerboard and corrugated packaging. It remains in litigation. *Containerboard Products Antitrust Litigation*, 10-cv-05711 (N.D. Ill., filed Sept. 9, 2010).

"That one came to me from a lawyer with some antitrust experience who forwarded an article from a small newspaper about unexplained movement in cardboard box prices," Mogin said. "We smelled something, so we spent a year exploring the facts with private investigators and economists, and then we crafted a complaint."

The firm added partner Jennifer M. Oliver in 2017. She had practiced for nearly 10 years as a complex business litigator in the New York office of Weil, Goshal & Manges LLP.

"She's a superstar," Mogin said. The firm has five other lawyers working as associates. "A lot of talent here," Mogin added.

He said his early fascination with antitrust law was thwarted during Ronald Reagan's pro-business presidency when "the door slammed" on federal antitrust prosecutions and "follow-on cases dried up." But things are changing, the partners believe. In April 2019 Mogin and Rubin wrote on their firm's website about "The New Antitrust Paradox." They said, "The public and some politicians have lost faith in antitrust's ability to promote competition or protect consumers. This antitrust paradox has led to some ambitious pot-stirring by a new wave of antitrust reformers."

Mogin said his firm is an example of how reform can pay off.

"We think of ourselves as change agents, Mogin said. "We believe passionately that antitrust law keeps things competitive."

— John Roemer