Nos. 13-17408, 13-17618

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: TFT-LCD (FLAT PANEL) ANTITRUST LITIGATION

BEST BUY CO., INC., et al.,
Plaintiffs-Appellees-Cross-Appellants,

v.

HANNSTAR DISPLAY CORPORATION,
Defendant-Appellant-Cross-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

REPLY BRIEF OF PLAINTIFFS-APPELLEES-CROSS-APPELLANTS

ROBINS KAPLAN LLP
Roman M. Silberfeld
Bernice Conn
Michael A. Geibelson
2049 Century Park East, Suite 3400
Los Angeles, CA 90067-3208
(310) 552-0130

ROBINS KAPLAN LLP
Eric J. Magnuson
Katherine S. Barrett Wiik
Lisa L. Beane
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
(612) 349-8500

Attorneys for Plaintiffs-Appellees-Cross-Appellants Best Buy Co., Inc., et al.

CORPORATE DISCLOSURE STATEMENT

Best Buy Co., Inc. has no parent corporation, and no publicly held corporation owns more than 10% of its stock. Best Buy Enterprise Services, Inc. and Best Buy Purchasing LLC are wholly-owned subsidiaries of Best Buy Co., Inc.

BestBuy.com, L.L.C. and Magnolia Hi-Fi, Inc. are wholly-owned subsidiaries of Best Buy Stores, L.P., which is a wholly-owned subsidiary of BBC Property Co., which is a wholly-owned subsidiary of Best Buy Co., Inc.

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INTRODUCTION

The Minnesota Supreme Court, in the cases of *Lorix v. Crompton Corp.*, 736 N.W.2d 619 (Minn. 2007) and *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490 (Minn. 1996), has clearly rejected the existence of a pass-through defense under the Minnesota Antitrust Act. *See, e.g.*, *Philip Morris*, 551 N.W.2d at 497 (concluding "that it was the intent of the Minnesota legislature *to abolish the availability of the pass through defense* by specific grants of standing within statutes designed to protect Minnesota citizens from sharp commercial practices") (emphasis added). As a federal court exercising supplemental jurisdiction over Best Buy's claims under state law, the district court was bound by constitutional principles to interpret the Minnesota Antitrust Act as would the Minnesota Supreme Court. "When interpreting state law, federal courts are bound by decisions of the state's highest court." *Nelson v. City of Irvine*, 143 F.3d 1196, 1206 (9th Cir. 1998). The district court's decision to allow HannStar to assert a pass-through defense, despite this relevant precedent from the Minnesota Supreme Court to the contrary, was reversible error.

HannStar also argues for the first time in its third brief on cross-appeal that the FTAIA limits the ability of the Minnesota Antitrust Act to provide remedies to citizens of Minnesota for the harms they have experienced from this TFT-LCD cartel. HannStar did not make this argument in its motion for judgment as a matter of law before the district court, nor did HannStar raise this legal attack (or any legal attack, for that matter) on Best Buy's direct-purchaser claim under the Minnesota Antitrust Act in its opening brief in this cross-appeal. This argument has been waived.

Even if this Court decides to entertain this new and additional FTAIA argument that HannStar now raises, it is without merit. This Court already has decided in *United States v. Hui Hsiung*, 778 F.3d 738, 743 (9th Cir. 2015), that the conduct at the heart of this TFT-LCD panel conspiracy— conduct to which HannStar has pleaded guilty— involves "import commerce" within the meaning of the Sherman Act and also satisfies the "domestic effects" exception to the FTAIA. The FTAIA does not bar Best Buy's recovery on any of its state or federal antitrust claims.

As the FTAIA presents no legal barrier to Best Buy's claims under the Minnesota Antitrust Act, and the district court erroneously granted summary judgment to HannStar allowing it to assert a pass-through defense to Best Buy's indirect-purchaser claim under Minnesota antitrust law, judgment for HannStar on this claim should be reversed. This Court should remand this claim to the district court for a retrial on Best Buy's indirect-purchaser damages.

ARGUMENT

I. The District Court's Decision to Allow HannStar to Assert a Pass-Through Defense to Best Buy's Claim under the Minnesota Antitrust Act Is Contrary to Minnesota Law and Must Be Reversed.

HannStar argues repeatedly in its response brief that there is nothing in the Minnesota Antitrust Act, or the rulings of the Minnesota Supreme Court, to preclude it from asserting a pass-through defense. With all due respect, HannStar's framing of the issue is backwards. As the party wishing to present the affirmative defense, and attempting to defend the district court's decision allowing such a defense on appeal, HannStar has the burden of establishing that such a defense is allowed under existing Minnesota law. HannStar has not and cannot meet that burden.

The district court's grant of partial summary judgment to HannStar, allowing it to assert a "pass-through" defense to Best Buy's indirect-purchaser claim under Minnesota law, is contrary to both the plain language of the Minnesota Antitrust Act, Minn. Stat. § 325D.57, and controlling decisions of the Minnesota Supreme Court interpreting the Act. The district court's decision must be reversed, and Best Buy's indirect-purchaser claim remanded to the district court for a new trial on damages.

A. The District Court's Conclusion Is Inconsistent With the Plain Language of the Minnesota Antitrust Act.

HannStar urges this Court to look only to the last clause of the last sentence of Minn. Stat. § 325D.57, which empowers a court "take any steps necessary to avoid duplicative recovery against a defendant." Contrary to the plain language of the Minnesota Antitrust Act, and spurred on by HannStar's incomplete reading of the statute, the district court improperly allowed HannStar to assert a pass-through defense.

The plain meaning of the text of Minnesota Antitrust Act ("MAA"), when read in its totality as it must be, makes clear that the Minnesota Legislature intended to forbid a pass-through defense. The MAA provides as follows:

> Any person … injured directly or indirectly by a violation of sections 325D.49 to 325D.66, shall recover three times *the actual damages sustained*, together with costs and disbursements, including reasonable attorneys' fees. *In any subsequent action* arising from the same conduct, the court *may* take any steps necessary to avoid duplicative recovery against a defendant.

Minn. Stat. § 325D.57 (emphases added).

HannStar's argument, and the district court's ruling, requires reading the last clause— "*the court may take any steps necessary to avoid duplicative recovery against a defendant*" —in isolation, which violates the whole-text canon of statutory interpretation. When the text of this sentence of Minn. Stat. § 325D.57 is read as a whole, as it must be, the first part of the sentence —"*In any subsequent action arising from the same conduct*" – makes clear that the Minnesota Legislature intended to permit, but not require, a court to take steps to prevent duplicative recovery in a subsequent action targeting the same conduct by the defendant. That language cannot be read to allow that defendant to raise a pass-through defense. Minnesota courts "interpret a statute as a whole 'to harmonize all its parts and, whenever possible, no word, phrase or sentence should be deemed superfluous, void or insignificant.'" *Washek v. New Dimensions Home Health*, 828 N.W.2d 732, 737 n.2 (Minn. 2013) (quoting *Owens v. Federated Mut. Implement & Hardware*

Ins. Co., 328 N.W.2d 162, 164 (Minn. 1983)); *see also Westwood Apex v. Contreras*, 644 F.3d 799, 804 (9th Cir. 2011) ("An excerpted clause in a statute cannot be interpreted without reference to the statute as a whole, nor can it be understood free from the sentence in which it was included.").

The district court's conclusion is contrary to a plain reading of the Minnesota Antitrust Act, and as analyzed below, is also inconsistent with controlling Minnesota law. It must be reversed.

B. The District Court's Conclusion Is Contrary to Controlling Case Law from the Minnesota Supreme Court.

Two dispositive cases from the Minnesota Supreme Court also interpret the MAA as prohibiting a pass-through defense. *See Lorix v. Crompton Corp.*, 736 N.W.2d 619 (Minn. 2007); *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490 (Minn. 1996). As it did with the language of Minn. Stat. § 325D.57, the district court failed to consider these opinions in their totality. Instead, the district court limited *Philip Morris* to its facts, finding that *Philip Morris* "is a standing case, not a damages case." Supp.ER 32 (MDL Dkt. 7420 at 9).

In *Philip Morris*, the defendant tobacco company argued that the existence of the pass-through defense meant that plaintiff Blue Cross Blue Shield lacked antitrust standing to sue it under the Minnesota Antitrust Act, because any damages would have been passed on to BCBS's insureds. 551 N.W.2d at 496. ("Here, the tobacco companies argue that because Blue Cross is a non-profit corporation, any increased costs associated with increased medical care needed by its nicotine-addicted consumers will simply be passed on to employer subscribers.").

The Minnesota Supreme Court rejected the tobacco companies' pass-through defense argument, and in its opinion, the high court could not have been clearer that the Minnesota Antitrust Act prohibits a pass-through defense. The Court explained that, "it was the intent of the Minnesota legislature *to abolish the availability of the pass-through defense* by specific grants of standing within statutes designed to protect Minnesota citizens from sharp commercial practices." 551 N.W.2d at 491 (emphasis added).

The Minnesota Supreme Court also interpreted the phrase "actual damages sustained" in the Minnesota Antitrust Act to mean the amount of

the overcharge actually paid by a plaintiff, thus rejecting HannStar's suggestion that any overcharged passed-on cannot be recovered as "actual damages." The Minnesota Supreme Court relied upon Justice Holmes's opinion in *Southern Pacific Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533-34 (1918), to reject the idea that a pass-through defense should be allowed to diminish in any way a plaintiff's actual damages:

> The only question before us is…whether the fact that the plaintiffs were able to pass on the damage…prevents their recovering the overpayment…. The answer is not difficult. The general tendency of the law, in regard to damages at least, *is not to go beyond the first step…. The plaintiffs suffered losses…. when they paid*. Their claim accrued at once in the theory of the law *and it does not inquire into later events*.

Philip Morris, 551 N.W.2d at 497 (ellipses in original) (emphases added).

The Court stated that the pass-through defense "has been uniformly rejected in the courts, primarily on the theory that the injury is sustained as soon as the price, artificially raised for whatever reason, has been paid." *Id.* at 496. The Court also stated "[t]hat the pass through defense is untenable appears equally evident outside of the context of antitrust and laws relating to regulated industry." *Id*. at 497. The Court concluded its analysis of the issue by holding, "*As the pass through defense is unavailable* to the

tobacco companies, Blue Cross has standing to sue under the various consumer protecting theories, *including antitrust*, alleged in its complaint." *Id*. (emphases added).

More recently, the Minnesota Supreme Court in *Lorix* again interpreted the Minnesota Antitrust Act in its totality to recognize that it allows for the consideration of duplicative recovery only in a subsequent action. 736 N.W.2d at 628 ("[S]ection 325D.57 allows a court to 'take any steps necessary to avoid duplicative recovery against a defendant' in a subsequent action arising from the same conduct."). *Lorix* noted the permissive, and not mandatory, language of the statute, recognizing that duplicative recovery of damages may sometimes occur under the MAA:

> To the extent that our courts cannot ameliorate the risk of duplicative recovery, as where parallel proceedings in federal courts or courts in other states may result in later awards based on the same injuries, this risk is inherent in the dual system of private antitrust enforcement created by *Illinois Brick* and *California v. ARC America Corp.*, 490 U.S. 93, 101, 109 S. Ct. 1661, 104 L. Ed. 2d 86 (1989).

Lorix, 736 N.W.2d at 628.

The Court in *Lorix* stated that while the risk of duplicative recovery "is a legitimate and important consideration, it is not a risk that our court may

remedy by restricting Minnesota antitrust law in ways that our legislature has not." *Id*. If the Minnesota Supreme Court cannot so restrict the Minnesota Antirust Act, neither can the district court. The Minnesota courts and legislature have made clear that if a windfall cannot be avoided entirely, and must go to the benefit of one party or the other, it should benefit the party that was wronged, not the party that has engaged in wrongful conduct.

Federal courts have an obligation to interpret the Minnesota Antitrust Act as the Minnesota Supreme Court would interpret the statute. *Nelson v. City of Irvine*, 143 F.3d 1196, 1206 (9th Cir. 1998) ("When interpreting state law, federal courts are bound by decisions of the state's highest court."). Federal courts are not free to ignore a state statute's plain language, nor to read one clause of a sentence of a state statute in isolation, nor to contort available precedent from a state's highest court to limit that court's clear intent regarding statutory interpretation. Both the plain language of the Minnesota Antitrust Act, and controlling decisions from the Minnesota Supreme Court interpreting the Act, establish that Minnesota has rejected a pass-through defense to claims brought under the Minnesota Antitrust Act.

For those reasons, the district court's grant of partial summary judgment on this issue must be reversed.

II. The FTAIA Does Not Preclude Best Buy from Recovering Under the Minnesota Antitrust Act.[1]

HannStar contends that, even if the district court did err by interpreting the Minnesota Antitrust Act to permit a pass-through defense, the error was harmless because the FTAIA precludes enforcement of the Minnesota Antitrust Act in this case. This assertion is incorrect, for several reasons.

First, HannStar waived its FTAIA-based attack on Best Buy's Minnesota Antitrust Act claims by failing to previously challenge judgment for Best Buy on these grounds. In fact, as noted in Best Buy's opening brief (the second brief on cross-appeal), HannStar raised no arguments at all relating to Best Buy's Minnesota Antitrust Act claims in its opening brief.

[1] Federal Rule of Appellate Procedure 28.1(c)(4) limits the scope of issues in this cross-appeal reply brief to the issues presented by Best Buy's cross-appeal. By arguing that the FTAIA bars Best Buy's recovery under the Minnesota Antitrust Act, however, (*see* Dkt. 38, HannStar Third Brief on Cross-Appeal at 59), HannStar has made its arguments regarding the FTAIA relevant to Best Buy's issue on cross-appeal. Therefore, Best Buy addresses those arguments here.

Even if this Court decides this issue has not been waived, however, neither the foreign affairs doctrine nor principles of international comity requires the incredibly narrow interpretation of the Minnesota Antitrust Act advocated by HannStar. Moreover, this Court already has decided in *United States v. Hui Hsiung*, 778 F.3d 738, 743 (9th Cir. 2015), that the conduct at the core of this TFT-LCD panel conspiracy— conduct to which HannStar has pleaded guilty— involves "import commerce" within the meaning of the Sherman Act and also satisfies the "domestic effects" exception to the FTAIA. The FTAIA does not bar Best Buy's recovery on any of its state or federal antitrust claims.

A. HannStar Waived its Argument That the FTAIA Bars Enforcement of the Minnesota Antitrust Act.

HannStar argues for the first time in this third brief on cross-appeal that the FTAIA bars Best Buy's recovery under the Minnesota Antitrust Act. HannStar's argument misses the point.

Best Buy prevailed at trial on its direct-purchaser claim under the Minnesota Antitrust Act, as well as under the Sherman Act. In its post-trial motion for judgment as a matter of law, the only attack made by HannStar as to Best Buy's Minnesota-law recovery was that it was a due process

violation to apply Minnesota law to HannStar. (Dkt. 8653 at 22.) HannStar included this issue in its notice of appeal but abandoned its due process argument by failing to brief it in its opening brief on cross-appeal. In fact, HannStar made the decision to not raise any arguments challenging judgment for Best Buy on its Minnesota Antitrust Act claim in its appeal brief. Similarly, HannStar's FTAIA argument in its motion for judgment as a matter of law was clearly focused only on attacking Best Buy's Sherman Act claim. (Dkt. 8653 at 24) (arguing that the FTAIA entitled HannStar "to judgment as a matter of law that the Sherman Act does not apply to the conduct found by the jury"). The district court properly rejected both of these arguments.

On appeal, it was only after Best Buy argued that the judgment against HannStar could be affirmed under the Minnesota Antitrust Act that HannStar belatedly attempted to attack the district court's judgment in favor of Best Buy on its Minnesota Antitrust Act claims. By failing to appeal the finding of liability under the Minnesota Antitrust Act, HannStar abandoned these arguments and should not be permitted to make them in its responsive brief. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999)

("[O]n appeal, arguments not raised by a party in its opening brief are deemed waived.").

B. The FTAIA Does Not Limit the Application of the Minnesota Antitrust Act.

HannStar's argument that the foreign affairs doctrine and principles of international comity preclude the Minnesota Antitrust Act from reaching foreign conduct removed from the scope of the Sherman Act by the FTAIA is unavailing. This argument incorrectly presupposes that any enforcement of U.S. antitrust laws beyond the excessively narrow interpretation of the Sherman Act advocated by HannStar would interfere with U.S. foreign relations. HannStar cannot point to any evidence to support this concern.

By contrast, the executive branch has weighed in on the question of whether extraterritorial enforcement of U.S. antitrust laws poses a threat to foreign relations. In an amicus brief[2] filed by the Department of Justice and

[2] This supplemental amicus brief was requested by the Seventh Circuit, which asked the government share its views concerning the potential impact on U.S. foreign commercial relations and foreign relations generally, and regarding the concerns expressed by foreign governments in other amicus curiae briefs filed in the case. The government's supplemental amicus brief is available at http://www.justice.gov/atr/cases/f306700/306783.pdf (last visited June 4, 2015).

signed by the Departments of State and Commerce in *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015), the government argued that many jurisdictions around the world now accept some extraterritorial application of antitrust laws to prevent the victimization of their consumers by foreign cartels.[3] Although the government was not asked to address whether state antitrust law could be applied somewhat more broadly to extraterritorial conduct, so long as the conduct affected commerce within the United States, the government's brief suggests that any concern that the enforcement of U.S. antitrust law against foreign cartels that harm U.S. consumers will impair U.S. foreign relations is overblown.

Neither the U.S. Supreme Court nor any federal court of appeals has considered whether the FTAIA limits the extraterritorial application of state antitrust laws. A handful of federal district courts have weighed in on the issue, but the question remains unsettled. Some courts have decided that state antitrust laws should not be applied to conduct that the FTAIA places outside the reach of the Sherman Act. *See, e.g.*, *In re Intel Corp.*

[3] This Court may take judicial notice of the parties' briefs in other related proceedings. *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).

Microprocessor Antitrust Litig., 476 F. Supp. 2d 452 (D. Del. 2007).[4] Other courts have acknowledged the complexity of the question but declined to reach it. *See, e.g.*, *In re Optical Disk Drive Antitrust Litig.*, No. 3:10-md-2143 RS, 2011 U.S. Dist. LEXIS 101763, at *47-48 (N.D. Cal. Aug. 3, 2011) (stating that "it is not immediately apparent that [the FTAIA] would serve as a bar to claims brought under state law"). Yet another court has rejected the argument that "Congress' power over foreign commerce is exclusive, and therefore states cannot regulate foreign commerce through antitrust laws." *Coca-Cola Co. v. Omni Pac. Co.*, No. C 98-0784 S1, 1998 U.S. Dist. LEXIS 23277, at *10 (N.D. Cal. Dec. 9, 1998).

The Minnesota legislature, unlike the Illinois legislature, has not chosen explicitly to adopt the territorial limitations of the FTAIA. *See In re TFT-LCD (Flat Panel) Antitrust Litig.*, 785 F. Supp. 2d 835, 844 (N.D. Cal. 2011) (citing Section 10/5(14) of the Illinois Antitrust Act and noting that the Illinois Legislature has included language "essentially identical to the FTAIA" in its Antitrust Act). However, the Minnesota Antitrust Act

[4] The decisions of these district courts are not binding precedent. *See Starbuck v. City & Cnty. of San Francisco*, 556 F.2d 450, 457 n.13 (9th Cir. 1977).

contains its own limiting language, and does not apply to wholly foreign conduct unless such foreign conduct impacts trade or commerce within the State of Minnesota.

The Minnesota Antitrust Act applies to "(a) any contract, combination, or conspiracy when any part thereof was created, formed, or entered into *in this state*; and (b) any contract, combination, or conspiracy, wherever created, formed, or entered into; . . . whenever any of the foregoing *affects the trade or commerce of this state*." Minn. Stat. § 325D.54 (2014) (emphases added). The enforcement of the Minnesota Antitrust Act does not risk disrupting foreign relations by virtue of its application to wholly foreign conduct because it does not apply to wholly foreign conduct unless such conduct affects Minnesota trade or commerce. This limitation prevents the Minnesota Antitrust Act from unreasonably interfering with foreign markets.

Ultimately, this Court need not decide whether the application of the Minnesota Antitrust Act is limited by the FTAIA, because the requirements of the FTAIA are satisfied in this case.

C. HannStar's Preemption Argument Is Irrelevant Because the Requirements of the FTAIA are Satisfied in This Case.

Even if the FTAIA did limit the application of the Minnesota Antitrust Act to extraterritorial conduct, HannStar's conduct in this case constituted import commerce to which the limitations of the FTAIA do not apply and satisfies the "domestic effects" exception to the FTAIA.

Contrary to HannStar's assertions, the Seventh Circuit's decision in *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015), is inapplicable here. In *Motorola*, the court concluded that Motorola's claims were barred by the *Illinois Brick* doctrine, which prevents antitrust claims by indirect purchasers of price-fixed goods. But the facts of *Motorola* are readily distinguishable from the facts of this case. In *Motorola*, foreign subsidiaries of Motorola purchased price-fixed TFT-LCD panels abroad, incorporated the panels into finished products abroad, and then imported the finished products into the United States.

Here, Best Buy purchased finished products for import into the United States from foreign manufacturers of finished products owned by participants in the conspiracy. The relevant contracts for the price-fixed goods were entered into in Minnesota. The law in this Circuit is clear: the

Illinois Brick doctrine is inapplicable where the direct purchaser is a subsidiary or division of a co-conspirator. *Royal Printing Co. v. Kimberly-Clark Corp.*, 621 F.2d 323, 326 (9th Cir. 1980). Therefore, the concerns raised by the Seventh Circuit in *Motorola* are not present here, and the district court correctly concluded that this case involves import commerce that falls within the Sherman Act.

Since the district court rejected HannStar's FTAIA argument post-trial, this Court has decided that the *same facts* of the *same conspiracy* at issue here constituted "import commerce" that falls within the Sherman Act and, alternatively, satisfied the "domestic effects" exception to the FTAIA. *See United States v. Hui Hsiung*, 778 F.3d 738, 743 (9th Cir. 2015). This Court explained that "[t]he constellation of events that surrounded the conspiracy leads to one conclusion – the impact on the United States market was direct and followed 'as an immediate consequence' of the price fixing." *Id.* at 759. Even though many of the price-fixed panels "were sold overseas, often to foreign subsidiaries of American companies or to systems integrators, and then incorporated into finished products," all of the participants in the Crystal Meetings, which includes HannStar, "understood that substantial

numbers of finished products were destined for the United States and that the practical upshot of the conspiracy would be and was increased prices to consumers in the United States." *Id.*

HannStar makes much of its contention that its own conduct is outside the reach of the Sherman Act because it sold price-fixed TFT-LCD panels only to foreign buyers. But HannStar admits that it participated in the price-fixing conspiracy: HannStar's own brief states that Best Buy proved that HannStar participated in the conspiracy, (*see* Dkt. 38, HannStar Br. at 25), and HannStar pled guilty to participating in the conspiracy. "All conspirators are jointly liable for the acts of their co-conspirators." *Beltz Travel Service, Inc. v. Int'l Transport Assoc.*, 620 F.2d 1360, 1367 (9th Cir. 1980). "Participation by each conspirator in every detail in the execution of the conspiracy is unnecessary to establish liability, for each conspirator may be performing different tasks to bring about the desired result." *Id.* Because Best Buy has proven the existence of a conspiracy in violation of antitrust laws, and HannStar has pleaded guilty and admitted at trial to being part of that conspiracy, HannStar "will be held liable for the acts of all members of the conspiracy in furtherance of the conspiracy." *Id.* Even if

there is no evidence that HannStar sold TFT-LCD panels directly into the United States, the fact that some of HannStar's co-conspirators did so—either directly or through their subsidiaries controlled by co-conspirators—is sufficient to sustain the judgment against HannStar.

HannStar is also jointly and severally liable for all the damages caused by the conduct of its co-conspirators. *See Royal Printing Co. v. Kimberly-Clark Corp.*, 621 F.2d 323, 327 (9th Cir. 1980) (stating that a plaintiff could sue all co-conspirators on a theory of joint and several liability, regardless of which co-conspirator manufactured the price-fixed products actually purchased by the plaintiff).

This Court's decision in *Hui Hsiung* leaves no question that the Crystal Meetings resulted in sales of price-fixed TFT-LCD panels in the United States for which the participants are liable under the Sherman Act. Because HannStar participated in the Crystal Meetings, HannStar is jointly and severally liable for all of Best Buy's damages stemming from the TFT-LCD price-fixing conspiracy. The FTAIA does not present a barrier to any of Best Buy's claims.

CONCLUSION

The district court's grant of partial summary judgment to HannStar allowing it to assert a pass-through defense to Best Buy's indirect-purchaser claim under the Minnesota Antitrust Act should be reversed. Judgment for HannStar on this claim should be vacated, and the indirect-purchaser claim remanded to the district court for a retrial on damages resulting from Best Buy's indirect purchases of the price-fixed panels.

Dated: June 4, 2015

Respectfully submitted,

By: s/Katherine S. Barrett Wiik

ROBINS KAPLAN LLP
Eric J. Magnuson
Katherine S. Barrett Wiik
Lisa L. Beane
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
(612) 349-8500

ROBINS KAPLAN LLP
Roman M. Silberfeld
Bernice Conn
Michael A. Geibelson
2049 Century Park East
Suite 3400
Los Angeles, CA 90067-3208
(310) 552-0130

Attorneys for Plaintiffs-Appellees-Cross-Appellants Best Buy Co., Inc., et al.

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Attorney for Plaintiffs-Appellants-Cross-Appellees Best Buy Co., Inc.

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9th Circuit Case Number(s) 13-17408, 13-17618

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