

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 13 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,

No. 16-16368

D.C. No. 3:07-cv-05944-JST

INDIRECT PURCHASER PLAINTIFFS,

ORDER*

Plaintiff-Appellee,

v.

JOHN FINN; LAURA TOWNSEND
FORTMAN,

Objectors-Appellants,

v.

TOSHIBA CORPORATION; TOSHIBA
AMERICA, INC.; TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.;
TOSHIBA AMERICA CONSUMER
PRODUCTS, LLC; TOSHIBA AMERICA
ELECTRONIC COMPONENTS, INC.;
SAMSUNG SDI CO., LTD.; SAMSUNG
SDI AMERICA, INC.; SAMSUNG SDI
(MALAYSIA) SDN BHD; SAMSUNG SDI
MEXICO S.A. DE C.V.; SAMSUNG SDI
BRASIL LTDA.; SHENZHEN SAMSUNG
SDI CO., LTD.; TIANJIN SAMSUNG SDI

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

CO., LTD.; HITACHI, LTD.; HITACHI
DISPLAYS, LTD., AKA Japan Display,
Inc.; HITACHI AMERICA, LTD;
HITACHI ASIA, LTD.; HITACHI
ELECTRONIC DEVICES (USA), INC.;
PANASONIC CORPORATION, FKA
Matsushita Electric Industrial Co., Ltd.
("MEI"), is a Japanese entity; PANASONIC
CORPORATION OF NORTH AMERICA;
MT PICTURE DISPLAY CO., LTD;
PHILIPS KONINKLIJKE N.V.; PHILIPS
ELECTRONICS NORTH AMERICA
CORPORATION; PHILIPS TAIWAN
LIMITED; PHILIPS DO BRASIL LTDA.;
THOMSON CONSUMER ELECTRONICS,
INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

SEAN HULL; GORDON B. MORGAN,

Objectors-Appellants,

v.

TOSHIBA CORPORATION; TOSHIBA
AMERICA, INC.; TOSHIBA AMERICA

No. 16-16371

D.C. No. 3:07-cv-05944-JST

INFORMATION SYSTEMS, INC.;
TOSHIBA AMERICA CONSUMER
PRODUCTS, LLC; TOSHIBA AMERICA
ELECTRONIC COMPONENTS, INC.;
SAMSUNG SDI CO., LTD.; SAMSUNG
SDI AMERICA, INC.; SAMSUNG SDI
(MALAYSIA) SDN BHD; SAMSUNG SDI
MEXICO S.A. DE C.V.; SAMSUNG SDI
BRASIL LTDA.; SHENZHEN SAMSUNG
SDI CO., LTD.; TIANJIN SAMSUNG SDI
CO., LTD.; HITACHI, LTD.; HITACHI
DISPLAYS, LTD., AKA Japan Display,
Inc.; HITACHI AMERICA, LTD.;
HITACHI ASIA, LTD.; HITACHI
ELECTRONIC DEVICES (USA), INC.;
PANASONIC CORPORATION, FKA
Matsushita Electric Industrial Co., Ltd.
("MEI"), is a Japanese entity; PANASONIC
CORPORATION OF NORTH AMERICA;
MT PICTURE DISPLAY CO., LTD;
PHILIPS KONINKLIJKE N.V.; PHILIPS
ELECTRONICS NORTH AMERICA
CORPORATION; PHILIPS TAIWAN
LIMITED; PHILIPS DO BRASIL LTDA.;
THOMSON CONSUMER ELECTRONICS,
INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

No. 16-16373

D.C. No. 3:07-cv-05944-JST

v.

ANTHONY GIANASCA; GLORIA
COMEAX; MINA ASHKANNEJHAD,
individually and as Administrator of the
Estate of the late R. Deryl Edwards, Jr.;
JEFFREY SPEAECT; ROSEMARY
CICCONE; JEFF CRAIG,

Objectors-Appellants,

v.

TOSHIBA CORPORATION; TOSHIBA
AMERICA, INC.; TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.;
TOSHIBA AMERICA CONSUMER
PRODUCTS, LLC; TOSHIBA AMERICA
ELECTRONIC COMPONENTS, INC.;
SAMSUNG SDI CO., LTD.; SAMSUNG
SDI AMERICA, INC.; SAMSUNG SDI
(MALAYSIA) SDN BHD; SAMSUNG SDI
MEXICO S.A. DE C.V.; SAMSUNG SDI
BRASIL LTDA.; SHENZHEN SAMSUNG
SDI CO., LTD.; TIANJIN SAMSUNG SDI
CO., LTD.; HITACHI, LTD.; HITACHI
DISPLAYS, LTD., AKA Japan Display,
Inc.; HITACHI AMERICA, LTD;
HITACHI ASIA, LTD.; HITACHI
ELECTRONIC DEVICES (USA), INC.;
PANASONIC CORPORATION, FKA
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("MEI"), is a Japanese entity; PANASONIC
CORPORATION OF NORTH AMERICA;
MT PICTURE DISPLAY CO., LTD;
PHILIPS KONINKLIJKE N.V.; PHILIPS
ELECTRONICS NORTH AMERICA
CORPORATION; PHILIPS TAIWAN

LIMITED; PHILIPS DO BRASIL LTDA.;
THOMSON CONSUMER ELECTRONICS,
INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,

No. 16-16374

D.C. No. 3:07-cv-05944-JST

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

DONNIE CLIFTON,

Objector-Appellant,

v.

TOSHIBA CORPORATION; TOSHIBA
AMERICA, INC.; TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.;
TOSHIBA AMERICA CONSUMER
PRODUCTS, LLC; TOSHIBA AMERICA
ELECTRONIC COMPONENTS, INC.;
SAMSUNG SDI CO., LTD.; SAMSUNG
SDI AMERICA, INC.; SAMSUNG SDI
(MALAYSIA) SDN BHD; SAMSUNG SDI
MEXICO S.A. DE C.V.; SAMSUNG SDI
BRASIL LTDA.; SHENZHEN SAMSUNG
SDI CO., LTD.; TIANJIN SAMSUNG SDI
CO., LTD.; HITACHI, LTD.; HITACHI
DISPLAYS, LTD., AKA Japan Display,
Inc.; HITACHI AMERICA, LTD;

HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

DAN L. WILLIAMS & CO.,

Objector-Appellant,

v.

TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA

No. 16-16378

D.C. No. 3:07-cv-05944-JST

ELECTRONIC COMPONENTS, INC.;
SAMSUNG SDI CO., LTD.; SAMSUNG
SDI AMERICA, INC.; SAMSUNG SDI
(MALAYSIA) SDN BHD; SAMSUNG SDI
MEXICO S.A. DE C.V.; SAMSUNG SDI
BRASIL LTDA.; SHENZEN SAMSUNG
SDI CO., LTD.; TIANJIN SAMSUNG SDI
CO., LTD.; HITACHI, LTD.; HITACHI
DISPLAYS, LTD., AKA Japan Display,
Inc.; HITACHI AMERICA, LTD;
HITACHI ASIA, LTD.; HITACHI
ELECTRONIC DEVICES (USA), INC.;
PANASONIC CORPORATION, FKA
Matsushita Electric Industrial Co., Ltd.
("MEI"), is a Japanese entity; PANASONIC
CORPORATION OF NORTH AMERICA;
MT PICTURE DISPLAY CO., LTD;
PHILIPS KONINKLIJKE N.V.; PHILIPS
ELECTRONICS NORTH AMERICA
CORPORATION; PHILIPS TAIWAN
LIMITED; PHILIPS DO BRASIL LTDA.;
THOMSON CONSUMER ELECTRONICS,
INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

ROCKHURST UNIVERSITY; GARY

No. 16-16379

D.C. No. 3:07-cv-05944-JST

TALEWSKY; HARRY GARAVANIAN,

Objectors-Appellants,

v.

TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZHEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT)

No. 16-16399

ANTITRUST LITIGATION,

16-16400

D.C. No. 3:07-cv-05944-JST

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

ANTHONY GIANASCA; GLORIA
COMEAX; MINA ASHKANNEJHAD,
individually and/or as Administrator of the
Estate of the Late R. Deryl Edwards, Jr.;
JEFFREY SPEAECT; ROSEMARY
CICCONE; JEFF CRAIG,

Movants-Appellants,

v.

TOSHIBA CORPORATION; TOSHIBA
AMERICA, INC.; TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.;
TOSHIBA AMERICA CONSUMER
PRODUCTS, LLC; TOSHIBA AMERICA
ELECTRONIC COMPONENTS, INC.;
SAMSUNG SDI CO., LTD.; SAMSUNG
SDI AMERICA, INC.; SAMSUNG SDI
(MALAYSIA) SDN BHD; SAMSUNG SDI
MEXICO S.A. DE C.V.; SAMSUNG SDI
BRASIL LTDA.; SHENZHEN SAMSUNG
SDI CO., LTD.; TIANJIN SAMSUNG SDI
CO., LTD.; HITACHI, LTD.; HITACHI
DISPLAYS, LTD., AKA Japan Display,
Inc.; HITACHI AMERICA, LTD;
HITACHI ASIA, LTD.; HITACHI
ELECTRONIC DEVICES (USA), INC.;
PANASONIC CORPORATION, FKA

Matsushita Electric Industrial Co., Ltd.
("MEI"), is a Japanese entity; PANASONIC
CORPORATION OF NORTH AMERICA;
MT PICTURE DISPLAY CO., LTD;
PHILIPS KONINKLIJKE N.V.; PHILIPS
ELECTRONICS NORTH AMERICA
CORPORATION; PHILIPS TAIWAN
LIMITED; PHILIPS DO BRASIL LTDA.;
THOMSON CONSUMER ELECTRONICS,
INC.; THOMSON SA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Jon S. Tigar, District Judge, Presiding

Argued and Submitted April 10, 2018
Submission Vacated April 30, 2018
Re-Submitted February 13, 2019
San Francisco, California

Before: Kim McLane Wardlaw and Richard R. Clifton, Circuit Judges, and Gary
S. Katzmman,* Judge.

On November 8, 2018, in response to Indirect Purchaser Plaintiffs' motion
for an indicative ruling pursuant to Federal Rule of Civil Procedure 62.1, the
District Court stated that, "with the benefit of hindsight . . . it erred in approving
the parties' original settlement" now pending on appeal in our court. The district
court recognized that it should have provided recovery to class members in the

* The Honorable Gary S. Katzmman, Judge for the United States Court
of International Trade, sitting by designation.

Omitted Repealer States, Massachusetts, Missouri, and New Hampshire, which necessarily affects the remaining issues on appeal: 1) the adequacy of representation under Federal Rules of Civil Procedure 23(a)(4); and 2) the attorneys' fees awarded to Lead Counsel.

We therefore remand this case so that the district court may reconsider its approval of the settlement.

The Indirect Purchaser Plaintiffs' motion for a stay, filed October 1, 2018 (Dkt. No. 226), and the Objector-Appellants' motion for leave to file an enlarged response (Dkt. Nos. 223 & 224) are **DENIED** as moot.

The Indirect Purchaser Plaintiffs' Motion Requesting Remand with Instructions Regarding: (1) The Plan of Distribution for the Settlements; and (2) The Fee Order, filed January 9, 2019 (Dkt. No. 230), is **DENIED**.¹

The Indirect Purchaser Plaintiffs' Motion for Leave to File Excess Pages, filed January 29, 2019 (Dkt. No. 233), is **GRANTED**. The Reply brief has already been filed (Dkt. No. 234). The request of Objectors-Appellants to file a Surreply to that Reply, contained within their Opposition to the Motion for Leave to File Excess Pages (Dkt. 235), is **DENIED** as moot.

¹ Objector-Appellants' motion to supplement the record on appeal (Dkt. No. 120) and motion to strike Indirect Purchaser Plaintiffs' response to the same (Dkt. No. 150) are **DENIED** as moot. Objector-Appellants' and Defendant-Appellees' motions to take judicial notice (Dkt. Nos. 130, 197) are **DENIED** as moot.

The motions to dismiss appeal voluntarily filed by Objectors-Appellants Sean Hull (Dkt. No. 198), John Finn and Laura Townsend Fortman (Dkt. No. 199), Donnie Clifton (Dkt. No. 200), and Josie Saik (Dkt. No. 222) are **GRANTED**.

We therefore **REMAND** to the District Court to reconsider its order on class certification and settlement approval. We do not vacate the order at this time.

The current panel will retain responsibility for future appeals in this case.

Each party shall bear its own costs of appeal.

IT IS SO ORDERED.