

## Litigation Note: Crowell & Moring Wins Appellate Victory Affirming Summary Judgment on Tying and Exclusive Dealing Case

**Washington, D.C. – March 14, 2017:** Crowell & Moring LLP is pleased to announce that client Owens & Minor Distribution, Inc., the nation’s largest distributor of medical-surgical supplies, prevailed in an appeal of summary judgment dismissing an antitrust tying and exclusive dealing lawsuit alleging over \$200 million in damages brought by a competitor, specialty distributor, Suture Express, Inc.

Suture Express challenged contracting practices that offer differential pricing to customers depending on whether they procure distribution of suture and endo products, which tend to be the most profitable, from O&M or Cardinal Health, a co-defendant to O&M in the case. Suture Express's theory was that the pricing differential was so large that it could not effectively compete for distribution of suture and endo products, and that customers have no choice but to agree because they need the other medical-surgical products that O&M and Cardinal Health, but not Suture Express, distribute. After extensive fact and expert discovery, O&M, along with its co-defendant Cardinal Health, moved for summary judgment. In 2016, Judge Daniel D. Crabtree of the U.S. District Court for the District of Kansas granted their motion, dismissing all claims and awarding defendants costs.

Today, the Tenth Circuit Court of Appeals affirmed that decision and rejected Suture Express’s appeal, recognizing that neither O&M nor Cardinal Health possessed the market power necessary to support Suture Express’s claims, and that Suture Express could not show injury to competition. The Tenth Circuit acknowledged that the undisputed facts revealed an increasingly competitive market in which distribution prices and margins have been declining. The Tenth Circuit did not reach Judge Crabtree’s additional basis for granting summary judgment, in which he also found that O&M and Cardinal Health had established that the challenged contracting practices’ procompetitive benefits outweighed any harm they posed.

Crowell & Moring served as lead counsel to O&M in this matter. The appellate team was led by Shari Ross Lahlou and included [Clifton Elgarten](#) and [Luke van Houwelingen](#).

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