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# How CME Used History To Beat A $2B Trading Rights Claim

By **Lauraann Wood**

*Law360 (September 24, 2025, 10:53 PM EDT)* -- As CME Group faced a $2 billion accusation that its data center trampled on some members' long-held trading floor rights, it knew convincing jurors otherwise meant trusting they'd broaden their perspective beyond a simple comparison to see the traders' dispute was not with the exchange but instead an evolving economy.

The traders presented jurors a straightforward theory that only they should have access to CME's Aurora, Illinois, data center since the modern-day facility contained all the traditional components of an open-outcry trading floor, whose access and proximity rights they enshrined in demutualization agreements for the Chicago Mercantile Exchange in 2000 and the Chicago Board of Trade in 2005. CME and CBOT later merged to form CME Group in 2007.

Staring down a seemingly simple proposition with which anyone could agree, CME's trial team knew they needed to be the teachers in the courtroom if they were going to convince 12 strangers that the exchanges had preserved members' core trading rights while it tried at the same time to restructure in a way that kept them competitive in a technologically evolving world.

Taking that on was no small feat. But it proved successful as the team presented a three-week history lesson on the exchanges and electronic trading's global rise, meticulously dissected the members' damages claim and closely monitored jurors' appetite for all the extra information, CME's team at Skadden Arps Slate Meagher & Flom LLP said.

"If you don't give the background, and you don't explain to people how the deal works, then that [trading floor] analogy makes a lot more sense," partner Manuel Cachán said. "If you just relied on the analogy, I think you were in trouble."

It was an approach less common of a defendant on trial, which otherwise typically aims to narrow the issues and limit admissible evidence a jury will hear. But "we knew that our case was going to require education about context and purpose in a way that their case did not," so the more evidence CME could give jurors on that front, "the better off it was," Skadden partner Albert Hogan III said.

CME's case was unique enough to pursue such a risky strategy because several of its witnesses lived through the exchanges' corporate restructuring as part of their leadership and were "convinced down to their bones" about how the demutualization agreements treated members' trading rights, Hogan said.

The members called several of those witnesses during their own trial presentation because it helped tell

their side of the story, which was largely based on documents they couldn't explain subjectively, their attorney, Stephen Morrissey of Susman Godfrey LLP told Law360.

The members were also trying to get ahead of the broader-context approach they knew CME would take given pretrial rulings that allowed the exchange to explore that history, he said. With all that the members had to anticipate coming from CME, "our case ended up being more complicated than ideally we would have wanted it to be," Morrissey said.

Facing more CME witnesses than anticipated during the plaintiffs' case allowed the exchange to tell the jury most of its story before its own turn came for evidence presentation, the Skadden team said. That gave the exchange space to limit its case to any evidence the jurors hadn't already heard and monitor how much more they seemed prepared to ingest before they could deliberate.

That scheduling leeway was particularly helpful for Skadden partner Amanda Brown, who was tasked with walking the jury through the electronic trading history that turned CME's Globex trading platform into what traders use today.

"By the time we got there ... it did seem that folks had probably made up their minds," Brown said. "We thought that CME did a really great job presenting Globex to the jury in an understandable, digestible way."

Morrissey said he wouldn't tackle the trial much differently beyond further focusing his clients' case to be "more dismissive rather than respectful" of CME and CBOT's history. The members' case "isn't really about 1999" but rather decisions and actions that took place 10 or more years later and how his clients' contractual rights fit within that period, he said.

"Let them be the ones who complicate it," Morrissey said. "If they say to that, 'OK, but let's talk about 1999,' it kind of sounds odd from the get-go."

The members still tried to be strategic in their witness presentation, however, as their first witness was a longtime CME board member whose name appeared on several key documents and "was not a great witness for them," Morrisey said. And after deciding they wanted to hear live testimony from CME Group CEO Terry Duffy, the traders' counsel tried to limit CME's ability to tell its story through his cross by putting him toward the end of their case, he said.

"But I think he ended up being a more effective witness for them than I anticipated," Morrissey said.

Beyond the live witnesses, the jury also saw a recorded presentation in which CME leaders explained the exchange's corporate restructuring plans and how it would impact members' rights. Skadden partner Marcella Lape, who has worked on the 11-year-old case since its inception, counts that footage among some of the rarest but most crucial evidence that helped prove CME's case.

"Everyone in that courtroom heard exactly what the members heard when CME unveiled the demutualization plan [and] told them what rights they would have going forward," she said.

Morrissey said the video was "pretty compelling," but he thought his team "did a pretty good job" of contextualizing it as simply a plan that didn't say the same things as the final contract his clients received.

If the parties didn't have to dive into CME and CBOT's demutualization history, the case could be seen as one that simply compares the contracts that were in place when the exchanges merged to CME's decision a year later to go forward in building a new facility to house trading operations, Morrissey said.

"I'm not sure why what happens a decade before that is particularly relevant, but [both sides] ended up spending a lot of time talking about 1999 when it's a contract that was still in place in 2012 when this place opened, and the question is what did it mean," he said.

Jurors heard at trial that CME made electronic trading terminals available on its member-exclusive exchange floor before eventually opening terminal access to members and nonmembers in 2000. The exchange later allowed traders to connect to a trade-matching engine it eventually moved to an off-site space before opening its Aurora data center in 2012 to house the engine and accommodate traders who wanted to place servers nearby for trading as quickly and efficiently as possible, jurors heard.

Explaining that evolution was important not only for rejecting the notion the Aurora data center equated to a trading floor, but also answering the "even more important question" of how electronic trading evolved separately from floor trading over time, Brown said.

"All of that we thought it would be important to teach the jury because it would show how where we are with the Aurora data center is just part of a natural evolution and in keeping with what it's done all the way up until that point," she said.

Placing the members' trading floor theory in the context of CME and CBOT's demutualization helped show the jury the role they played on the exchanges' open-outcry floors, where trades were executed face-to-face, to the role they would not play on the electronic platform, Hogan said.

Leading the jury through that history demonstrated that "this was the beginning of having that view that the members just weren't supposed to have these kinds of rights in the all-electronic exchange," Hogan said.

The Skadden team also challenged plaintiff class representatives' theory head-on through cross-examination, which Cachán largely handled and received Morrissey's praise.

"He really did a good job of coming up to the line of being effective without coming across as a jerk," Morrissey said. "It's a tough balance to strike in crossing someone."

Lape said the witness examinations were a lesson in ensuring pretrial depositions capture testimony that can be used both for impeachment and telling an opposing party's story. That's particularly true for a lawsuit as old as the members' case, in which some witnesses had either died or become unavailable and "having documented their testimony in an affirmative fashion could have proved useful," she said.

The trial result also provided jury-related takeaways for both sides of the case. For Morrissey, the verdict reinforced how much jury selection matters and demonstrated that "sometimes jurors who you might often profile as a more likely plaintiff's juror in this case, for whatever reason, is not going to be so sympathetic."

For CME, the jury's verdict proved that a complex case can go to trial even if the opposing party is a massive class of plaintiffs.

"Juries don't think of the class in the abstract. They see the people there in front of them," Cachán said. "They may know it's a class, but they're really making their decision based on the people taking the stand."

The traders are represented by Stephen Morrissey, Robert Safi, Mark Hatch-Miller, Nick Carullo, Sarah Hannigan, Amanda Bonn and Bianca Rey of Susman Godfrey LLP and Suyash Agrawal of Massey & Gail LLP.

CME Group is represented by Albert Hogan III, Marcella Lape, Manuel Cachán and Amanda Brown of Skadden Arps Slate Meagher & Flom LLP.

The case is Langer et al. v. CME Group Inc. et al., case number 2014-CH-00829, in the Circuit Court of Cook County, Illinois.

--Editing by Jay Jackson Jr. and Michael Watanabe.

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