

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

<b>In Re:</b>  <b>DISPOSABLE CONTACT LENS ANTITRUST LITIGATION</b>	<b>Case No. 3:15-md-02626-HES-JRK</b>  <b>Judge Harvey E. Schlesinger Magistrate Judge James R. Klindt</b>
<b>THIS DOCUMENT RELATES TO:</b>  <b>All Class Actions</b>	

**JOINT DECLARATION OF THOMAS BOARDMAN, BENJAMIN  
STEINBERG, AND NATHANIEL GIDDINGS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF  
SETTLEMENT AGREEMENTS WITH DEFENDANTS ALCON VISION,  
LLC AND JOHNSON & JOHNSON VISION CARE, INC. AND LEAD  
COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES  
AND REIMBURSEMENT OF EXPENSES**

Pursuant to 28 U.S.C. §1746, Thomas Boardman, Benjamin Steinberg, and Nathaniel Giddings, declare as follows:

1. We submit this declaration in support of Lead Counsel’s two concurrently-filed motions (1) the Motion for Payment of Attorney Fees and Costs and (2) Motion for Final Approval of the Settlements with Alcon Vision Care, Inc. (“Alcon”) and Johnson & Johnson Vision Care, Inc. (“JJVCI”) (“the Settlements”).

2. Nathaniel Giddings is a partner with the law firm of Hausfeld LLP (“Hausfeld”) and a member in good standing of the Washington D.C. bar. Benjamin Steinberg is a partner with the law firm of Robins Kaplan LLP (“Robins Kaplan”) and a member in good standing of the New York State Bar. Thomas Boardman is a partner with the law firm of Scott+Scott Attorneys at Law LLP (“Scott+Scott”) and a member in good standing of the New York State Bar. Hausfeld, Robins Kaplan, and Scott+Scott are co-lead counsel (“Lead Counsel”) for Plaintiffs and the certified Classes in the U.S. District Court for the Middle District of Florida, No. 3:15-md-02626. *See* ECF No. 940.

3. Each of us declares that he has personal knowledge of the matters set forth herein and, if called to testify as a witness, could testify competently thereto.

4. Lead Counsel have significant experience with antitrust litigation and class actions, including settlements thereof. Copies of Hausfeld’s, Robins Kaplan’s, and Scott+Scott’s firm résumés are attached hereto as Exhibits A-C, respectively.

5. The attorneys working for Plaintiffs on this matter (the “Action”) are experienced lawyers who have substantial experience prosecuting large-scale class actions and antitrust litigation.

**I. LEAD COUNSEL’S EFFORTS**

6. Lead Counsel have been litigating this Action for more than seven years in what has been hard-fought litigation against Defendants that are represented by some of the world’s largest law firms.

7. Since the beginning of this Action, Lead Counsel have made significant efforts to prosecute this action and prepare the case for trial, as detailed below.

**A. Investigation, Complaints, and Motions to Dismiss Briefing**

8. Lead Counsel devoted substantial time to investigating the potential claims against Defendants before filing their complaints. Lead Counsel interviewed market participants and potential plaintiffs to gather information about Defendants’ conduct and the impact on the market. This information was essential to Lead Counsel’s ability to understand the nature of Defendants’ conduct, the nature of Defendants’ so-called “Unilateral Pricing Policies” (“UPPs”), and potential remedies. Lead Counsel consulted with experts to develop and refine their legal and damages theories. Lead Counsel also amassed evidence from across the various state and federal government hearings on matters related to disposable contact lenses.

9. The first class action lawsuit challenging the Defendants’ “Unilateral Pricing Policies” (“UPPs”) was filed by Plaintiff John Machikawa on March 3, 2015. *See* Case No. 3:15-cv-01001 (N.D. Cal.). In the months that followed, more than 120

plaintiffs filed more than 50 additional class action lawsuits challenging these UPPs. The complaints alleged that the Defendants' UPPs were illegal restraints on competition under Section One of the Sherman Act, 15 U.S.C. §1, and various state unfair competition laws and sought, among other things, monetary damages, interest, attorneys' fees, restitution, and equitable relief.

10. The U.S. Judicial Panel on Multidistrict Litigation ("JPML") transferred all of these cases to this District for centralized pre-trial proceedings. *See, e.g.*, ECF No. 186 in MDL No. 2626 (June 8, 2015). The cases were re-captioned *In Re: Disposable Contact Lens Antitrust Litigation*, No. 3:15-md-02626-HES-JRK.

11. On July 15, 2015, the Court entered a case management order (ECF No. 61), the first in a series of scheduling orders in this Action.

12. On October 7, 2015, the Court granted Lead Counsel's motion to appoint Hausfeld, Robins Kaplan, and Scott+Scott as interim co-lead counsel. ECF No. 116.

13. On November 23, 2015, Lead Counsel, on behalf of Plaintiffs, filed the Consolidated Class Action Complaint ("Consolidated Complaint"), asserting six causes of action: (1) Violation of 15 U.S.C. §§ 1 and 3 (*Per Se* Violation of the Sherman Act); (2) Violation of 15 U.S.C. §§ 1 and 3 (Rule of Reason Violations of the Sherman Act); (3) Violation of the California Cartwright Act; (4) Violation of the Maryland Antitrust Act; (5) Violation of the California Unfair Competition Law; and (6) Violation of the Maryland Consumer Protection Act. ECF No. 133.

14. On December 23, 2015, Defendants filed their Motion to Dismiss the Consolidated Complaint. ECF No. 146. Following briefing and oral argument, the

Court denied Defendants' motion (ECF Nos. 185, 190), and on July 27, 2016, Defendants filed their Answers and Affirmative Defenses. ECF Nos. 266-70.

15. On March 1, 2017, Plaintiffs filed the operative complaint in this matter. ECF No. 395.

**B. Case Investigation and Discovery**

16. Even before discovery commenced, Lead Counsel's investigation included, but was not limited to, review and analysis of publicly available documents related to the contact lens market, the pricing of contact lenses, and Congress's investigation into Defendants' UPPs.

17. Specifically, in preparation of the complaints, Lead Counsel undertook an extensive investigation regarding contact lenses, including the pricing of contact lenses before and after the UPPs, and potential claims that could be alleged against the contact lens manufacturers and others in the marketplace, including the largest contact lens distributor, Defendant ABB.

18. Discovery commenced on April 1, 2016. ECF No. 204.

19. During the course of discovery, Lead Counsel served written discovery seeking documents and depositions on Defendants and on certain non-parties. In addition, Defendants sought document and deposition discovery from Plaintiffs and certain non-parties.

20. In total, the parties and non-parties in this Action have produced roughly 4.3 million pages of documents, as well as voluminous electronic data files and spreadsheets in native format (*i.e.*, transactional data), in response to discovery served

by Plaintiffs and Defendants in this Action. A breakdown of the number of documents and pages produced in this litigation that Plaintiffs uploaded to their document review platform are set forth in the below chart.

<b>Producing Party</b>	<b># of Documents</b>	<b># of Pages</b>
Defendants	1,001,296	3,933,097
Plaintiffs	855	5,226
Non-Parties	102,530	365,973
<b><i>Totals:</i></b>	<b>1,104,681</b>	<b>4,304,296</b>

21. Lead Counsel have reviewed and analyzed substantially all of the documents and electronic data files produced in this Action.

22. In addition, Plaintiffs and Defendants have collectively taken a total of 79 depositions in this matter. These depositions are categorized below:

- Defendants' current and former employees: 22 depositions
- Plaintiffs: 16 depositions
- Non-Parties: 23 depositions
- Defendants' experts: 10 depositions
- Plaintiffs' experts: 8 depositions

23. Much of this discovery has been highly contested. In total, Plaintiffs and Defendants have filed at least 17 motions to compel with this Court. *See* ECF Nos. 248, 276, 318, 354, 420, 460, 512, 587, 590-92, 609, 655, 728, 737, 759. Many of these

motions were fact-intensive and included declarations attaching significant numbers of documents in support of the parties' respective positions.

24. Apart from the discovery disputes that resulted in motion practice, Lead Counsel separately negotiated resolutions to numerous other discovery disputes with Defendants and non-parties through extensive written correspondence and meet-and-confers.

**C. Class Certification**

25. On March 3, 2017, Plaintiffs filed their class certification motion, which was supported by two expert reports and 170 exhibits. *See* ECF Nos. 396-99.

26. On June 15, 2017, Defendants filed their motions to strike certain portions of Plaintiffs' expert reports and memorandum of law in opposition to plaintiffs' motion for class certification, accompanying expert reports, and numerous exhibits. *See* ECF Nos. 500-10.

27. On July 10, 2017, Plaintiffs responded to Defendants' motions to strike (ECF Nos. 548-51), and on September 8, 2017, Plaintiffs filed their class certification reply, which included two supporting expert reports and 191 exhibits. *See* ECF Nos. 611-14.

28. On October 20, 2017, Defendants filed their sur-reply in further opposition to Plaintiffs' class certification motion, which included two additional expert reports and numerous exhibits. *See* ECF Nos. 674-78.

29. On August 1 and 2, 2018, the Court held an evidentiary hearing on Plaintiffs' class certification motion, which involved examination and cross-

examination of Plaintiffs' and Defendants' experts and presentation of more than 50 exhibits relating to Plaintiffs' motion for class certification and Defendants' motions to strike portions of Plaintiffs' expert reports. *See* ECF Nos. 865-1, 865-2, 866. The hearing lasted more than 10 hours.

30. On December 4, 2018, the Court granted Plaintiffs' class certification motion and certified horizontal and vertical litigation classes. *See* ECF No. 940. The Court also appointed Lead Counsel as counsel for the litigation classes and named Plaintiffs Rachel Berg, Miriam Pardoll, Jennifer Sineni, Elyse Ulino, Susan Gordon, Cora Beth Smith, Brett Watson, Tamara O'Brien, Sheryl Marean, Catherine Dingle, Amanda Cunha, Alexis Ito, Kathleen Schirf, John Machikawa, and Joseph Felson as class representatives.

31. On December 18, 2018, Defendants filed petitions to appeal the Court's class certification order pursuant to Rule 23(f) of the Federal Rules of Civil Procedure. The parties briefed Defendants' petitions.

32. On April 5, 2019, the Eleventh Circuit denied Defendants ABB's and JJVC's petition to appeal the Court's class certification order, and on June 20, 2019, denied Defendant Alcon's and B&L's virtually identical petition.

**D. Summary Judgement**

33. After the class certification hearing, but before the Court had resolved Plaintiffs' class certification motion, the parties began briefing summary judgment.

34. On August 20, 2018, Defendants filed four summary judgment motions, attaching declarations and more than 200 exhibits in support thereof. *See* ECF Nos. 872-77.

35. Plaintiffs responded to these motions in a single, omnibus summary judgment brief on October 22, 2018. ECF No. 917. In support of their opposition, Plaintiffs attached a total of 429 exhibits, including the merits reports of three experts. *See* ECF Nos. 918-23.

36. On November 19, 2018, Defendants filed four additional reply briefs in support of their summary judgment motions, which attached additional declarations and more than 200 exhibits. *See* ECF Nos. 930-35.

37. Plaintiffs filed a single sur-reply brief in opposition to Defendants' summary judgment motions on December 17, 2018. ECF No. 942.

38. On May 20, 2019, Defendants filed a notice of supplemental authority in further support of their summary judgment motions (ECF No. 967), which Plaintiffs responded to on May 23, and, with the Court's permission, on August 22. *See* ECF Nos. 969, 1014.

39. The Court held a hearing on the summary judgment motions on August 21 and 22, 2019. ECF Nos. 1015-16.

40. On November 27, 2019, the Court denied Defendants' motions for summary judgment. ECF No. 1091.

**E. Pre-Trial Preparation and Motions**

41. Plaintiffs began preparing for trial in earnest in the Fall of 2019. These efforts included, among other things, negotiating a final pre-trial schedule and final pre-trial memorandum with Defendants (ECF No. 1099); exchanging preliminary exhibit lists and objections thereto; exchanging deposition designations and objections and counters thereto; exchanging witness lists; filing and opposing motions *in limine* (ECF Nos. 1055, 1056, 1058-61, 1064, 1089, 1092, 1103, 1106, 1160); opposing motions to strike Plaintiffs' experts (ECF No. 1114); moving to amend the case management order and opposing Defendants' motion to enforce the scheduling order (ECF Nos. 1063, 1065); and opposing a motion for leave to seek interlocutory appeal of the Court's summary judgment order. ECF No. 1123.

42. The Court held a pre-trial conference on December 11, 2019 (ECF No. 1109), and Plaintiffs filed a notice to address the Court's comments at that hearing on January 5, 2020. ECF No. 1125.

43. The Court held a further pre-trial conference on January 8, 2020. ECF No. 1126. At this hearing, the parties argued a number of the pending pre-trial motions and agreed to new dates for the final pre-trial conference and the start of trial.

44. The Parties worked to prepare their respective cases for trial, which was then scheduled for February of 2020. Lead Counsel's trial preparations included drafting, exchanging, and meeting and conferring regarding proposed jury instructions, witness lists, deposition designations, and trial exhibits. As noted, the Parties also filed competing motions *in limine*, which this Court ultimately ruled on,

granting some in favor of Defendants and some in favor of Plaintiffs. ECF Nos. 1142, 1150, 1174.

45. At a January 8, 2020 hearing, the Court set a new trial date of June 22, 2020 and a final pre-trial hearing for May 13, 2020. ECF No. 1131. On March 30, 2020, Plaintiffs and Defendants filed a Joint Notice requesting the Court's guidance on pre-trial and trial scheduling issues regarding the impact of the COVID-19 pandemic. ECF No. 1178. On April 3, 2020, the Court delayed the start of trial indefinitely due to the pandemic. ECF No. 1180. The Court also urged the parties to use the delay to seriously consider a potential resolution of the litigation. *Id.*

46. During this time, the Parties continued to litigate the case, filing various pretrial motions regarding expert testimony (ECF Nos. 1188, 1190, 1191, 1193), jury instructions (ECF Nos. 1196, 1200, 1202, 1206), and a number of status reports. (ECF Nos. 1192, 1195, 1213, 1227, 1232, 1251). On July 27, 2021, the Court rescheduled the trial for March 28, 2022. ECF No. 1266. On December 20, 2021, the United States Judicial Panel on Multidistrict Litigation issued an order assigning Judge Virginia M. Hernandez Covington as an additional judge to oversee the trial, which was later moved to Tampa, Florida. ECF No. 1290. Judge Covington held virtual pretrial conferences with the remaining parties on January 21, 2022 (ECF No. 1297) and March 9, 2022 (ECF No. 1316).

47. Lead Counsel dedicated substantial resources to preparing the case for trial in advance of the new March 28, 2022 trial date. Most of Lead Counsels' trial team, including key support staff and witnesses, relocated to Tampa, Florida in mid-

March to oversee final trial preparations. This work included finalizing the presentation and cross-examination of fact and expert witnesses, deposition designations, trial exhibits and graphics, and opening statements.

48. On March 15, 2022, Alcon and JJVCI filed a motion requesting that the Court give certain jury instructions regarding antitrust injury and proximate causation (ECF No. 1317), which Plaintiffs opposed on March 24, 2022 (ECF No. 1332). On Friday, March 25, 2022, after multiple rounds of meet and confers, JJVCI and Plaintiffs submitted their final proposed jury instructions. ECF No. 1333. Had the case not fully settled, as detailed below, trial proceeding would have commenced on Monday, March 28, 2022.

**F. CVI Settlement**

49. Lead Counsel and counsel for CVI began settlement discussions in July of 2017.

50. After nearly a month of negotiations, which included both in-person, written, and telephonic communications, the parties reached an agreement-in-principle on August 11, 2017, to resolve the litigation against CVI based on CVI's payment of \$3,000,000.

51. Based on Dr. William's calculations in his Class Report (*see* ECF No. 612), the \$3,000,000 cash payment represents 38% of the maximum recovery Lead Counsel could have achieved at trial against CVI on Plaintiffs' vertical claims (before trebling).

52. On August 30, 2017, Plaintiffs and CVI executed the CVI Settlement.

53. The CVI Settlement defines the settlement class as follows:

[A]ll persons and entities residing in the United States who made retail purchases of disposable contact lenses manufactured by Alcon Laboratories, Inc., Johnson & Johnson Vision Care, Inc., Bausch & Lomb, Inc., or CVI (or distributed by ABB Concise Optical Group) during the Settlement Class Period for their own use and not for resale, which were sold at any time subject to a Unilateral Pricing Policy. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any coconspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

ECF No. 781-1, ¶ 1.37.

**G. B&L Settlement**

54. Beginning in the summer of 2018, Lead Counsel and counsel for B&L began bilateral settlement discussions. Ultimately, after approximately one year of negotiations, which included both in-person, written, and telephonic communications, and exchanges of various proposals for settlement, the parties reached an agreement-in-principle on August 17, 2019 to resolve the litigation against B&L based on B&L's payment of \$10,000,000.

55. Based on Dr. Williams' calculations in his Merits Report (*see* ECF No. 918-2), the \$10,000,000 cash payment represents between 72% and 81% of the maximum recovery Lead Counsel could have achieved at trial against B&L on Plaintiffs' vertical claims (before trebling).

56. On August 19, 2019, the parties executed the B&L Settlement.

57. The B&L Settlement defines the settlement class as follows:

[A]ll persons and entities residing in the United States who made retail purchases of disposable contact lenses manufactured by Alcon

Laboratories, Inc., Johnson & Johnson Vision Care, Inc., or B&L during the Settlement Class Period for their own use and not for resale, where the prices for such contact lenses were subject to a Unilateral Pricing Policy and the purchase occurred during the period when the Unilateral Pricing Policy was in effect. Excluded from the Settlement Class are any purchases from 1-800-Contacts of disposable contact lenses subject to B&L's Unilateral Pricing Policy, where the purchase occurred on or after July 1, 2015. Also excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any coconspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

ECF No. 1037-1, ¶ 1.35.

58. On October 8, 2019, the Court granted preliminary approval of the B&L settlement and approved the notice to be disseminated to putative members of the litigation classes, the CVI Settlement Class, and the B&L Settlement Class. ECF No. 1046.

59. On January 16, 2020, Plaintiffs filed their Motion for Final Approval of Settlement Agreements with Defendants B&L and CVI. ECF No. 1136. On February 25, 2020, the Court held a fairness hearing regarding the CVI and B&L settlements. *See* ECF No. 1154; February 25, 2020 Hearing Tr. On March 4, 2020, the Court granted Plaintiffs' Motion for Final Approval and issued its Final Approval Order and Final Judgment and Order of Dismissal with Prejudice as to B&L and CVI. ECF No. 1164.

60. Also on January 16, 2020, Plaintiffs filed a Motion for Payment of Common Expenses and Class Representatives' Service Awards from the B&L and CVI Settlement Funds. ECF No. 1137. On March 4, 2020, the Court granted Plaintiffs' motion. ECF No. 1165. Subject to the Court's order, Lead Counsel withdrew 33.3%,

or \$4,329,000, from the collective \$13,000,000 in the B&L and CVI Settlement Funds. \$3,330,800 was withdrawn from the B&L Settlement Fund and \$999,000 was withdrawn from the CVI Settlement Fund. *Id.* These costs included \$664,206.86 for some, but not all, of the future costs Lead Counsel anticipated incurring during the litigation of this case through trial. ECF No. 1165. Lead Counsel did not apply for attorneys' fees from the B&L and CVI Settlements at this time, and instead notified the Court that they may do so at a later date.

61. No Class Member objected to the CVI or B&L Settlements or Lead Counsel request for costs on any grounds.

**H. The ABB Settlement**

62. On Sunday, August 30, 2020, counsel for ABB and Lead Counsel engaged in a day-long mediation session with former U.S. District Judge Layn Phillips via video conference. Prior to the August 30, 2020 mediation session, the parties engaged in a series of pre-mediation discussions with Judge Phillips regarding a potential settlement. With Judge Phillips' guidance and assistance, the Parties reached an agreement to resolve the case against ABB based on ABB's payment of \$30,200,000 into a settlement fund. The Parties fully executed the Settlement Agreement on September 22, 2020.

63. As provided by ¶ 3.1 of the Settlement Agreement, ABB ultimately paid \$30,200,000 total into an escrow account to establish the Settlement Fund.

64. On October 22, 2020, Plaintiffs filed their Motion for Preliminary Approval and Notice Plan regarding the ABB Settlement. ECF No. 1215.

65. On November 4, 2020, the Court held a hearing on the Motion for Preliminary Approval of the ABB Settlement. ECF No. 1219. On November 12, 2020, the Court issued an order granting preliminary approval of the ABB Settlement and endorsing the Notice Plan. ECF No. 1224. On October 22, 2020, Plaintiffs filed their Motion for Preliminary Approval and Notice Plan regarding the ABB Settlement. ECF No. 1215. On November 4, 2020, the Court held a hearing on the Motion for Preliminary Approval of the ABB Settlement. ECF No. 1219. On November 12, 2020, the Court preliminarily approved the ABB Settlement and approved the Notice Plan. ECF No. 1224. On February 26, 2021, Plaintiffs filed motions for Final Approval of the ABB Settlement and for an Award of Attorneys' Fees and Costs. ECF Nos. 1241, 1242. On May 19, 2021, the Court held a Fairness Hearing regarding the Motion for Final Approval and Award of Attorneys' Fees and Costs. ECF No. 1254. On June 1, 2021, the Court granted Final Approval and Final Judgment as to the ABB Settlement and granted Lead Counsel's request for attorneys' fees (\$9,315,960.97), and incurred and anticipated litigation costs (\$752,117.10). ECF Nos. 1257, 1258.

## **II. THE ALCON AND JJVCI SETTLEMENTS**

66. A true and correct copy of the Alcon and JJVCI Settlements were previously filed with the Court. ECF No. 1337-1&2.

67. The Settlements were reached in the absence of collusion and are the product of good-faith, informed, and intensive arm's-length negotiations between experienced attorneys and were overseen by experienced mediators, all of whom are

familiar with class action antitrust litigation and the legal and factual issues of this Action.

68. Lead Counsel believe that the Settlements are fair, reasonable, and adequate and fall well within the range of reasonableness, such that Final Approval is appropriate.

69. Lead Counsel believe that the benefits of the Settlements outweigh the risks and uncertainties attendant to continued litigation, which include, but are not limited to, the risks, time, and expenses associated with completing trial and likely appellate review.

70. Furthermore, Lead Counsel are particularly experienced in the litigation, class certification, trial, and settlement of nationwide class action cases. Lead Counsel have zealously represented Plaintiffs and the Classes throughout this Action. Lead Counsel ultimately prevailed at class certification, where this Court made its own independent determination that “[Lead] [C]ounsel are skilled and adequate in all respects,” ECF No. 940 at 127, and at summary judgment. Further, in 2020, Lead Counsel were recognized by the American Antitrust Institute for their work on this case for Outstanding Antitrust Litigation Achievement by a Young Lawyer. *See* <https://www.antitrustinstitute.org/aai-2020-antitrust-enforcement-awards-honorees-announced>.

71. Lead Counsel are confident in the strength of this Action but are also cognizant of the defenses available to Defendants and the risks inherent in trial and post-judgment appeal.

72. Lead Counsel are also highly familiar with the challenged practices and defenses at issue in this Action through their experience litigating similar cases in MDL No. 1030 and elsewhere.

73. On Friday, February 25, 2022, Plaintiffs and Alcon engaged in a day-long mediation with Robert Meyer of JAMS in Los Angeles, California. Although the Parties made progress, the initial mediation did not result in a settlement. In the following weeks, as the Parties prepared for trial, they continued to negotiate through Mr. Meyer. On March 23, 2022, Plaintiffs and Alcon agreed to settle the action for \$20,000,000 and executed the Alcon Settlement.

74. JJVCI and Plaintiffs participated in an all-day mediation on September 1, 2020 overseen by Hon. Layn Phillips (Ret.). The initial mediation did not result in an agreement, and JJVCI and Plaintiffs continued preparing their respective cases for trial. The Parties engaged in further settlement negotiations in the weeks preceding the March 28, 2022 trial date with the assistance of Judge Phillips and his staff. These negotiations continued into the week before trial, culminating in an agreement to settle the action as to JJVCI for \$55,000,000. JJVCI and Plaintiffs executed the JJVCI Settlement on March 27, 2022, just one day before the scheduled start of trial proceedings.

75. The Alcon Settlement required Alcon to pay \$20,000,000 in cash into an Escrow Account within 15 days following Preliminary Approval. ECF No. 1337-1, Alcon Settlement Agreement, ¶ 3.1. On May 20, 2022, Alcon deposited \$20,000,000 in cash into the Escrow Account.

76. The JJVCI Settlement similarly required JJVCI to pay \$55,000,000 in cash into an Escrow Account within 15 days following Preliminary Approval. ECF No. 1337-2, JJVCI Settlement Agreement, ¶ 3.1. On May 19, 2022, JJVCI deposited \$55,000,000 in cash into the Escrow Account.

77. The Alcon Settlement and JJVCI Settlement together comprise the Settlement Fund, which as noted, has been fully funded.

78. The Alcon and JJVCI Settlement Classes are opt-out classes under Rule 23(b)(3) of the Federal Rules of Civil Procedure. They are both defined as follows:

All persons and entities residing in the United States who made retail purchases of disposable contact lenses manufactured by Alcon, JJVC, CVI, or B&L during the Settlement Class Period for their own use and not for resale, where the prices for such contact lenses were subject to a “Unilateral Pricing Policy” and the purchase occurred during the period when the Unilateral Pricing Policy was in effect. Excluded from the Settlement Class are any purchases from 1-800 Contacts of disposable contact lenses subject to B&L’s Unilateral Pricing Policy, where the purchase occurred on or after July 1, 2015. Also excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, any alleged co-conspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

ECF Nos. 1337-1, 1337-2, Alcon & JJVCI Agreements, ¶ 1.35.

79. The above-discussed Court-approved Notice Plans for the CVI, B&L, Alcon, and JJVCI Settlements each contained language that Lead Counsel would later ask the Court for attorneys’ fees “up to one-third (33.3%)” of the Settlement Funds, as well as Court-approved costs and expenses. ECF Nos. 1139, 1216, 1337.

### III. LEAD COUNSEL'S REQUEST FOR ATTORNEYS' FEES

80. The Notice Plan, approved by the Court, informed potential Settlement Class Members that "Lead Counsel will ask the Court for attorneys' fees of up to one-third (33.3%) of the Alcon and JJVCI Settlement Funds, as well as reimbursement of costs and expenses incurred by Lead Counsel during the litigation." ECF No. 1337-4.

81. Lead Counsel and supporting law firms have collectively spent thousands of hours litigating this case since its inception more than seven years ago, with lodestar exceeding \$50,000,000 using historic billing rates.

82. During the pendency of this litigation, Lead Counsel have diligently worked to make sure that all efforts were efficient and coordinated so as to minimize duplication.

83. Lead Counsel acquired and analyzed, along with experts, an immense amount of factual and legal information.

84. Litigation of this action required counsel that was highly trained in class action law and procedure, as well as the specialized antitrust issues, presented here. Lead Counsel possess these attributes, and their participation added value to the representation of the Classes. The record demonstrates that the action involved a broad range of complex challenges by Defendants, which Lead Counsel met at every juncture.

85. For example, Defendants have repeatedly argued to this Court, and the Eleventh Circuit, that Plaintiffs lack standing to bring this lawsuit because they are not direct purchasers under the antitrust laws. ECF Nos. 505, 674, 906-908, 912, 930, 931,

934, 935, 967, 1015, 1016, 1023. Lead Counsel prevailed on this issue at every turn. ECF Nos. 940, 993, 1091. The ability and knowledge to successfully navigate the issues regarding purchaser standing in antitrust matters is rare, even among class action attorneys.

86. Lead Counsel were able to draw on their decades of combined experience, specifically in representing plaintiffs in large antitrust class actions against these kinds of arguments.

87. Opposing counsel for the Defendants similarly possessed experience and skill in litigating large antitrust class actions.

88. Lead Counsel represents the Named Plaintiffs on an entirely contingent-fee basis.

89. Thus far, Lead Counsel have not been paid any money from Plaintiffs or the Class for their time and effort litigating this matter; Lead Counsel's only attorneys' fees to date in this matter were paid from the ABB Settlement Fund.

#### **IV. LEAD COUNSEL'S EXPENSES**

90. Lead Counsel established a litigation fund in order to pay common expenses throughout the litigation.

91. Non-common expenses (*e.g.*, travel, lodging, legal research, long-distance phone calls, etc.) have not been paid from the litigation fund, and Lead Counsel now seek reimbursement of these expenses on behalf of themselves and other supporting firms.

92. As detailed and categorized in the below schedule, Lead Counsel have incurred a total of \$1,640,110.77 in litigation-related expenses unreimbursed by any of the previous orders awarding costs. *See* ECF Nos. 1164 & 1258. These costs are unreimbursed litigation expenses incurred in connection with the prosecution of this Action. Lead Counsel's expenses were reasonably necessary to the prosecution of this Action; and are the type of expenses that Lead Counsel normally incur in litigation and that would be reimbursed by clients under fee arrangements where the client was paying expenses. In addition, all litigation expenses submitted by the law firms that assisted Lead Counsel have been attested to as reasonable and necessary expenses incurred in prosecuting this action in sworn declarations by knowledgeable attorneys from those firms. Lead Counsel are happy to provide those declarations to the Court if requested to do so.

93. The following chart of expenses was prepared from Lead Counsel's review of their own accounting records, as well as the declarations submitted by the supporting law firms.

<b>EXPENSE</b>	<b>AMOUNT</b>
Experts and Trial Consultants	\$12,192.88
Filing & Other Court Fees	\$34,147.00
Litigation-Related Transportation, Hotels & Meals	\$644,307.72
Litigation Fund Assessments (Less Previous Reimbursements)	\$790,000.00
Telephone, Facsimile & Conference Calling	\$23,644.05
Messenger & Postages Fees	\$28,490.44
Process Server Fees	\$582.15

Printing Fees	\$72,908.53
Online Legal & Factual Research	\$156,069.16
Investigators	\$5,331.25
Depositions and Court Reporters/Transcripts	\$4,095.70
Staff Overtime	\$1,022.71
Miscellaneous Costs (Supplies, etc.)	\$36,990.67
Less Current Litigation Fund Balance	(\$169,671.49)
<b>TOTAL</b>	<b>\$1,640,110.77</b>

## V. DAMAGES

94. Based on Plaintiffs' expert's damages estimates, the recoveries provided for under the Settlements represent 63.1% of possible recoverable single damages against Alcon, and 28.5% of possible recoverable single damages against JJVCI.

95. These recovery shares are significantly higher than most antitrust class actions, where plaintiffs' median settlement recovery is roughly 19% of single damages. *See* John M. Connor & Robert H. Lande, *Not Treble Damages: Cartel Recoveries are Mostly Less Than Single Damages*, 100 Iowa L. Rev. 1997, 2010 (2015).

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22<sup>nd</sup> Day of July 2022.

<u>/s/ Thomas Boardman</u>	<u>/s/ Benjamin Steinberg</u>	<u>/s/ Nathaniel Giddings</u>
Thomas Boardman	Benjamin Steinberg	Nathaniel Giddings

# Exhibit A

# HAUSFELD FIRM RESUME

[www.hausfeld.com](http://www.hausfeld.com)



## About Hausfeld

In the last decade, Hausfeld attorneys have won landmark trials, negotiated complex settlements among dozens of defendants, and recovered billions of dollars for clients both in and out of court. Renowned for skillful prosecution and resolution of complex and class-action litigation, Hausfeld is the only claimants' firm to be ranked in the top tier in private enforcement of antitrust/competition law in both the United States and the United Kingdom by The Legal 500 and Chambers & Partners. Our German office was also ranked by The Legal 500 for general competition law.

From our locations in Washington, D.C., Boston, New York, Philadelphia, San Francisco, Amsterdam, Berlin, Brussels, Paris, Düsseldorf, Stockholm, and London, Hausfeld contributes to the development of law in the United States and abroad in the areas of Antitrust/Competition, Commercial and Financial Disputes, Environmental and Product Liability, Human Rights, and Technology and Data Breach. Hausfeld attorneys have studied the global integration of markets—and responded with innovative legal theories and a creative approach to claims in developed and emerging markets.

Hausfeld was founded by Michael D. Hausfeld, who is widely recognized as one of the country's top civil litigators and a leading expert in the fields of private antitrust/competition enforcement and international human rights. The New York Times has described Mr. Hausfeld as one of the nation's "most prominent antitrust lawyers," while Washingtonian Magazine characterizes him as a lawyer who is "determined to change the world—and succeeding," noting that he "consistently brings in the biggest judgments in the history of law."

### Antitrust and competition litigation

Hausfeld's reputation for leading groundbreaking antitrust class actions in the United States is well-earned. Having helmed more than 40 antitrust class actions, Hausfeld attorneys are prepared to **litigate and manage cases with dozens of defendants** (*In re Blue Cross Blue Shield Antitrust Litigation*, with more than thirty defendants), **negotiate favorable settlements for class members and clients** (*In re Air Cargo Shipping Services Antitrust Litigation*, settlements of more than \$1.2 billion, and *In re Blue Cross Blue Shield Antitrust Litigation*, \$2.67 billion settlement), **take on the financial services industry** (*In re Foreign Exchange Antitrust Litigation*, with settlements of more than \$2.3 billion), take cartelists to trial (*In re Vitamin C Antitrust Litigation*, trial victory of \$162 million against Chinese manufacturers of Vitamin C), and **push legal boundaries where others have not** (*O'Bannon v. NCAA*, another trial victory in which the court found that NCAA rules prohibiting additional scholarship payments to players as part of the recruiting process are unlawful).



**Hausfeld is 'the world's leading antitrust litigation firm.'**

Politico

# HAUSFELD

FOR THE CHALLENGE

## Hausfeld: a global reach

Hausfeld's international reach enables it to advise across multiple jurisdictions and pursue claims on behalf of clients worldwide. Hausfeld works closely with clients to deliver outstanding results while always addressing their business concerns. Hausfeld does so by anticipating issues, considering innovative strategies, and maximizing the outcome of legal disputes in a way that creates shareholder value. Its inventive cross border solutions work to the benefit of the multinational companies it often represents.

### Creative solutions to complex legal challenges

Hausfeld lawyers consistently apply forward-thinking ideas and creative solutions to the most vexing global legal challenges faced by clients. As a result, the firm's litigators have developed numerous innovative legal theories that have expanded the quality and availability of legal recourse for claimants around the globe that have a right to seek recovery. Hausfeld's impact was recognized by the Financial Times, which honored Hausfeld's European team with the "Innovation in Legal Expertise - Dispute Resolution," award, which was followed up by FT commending Hausfeld's North American team for its innovative work in the same category. In addition, The Legal 500 has ranked Hausfeld as the only top tier claimants firm in private enforcement of antitrust/competition law in both the United States and the United Kingdom. For example, the landmark settlement that Hausfeld negotiated to resolve claims against Parker ITR for antitrust overcharges on marine hoses represented the first private resolution of a company's global cartel liability without any arbitration, mediation, or litigation—creating opportunities never before possible for dispute resolution and providing a new model for global cartel settlements going forward.

### Unmatched global resources

The firm combines its U.S. offices on both coasts and vibrant European presence with a broad and deep network around the globe to offer clients the ability to seek redress or confront disputes in every corner of the world and across every industry. With over 160 lawyers in offices in Washington, D.C., Boston, New York, Philadelphia, San Francisco, Amsterdam, Berlin, Düsseldorf, Brussels, Paris, Stockholm, and London, Hausfeld is a "market leader for claimant-side competition litigation" (The Legal 500).



**A prominent litigation firm, renowned for its abilities representing plaintiffs in multidistrict class action antitrust suits across the country involving a wide variety of antitrust issues including monopolization, price manipulation and price-fixing.**

Chambers and Partners



**Hausfeld, which 'commits extensive resources to the most difficult cases,' widely hails as one of the few market-leading plaintiff firms.**

The Legal 500



**Primarily in the antitrust capacity, Hausfeld is an undisputed trailblazer, identified as a ubiquitous presence by peers on both the plaintiff and defense sides of the 'V.'**

Benchmark Litigation

# HAUSFELD

FOR THE CHALLENGE

## Antitrust litigation

### Hausfeld's antitrust litigation experience is unparalleled

Few, if any, U.S. law firms are litigating more class actions on behalf of companies and individuals injured by anticompetitive conduct than Hausfeld. The firm has litigated cases involving price-fixing, price manipulation, monopolization, tying, and bundling, through individual and class representation and has experience across a wide variety of industries, including automotive, aviation, energy, financial services, food & beverage, healthcare, manufacturing, retail, and the transportation and logistics sectors. Clients rely on us for our antitrust expertise and our history of success in the courtroom, and at the negotiation table, and the firm does not shy away from challenges, taking on some of the most storied institutions.



**Hausfeld, 'one of the most capable plaintiffs' firms involved in the area of civil cartel enforcement,' is [w]idely recognised as a market leader for claimant-side competition litigation... [It is the] market leader in terms of quantity of cases, and also the most advanced in terms of tactical thinking.**

The Legal 500

Hausfeld is not only trusted by its clients, it is trusted by judges to pursue these claims, as evidenced by the fact that the firm has been appointed as lead or co-lead counsel in dozens of antitrust cases in the last decade. In one example, Judge Morrison C. England of the Eastern District of California praised Hausfeld for having "the breadth of experience, resources and talent necessary to navigate" cases of import.

Recognizing the firm's antitrust prowess, Global Competition Review has opined that Hausfeld is "one of—if not the—top Plaintiffs' antitrust firm in the U.S." The Legal 500 and Chambers and Partners likewise consistently rank Hausfeld among the top five firms in the United States for antitrust

litigation on behalf of plaintiffs. And in naming Hausfeld to its Plaintiffs' Hot List, The National Law Journal opined that Hausfeld "punches above its weight" and "isn't afraid to take on firms far larger than its size and deliver results, especially in antitrust litigation."

### Hausfeld has achieved outstanding results in antitrust cases

Hausfeld lawyers have achieved precedent-setting legal decisions and historic trial victories, negotiated some of the world's most complex settlement agreements, and have collectively recovered billions of dollars in settlement and judgments in antitrust cases. Key highlights include:

- ***In re Foreign Exchange Benchmark Rates Antitrust Litig.*, 13-cv-7789 (S.D.N.Y.)**  
Hausfeld serves as co-lead counsel in this case alleging financial institutions participated in a conspiracy to manipulate a key benchmark in the foreign exchange market. To date, the firm has obtained over **\$2.3 billion** in settlements from **fifteen defendants**. The case is ongoing against the remaining defendant.
- ***In re LIBOR-Based Financial Instruments Antitrust Litig.*, No. 11-md-2262 (S.D.N.Y.)**  
Hausfeld serves as co-lead counsel in this case against sixteen of the world's largest financial institutions for conspiring to fix LIBOR, the primary benchmark for short-term interest rates. To date, the firm has obtained **\$590 million** in settlements with four defendants. An antitrust class has been certified and the case is ongoing against the remaining defendants.
- ***In re Blue Cross Blue Shield Antitrust Litig.*, No. 13-mdl- 2496 (N.D. Ala.)**  
The Court appointed Hausfeld attorneys as co-lead counsel, and to the Plaintiffs' Steering Committee, in this case against Blue Cross Blue Shield entities. This case was brought against over 30 Blue Cross companies and its trade association (BCBSA), and alleges that they illegally agreed not to compete with each other for health insurance subscribers across the United States. After defeating motions to dismiss, Hausfeld marshalled evidence from a record that consisted of over 14 million documents from more than thirty defendants and won a landmark ruling when the district court ruled that the per se standard would

# HAUSFELD

## FOR THE CHALLENGE

be applied to defendants' conduct. In November 2020, the Court granted preliminary approval to the proposed settlement agreement resolving the claims of Blue Cross Blue Shield subscribers for \$2.67 billion. In addition to monetary relief, the settlement proposes systemic injunctive relief that will change the landscape for competition in healthcare.

- ***O'Bannon v. NCAA, No. 09-cv-03329 (N.D. Cal.)***

In the landmark *O'Bannon* litigation, Hausfeld represented college athletes who collectively alleged that the NCAA, its members, and its commercial partners, violated federal antitrust law by unlawfully foreclosing former players from receiving any compensation related to the use of their names, images, and likenesses in television broadcasts, rebroadcasts, and videogames. In 2013, the plaintiffs announced a \$40 million settlement agreement with defendant Electronic Arts, Inc., which left the NCAA as the remaining defendant. Following trial in 2014, the Court determined that the NCAA had violated the antitrust laws and issued a permanent injunction. The Ninth Circuit affirmed the NCAA's violation of the antitrust laws and upheld significant injunctive relief—the practical effect of which is that college athletes can now each receive up to \$5,000 more every year as part of their scholarship package (to cover their education, travel and medical expenses, and acquire pre-professional training as they enter the work force).

- ***In re Vitamin C Antitrust Litig., No. 06-md-01738 (E.D.N.Y.)***

Hausfeld serves as co-lead counsel in the first class antitrust case in the United States against Chinese manufacturers. Hausfeld obtained settlements for the class of **\$22.5 million from two of the defendants**—the first after summary judgment, and the second just before closing arguments at trial. Days later, the jury reached a verdict against the remaining defendants, and the court entered a judgment for **\$148 million** after trebling the damages awarded. On appeal to the U.S. Supreme Court, our clients prevailed, and the case was remanded for further consideration by the Second Circuit.

- ***In re Dental Supplies Antitrust Litig., No. 1:16-cv-00696 (E.D.N.Y.)***

Hausfeld served as co-lead counsel in this litigation in which a proposed class of private dental practices claimed that the four major distributors of dental products and equipment conspired to fix margins, divide markets and allocate customers, and orchestrate industry boycotts of lower-priced, innovative rivals. The Federal Trade Commission filed a related lawsuit against the dental distributor companies a year after the private plaintiffs first initiated their action, borrowing legal theories first investigated and advanced by the private plaintiffs. In 2019 the private plaintiffs' action was settled just minutes before a class certification Daubert hearing was set to commence for **\$80 million**.

- ***In re Disposable Contact Lens Antitrust Litig., No. 3:15-md-2626-J-20JRK (M.D. Fla.)***

Hausfeld serves as one of the three co-lead counsel for a nationwide class of consumers alleging horizontal and vertical conspiracies by the four leading contact lens manufacturers and their primary distributor to impose minimum resale price maintenance policies called "unilateral pricing policies," or "UPPs." case. On June 16, 2016, the court overseeing the litigation denied the defendants' motion to dismiss; on December 4, 2018, the court certified litigation classes of consumers who purchased contact lenses subject to UPPs; and on November 27, 2019, the Court denied the defendants' four motions for summary judgment. Plaintiffs have thus far reached settlements with three defendants in the case: Bausch & Lomb, CooperVision, and ABB Optical Group totaling more than \$40 million.

- ***In re International Air Passenger Surcharge Antitrust Litig., No. 06-md-01793 (N.D. Cal.)***

Hausfeld served as co-lead counsel in this case against two international airlines alleged to have fixed fuel surcharges on flights between the United States and United Kingdom. Lawyers at the firm negotiated a groundbreaking **\$200 million** international settlement that provides recovery for both U.S. purchasers under U.S. antitrust laws and U.K. purchasers under U.K. competition laws.

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- ***In re Municipal Derivatives Antitrust Litig., No. 08-cv-2516 (S.D.N.Y.)***

Hausfeld served as co-lead counsel in this case against banks, insurance companies, and brokers accused of rigging bids on derivative instruments purchased by municipalities. The firm obtained over **\$200 million** in settlements with more than **ten defendants**.

- ***In re Automotive Aftermarket Lighting Products Antitrust Litig., No. 09-ML-2007 (C.D. Cal.)***

Hausfeld served as co-lead counsel in this case against three manufacturers for participating in an international conspiracy to fix the prices of aftermarket automotive lighting products. The firm obtained over **\$50 million** in settlements.

- ***In re Processed Egg Products Antitrust Litig., No. 08-cv-04653 (E.D. Pa.)***

Hausfeld served as co-lead counsel in this case alleging that egg producers, through their trade associations, engaged in a scheme to artificially inflate egg prices by agreeing to restrict the supply of both laying hens and eggs. The firm obtained over **\$135 million** in settlements, won certification of a class of shell egg purchasers, and tried the case against the remaining defendants.

- ***In re American Express Anti-Steering Rules Antitrust Litig., No. 11-md-2221 (E.D.N.Y.)***

As lead counsel, Hausfeld represents a two classes of merchants against American Express (“Amex”): Amex-accepting merchants and merchants that accept Visa, MasterCard, and/or Discover cards but not Amex (the “V/MC/D Class”). The merchants allege that Amex violated antitrust laws by requiring them to accept all Amex cards, and by preventing them from steering their customers to other payment methods. The V/MC/D Class also asserted that Amex’s conduct had, among other things, created an elevated price “umbrella” marketwide and stifled price competition among other card networks. In January 2020, Judge Garaufis granted Amex’s motion to compel arbitration of the Amex Class’ claims, and he dismissed the V/MC/D Class’ claims. An appeal addressing umbrella liability is pending.

- ***In re Domestic Airline Travel Antitrust Litig., No. 15-1404 (CKK) (D.D.C.)***

Hausfeld serves as co-lead counsel for a proposed class of domestic air passengers that collectively allege the defendants, the four major U.S. passenger air carriers — United, American, Delta, and Southwest — conspired to fix domestic airfares by colluding to limit their respective capacity. The passengers allege that Defendants, in which a common set of investors owned significant shares during the conspiracy period, carried out the conspiracy through repeated assurances to each other on earnings calls and other statements that they each were engaging in “capacity discipline”. In October 2016, the court denied defendants’ motion to dismiss. Since that time, the firm has obtained **\$60 million** in settlements with American and Southwest. The litigation against United and Delta is ongoing.

# HAUSFELD

## FOR THE CHALLENGE

## Litigation achievements

### Significant trial victories

While many law firms like to talk about litigation experience, Hausfeld lawyers regularly bring cases to trial—and win. Among our trial victories are some of the largest antitrust cases in the modern era. For example, in ***O'Bannon v. NCAA (N.D. Cal.)***, we conducted a three-week bench trial before the chief judge of the Northern District of California, resulting in a complete victory for college athletes who alleged an illegal agreement among the National Collegiate Athletic Association and its member schools to deny payment to athletes for the commercial licensing of their names, images, and likenesses. Our victory in the *O'Bannon* litigation followed the successful trial efforts in ***Law v. NCAA (D. Kan.)***, a case challenging earning restrictions imposed on assistant college coaches in which the jury awarded **\$67 million** to the class plaintiffs that one of our lawyers represented.

In ***In re Vitamin C Antitrust Litigation (E.D.N.Y.)***, we obtained, on behalf of our direct purchaser clients, a **\$148 million** jury verdict and judgment against Chinese pharmaceutical companies that fixed prices and controlled export output of Vitamin C—on the heels of \$22.5 million in settlements with other defendants, which represented the first civil settlements with Chinese companies in a U.S. antitrust cartel case. Years earlier, we took on a global vitamin price-fixing cartel in ***In re Vitamins (D.D.C.)***, in which we secured a **\$1.1 billion settlement** for a class of vitamin purchasers and then took the remaining defendants to trial, culminating in a **\$148 million jury verdict**.

Our trial experience extends to intellectual property matters and general commercial litigation as well. Recently, we represented entertainment companies that sought to hold internet service provider Cox Communications accountable for willful contributory copyright infringement by ignoring the illegal downloading activity of its users. Following a trial in ***BMG Rights Management (US) LLC, v. Cox Enterprises, Inc. (E.D. Va.)***, the jury returned a **\$25 million verdict** for our client. After the defendants appealed and prior to a new trial, the parties settled.

### Exceptional settlement results

Over the past decade, Hausfeld has recouped over \$20 billion for clients and the classes they represented. We

are proud of our record of successful dispute resolution. Among our settlement achievements, a selection of cases merit special mention.

Most recently, on November 30, 2020, the Court granted preliminary approval to the proposed settlement agreement in ***In re Blue Cross Blue Shield Antitrust Litigation (M.D. Ala.)***, resolving the claims of Blue Cross Blue Shield subscribers represented by Hausfeld for \$2.67 billion. In addition to monetary relief, the settlement proposes systemic injunctive relief that will change the landscape for competition in healthcare.

In the high profile ***In re Foreign Exchange Benchmark Rates Antitrust Litigation (S.D.N.Y.)***, we negotiated settlements totaling more than \$2.3 billion with fifteen banks accused of conspiring to manipulate prices paid in the foreign-exchange market. In another case involving allegations of pricefixing among the world's largest airfreight carriers, ***In re Air Cargo Shipping Services Antitrust Litigation (E.D.N.Y.)***, we negotiated settlements with more than 30 defendants totaling over \$1.2 billion—all in advance of trial. In the ongoing ***In re: LIBOR-Based Financial Instruments Antitrust Litigation (S.D.N.Y.)*** case, we have secured settlements to date totaling \$590 million with Barclays (\$120 million), Citi (\$130 million), Deutsche Bank (\$240 million), and HSBC (\$100 million). The court has granted final approval to each of these settlements.

Hausfeld served as class counsel in ***Hale v. State Farm Mutual Automobile Insurance Co. (S.D.Ill.)***. This case involved allegations that State Farm worked to help elect an Illinois state supreme court justice in order to overturn a billion-dollar judgment against it. On the day opening statements were to be delivered to the jury, State Farm agreed to settle for \$250 million. Finally, in the global ***Marine Hose*** matter, we broke new ground with the first private resolution of a company's global cartel liability without any arbitration, mediation, or litigation. That settlement enabled every one of Parker ITR's non-US marine-hose purchasers to recover up to 16% of their total purchases.

These cases are just a few among dozens of landmark settlements across our practice areas.

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## Reputation and leadership in the antitrust bar

### Court commendations

Judges across the country have taken note of Hausfeld's experience and results achieved in antitrust litigation.



**This has just been an absolute gem of an experience from the standpoint of having the opportunity to have just great lawyers fighting over something that's really important and significant.**

– District Judge R. David Proctor

*In re Blue Cross Blue Shield Antitrust Litigation*, MDL No. 2406 (N.D. Ala.) (granting preliminary approval of settlement in case where Hausfeld serves as co-lead counsel.)



**All class actions generally are more complex than routine actions... But this one is a doozy. This case is now I guess nearly more than ten years old. The discovery as I've noted has been extensive. The motion practice has been extraordinary... The recovery by the class is itself extraordinary. The case, the international aspect of the case is extraordinary. Chasing around the world after all these airlines is an undertaking that took enormous courage.**

– Judge Brian M. Cogan

*In re Air Cargo Shipping Services Antitrust Litigation*, No. 06-md-1775 (E.D.N.Y.)



**Comparing Hausfeld's work through trial to *Game of Thrones*: 'where individuals with seemingly long odds overcome unthinkable challenges... For plaintiffs, their trial victory in this adventurous, risky suit, while more than a mere game, is nothing less than a win...'**

– Magistrate Judge Nathanael M. Cousins

*O'Bannon v. Nat'l College Athletic Ass'n*, No. 09-cv-3329 (N.D. Cal.)



**Hausfeld lawyers achieved 'really, an outstanding settlement in which a group of lawyers from two firms coordinated the work... and brought an enormous expertise and then experience in dealing with the case.'**  
**Hausfeld lawyers are 'more than competent. They are outstanding.'**

– Judge Charles R. Breyer

*In re International Air Passenger Surcharge Antitrust Litig.*, No. 06-md-01793 (N.D. Cal.) (approving a ground-breaking \$200 million international settlement that provided recovery for both U.S. purchasers under U.S. antitrust laws, and U.K. purchasers under U.K. competition laws.)



**Hausfeld has 'the breadth of experience, resources and talent necessary to navigate a case of this import.'**  
**Hausfeld 'stands out from the rest.'**

– District Judge Morrison C. England Jr.

*Four In One v. SK Foods*, No. 08-cv-3017 (E.D. Cal.)



**The class is represented by what I would describe as an all-star group of litigators...**

– District Judge David R. Herdon

*Hale v. State Farm*, No. 12-cv-00660-DRH-SCW (S.D. Ill.)

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## Awards and recognitions



### The Legal 500

In 2021, for the 12th consecutive year, Hausfeld was ranked in the top tier nationally for firms in antitrust civil litigation and class actions by The Legal 500. The publication described Hausfeld lawyers as “top-notch in all respects and particularly expert in everything about antitrust law.” The publication has previously stated that:

Hausfeld lawyers are, “pragmatic, smart and focused litigation experts,” and the firm is “at the top of its game,” with “a number of heavyweight practitioners.”

“DC firm Hausfeld LLP remains top-notch in antitrust litigation... Hausfeld LLP is one of the most capable plaintiffs firms involved in the area of civil cartel enforcement, and is handling some of the major cartel-related cases...”

Hausfeld is a “market transformer,” the “most innovative firm with respect to antitrust damages,” is “[d]riven by excellence,” “anticipates the evolving needs of clients,” and delivers “outstanding advice not only in legal terms but also with a true entrepreneurial touch. . . .”

### Concurrences

Antitrust Publications & Events

### Concurrences

In 2020, the Hausfeld Competition Bulletin article titled, “Data Exploiting as an Abuse of Dominance: The German Facebook Decision,” authored by Hausfeld lawyer Thomas Höppner, was awarded Concurrences’ 2020 Writing Award in its Unilateral Conduct (Business) category.

In 2018, an article authored by Hausfeld lawyer Scott Martin, joined by co-authors Brian Henry and Michaela Spero, was awarded Concurrences’ 2018 Writing Award for Private Enforcement (Business) Category. The article, “Cartel Damage Recovery: A Roadmap for In-House Counsel,” was originally published in Antitrust Magazine.

In 2017, Hausfeld’s Competition Bulletin was selected to be ranked among the top antitrust firms distributing newsletters and bulletins. Hausfeld is the only Plaintiffs’ firm to be ranked, and we secured the number one spot for Private Enforcement Newsletters.

In 2015, Hausfeld Partners Michael Hausfeld, Michael Lehmann and Sathya Gosselin won the Concurrences’ 2015 Antitrust Writing Awards in the Private Enforcement (Academic) category for their article, “Antitrust Class Proceedings—Then and Now,” Research in Law and Economics, Vol. 26, 2014.



### Benchmark Litigation

In 2021, for the second consecutive year, Benchmark Litigation highlighted Hausfeld as a leader in the domain of dispute resolution, recognizing the firm at the national level, as well as regionally on both coasts.

Hausfeld was ranked by Benchmark for Antitrust/Competition Nationwide, and is one of only a small handful of plaintiff-side firms on the list. Hausfeld was also honored as a ‘Recommended Top Plaintiff Firm’ Nationwide, and described by the publication as “an undisputed trailblazer, identified as a ubiquitous presence by peers on both the plaintiff and defense sides of the ‘V.’” A peer on the defense side commented to the publication that Hausfeld is always in mix among antitrust and sports matters, “at least in the biggest and

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best cases.” Further to Hausfeld’s national recognitions, Benchmark recognized several individuals in the firm’s San Francisco and Washington, DC offices.



## 2020 Antitrust Report

In 2021, for a third consecutive year, Hausfeld has been recognized as one of the leading claimant firms for recovery in antitrust litigation in the US. In the 2020 Antitrust Annual Report, published by the University of San Francisco Law School and The Huntington National Bank, Hausfeld is listed as the top firm out of the 25 analyzed, having achieved an aggregate settlement recovery totaling over \$5.24 billion over 12 years from 2009-2020. Hausfeld also ranked first among lead counsel in relation to the number of complaints filed in US federal courts (Hausfeld was responsible for 292 filings between 2009 and 2020) and first among lead counsel in the total amounts recovered for class members (Hausfeld recovered 113 settlements for its clients between 2009 and 2020 totaling over \$5.24 billion).



## Who's Who Legal

In 2019, Who's Who Legal honored Hausfeld as the 'Competition Plaintiff Firm of the Year,' noting that the firm is, "a giant in the competition plaintiff field that once again demonstrates the strength and depth of its expertise..."

In 2018, the publication recognized the firm as "[a] powerhouse in the plaintiffs' litigation field, with particularly deep capability in competition matters," highlighting "nine outstanding litigators."



## Financial Times

In 2019, the Financial Times named Hausfeld one of the 25 'Most Innovative Law Firms: Overall' in North America. Notably, Hausfeld was the only plaintiffs' firm to make the list. In 2018, the Financial Times' Innovative Lawyers Report honored Hausfeld with the 'Innovation in Legal Expertise - Dispute Resolution' award for the firm's work with Dutch transportation insurer TVM. The Financial Times followed up this award by commending Hausfeld in its 2018 North America Innovative Lawyers Report for its representation of plaintiffs in *In Re Foreign Exchange Benchmark Rates Antitrust Litigation*. Hausfeld is proud to be the only plaintiffs' firm to have received recognition in the category of 'dispute resolution' for 2018 on both sides of the Atlantic.

In 2016, the Financial Times named Hausfeld as a top innovative law firm. Writing about Hausfeld's innovation in the legal market, the Financial Times noted: "The firm has taken the litigation finance model to Germany, to turn company inhouse legal departments into profit centres."

In 2015, Michael Hausfeld was recognized by the Financial Times as one of the Top 10 Innovative Lawyers in North America.

In 2013, Hausfeld won the Financial Times Innovative Lawyer Dispute Resolution Award. The FT stated that Hausfeld has "[p]ioneered a unique and market-changing litigation funding structure that improved accessibility and enabled victims to pursue actions with little or no risk."



## U.S. News & World Report & Best Lawyers

Hausfeld was the only firm awarded the honor of best law firm in the 'Litigation – Antitrust' category by U.S. News and Best Lawyers in its 2022 Best Law Firms edition.

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## Global Competition Review

In 2021, the firm won Global Competition Review's award for "Litigation of the Year – Cartel Prosecution" in recognition of the firm's work on *In re Blue Cross Blue Shield Antitrust Litigation*. After eight years of litigation, the proposed class of subscribers secured a \$2.67 billion settlement from the Blue Cross Blue Shield (BCBS) network, which was preliminarily approved in 2020 and pending final approval.

In 2018, Hausfeld attorneys were awarded Global Competition Review's "Litigation of the Year – Cartel Prosecution" commending its work on *In re Vitamin C Antitrust Litigation*. In this historic case, the Supreme Court ruled in favor of Hausfeld's clients, setting forth criteria and a framework for courts to use when assessing the credibility and weight to give to a foreign government's expression of its own laws.

In 2016, Hausfeld was awarded Global Competition Review's "Litigation of the Year – Cartel Prosecution" for its work on *In re Foreign Exchange Antitrust Benchmark Litigation*. The award recognized Hausfeld's success in the Foreign Exchange litigation to date, which has included securing settlements for more than \$2.3 billion in on behalf of a class of injured foreign exchange investors and overcoming three motions to dismiss in the action.

In 2015, Hausfeld attorneys were awarded Global Competition Review's "Litigation of the Year – Non-Cartel Prosecution," which recognized their trial victory in *O'Bannon v. NCAA*, a landmark case brought on behalf of college athletes challenging the NCAA's restrictions on payment for commercial licensing of those athletes' names, images, and likenesses in various media.



## U.S. News & World Report

Since 2016, U.S. News & World Report – Best Law Firms has named Hausfeld to its top tier in both Antitrust Law and Litigation, and among its top tiers in Commercial Litigation. Hausfeld was also recognized in New York, San Francisco, and Washington, DC in Antitrust Law, Litigation, Mass Torts and Commercial Litigation.

## American Antitrust Institute

In 2021, Hausfeld and its co-counsel received the American Antitrust Institute's award for 'Outstanding Antitrust Litigation Achievement in Private Law Practice' for collective work on behalf of our clients in *In re Blue Cross Blue Shield Antitrust Litigation*.

In 2018, Hausfeld and its co-counsel received the American Antitrust Institute's award for 'Outstanding Antitrust Litigation Achievement in Private Law Practice' for their trial and appellate victories in *In re Vitamin C Antitrust Litigation*.

In 2016, the American Antitrust Institute honored two Hausfeld case teams—*In re Air Cargo Shipping Services Antitrust Litig.* (E.D.N.Y.) and *In re Municipal Derivatives Antitrust Litig.* (S.D.N.Y.)—with its top award for Outstanding Antitrust Litigation Achievement in Private Law Practice. Taken together, these two cases have yielded settlements of over \$1.4 billion to class members after nearly a decade of litigation. The award celebrates private civil actions that provide significant benefits to clients, consumers, or a class and contribute to the positive development of antitrust policy.

In 2015, Hausfeld and fellow trial counsel won the American Antitrust Institute's award for Outstanding Antitrust Litigation Achievement in Private Law Practice for their trial and appellate victories in *O'Bannon v. NCAA*.



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## Chambers & Partners

In 2021, Chambers and Partners named Hausfeld to its highest tier, Band 1, for “Antitrust: Plaintiff – USA – Nationwide,” noting that the firm:

“has fantastic lawyers who are out-of-the-box thinkers, client service-oriented and a pleasure to work with.”

Hausfeld was one of just five law firms ranked in Band 1. Hausfeld’s New York office was also named to Band 1 for “Antitrust: Mainly Plaintiff – New York.”

The publication has also previously noted about the firm:

“Able to deploy a deep bench of trial attorneys with outstanding litigation experience,” and is “renowned for its abilities representing plaintiffs in multidistrict class action antitrust suits across the country involving a wide variety of antitrust issues.”

Clients reported to the publication that “Hausfeld is a great partner that makes sure to understand our perspective,” and peers have commended the firm’s “terrific, deep bench.”

- A reputation as a “[m]arket-leading plaintiffs’ firm with considerable experience in antitrust class action suits and criminal cartel investigations.”
- “[N]umerous successes in the area, resulting in major recovery or settlements for its clients.”
- Firm Chair Michael Hausfeld’s record as “a very successful and able antitrust litigator,” and “one of the titans of the Plaintiffs Bar.”

Additionally, between 2016 and 2020, Chambers & Partners UK ranked Hausfeld in the top tier among London firms representing private claimants in competition matters and recognized the firm’s accomplishments in Banking Litigation. .



## National Law Journal

In 2015, Hausfeld was named to the National Law Journal’s “Plaintiffs Hot List” for the fourth year in a row. The publication elaborated:

“Hausfeld’s creative approaches underpinned key antitrust wins last year, including a trailblazing victory for former college athletes over the use of their likenesses in television broadcasts and video games...” and Hausfeld, along with its co-counsel, “nailed down a \$99.5 million settlement with JPMorgan Chase & Co. in January in New York federal court for alleged manipulation of market benchmarks. And it helped land nearly \$440 million in settlements last year, and more than \$900 million thus far, in multidistrict antitrust litigation against air cargo companies.”

In 2014, The National Law Journal named Hausfeld as one of a select group of America’s Elite Trial Lawyers, as determined by “big victories in complex cases that have a wide impact on the law and legal business.” The award notes that Hausfeld is among those “doing the most creative and substantial work on the plaintiffs side.”

# HAUSFELD

FOR THE CHALLENGE

## Diversity, equity & inclusion

Hausfeld is committed to diversity and inclusion, because we know that embracing a variety of viewpoints and backgrounds allows us to gain better insights and strengthen our practice. Our diversity is reflected throughout our dozens of case teams leading class actions across the country. We are proud that half of our lawyers are women, who lead some of the largest price-fixing and market manipulation antitrust MDLs in the United States on behalf of our firm.

Hausfeld's Diversity, Equity and Inclusion Committee is committed to examining and improving all aspects of our hiring, benefits, training, support, and promotion practices to ensure that we maintain the highest standards for ourselves, and continually strive for improvement. We seek to ensure that all of our attorneys are provided the resources they need to excel, and are given opportunities to lead, both within and outside the firm.

## Thought leadership

Hausfeld lawyers do more than litigation. They exercise thought leadership in many fields. Hausfeld lawyers host, lecture at, and participate in leading legal conferences worldwide and address ground-breaking topics including: the pursuit of damages actions in the United States and the European Union on behalf of EU and other non-U.S. plaintiffs; nascent private civil enforcement of EU competition laws; application of the FTAIA; the impact of *Wal-Mart Stores, Inc. v. Dukes* and *Comcast Corp. v. Behrend* on class certification; reforms to the Federal Civil Rules of Procedure; emerging issues in complex litigation; and legal technology and electronic discovery.

Hausfeld attorneys have presented before Congressional subcommittees, regulators, judges, business leaders, in-house counsel, private lawyers, public-interest advocates, elected officials and institutional investors, and hold leadership positions in organizations such as the American Bar Association, the American Antitrust Institute, the Women Antitrust Plaintiffs' Attorneys network group, the Sedona Conference and the Institute for the Advancement of the American Legal System.

## Selected articles

- **“Confusion continues in the antitrust evaluation of Most Favored Nations Provisions,”** Irving Scher, Hausfeld Competition Bulletin/Lexology (Spring 2021)
- **“Supreme Court Justices foreshadow a turbulent future for the NCAA,”** Swathi Bojedla & Eduardo Carlo, Hausfeld Competition Bulletin/Lexology (Summer 2021)
- **“Can a non-signatory compel arbitration?”** Walter D. Kelley Jr., Hausfeld Competition Bulletin/Lexology (Summer 2021)
- **“*Briseño v. Henderson*: new considerations for class action settlements today,”** Christopher Lebsack & Kyle Bates, Hausfeld Competition Bulletin/Lexology (Summer 2021)
- **“Umbrella Liability: Has Its Time Come?”** Michael D. Hausfeld and Irving Scher, Competition Policy International (October 24, 2020)
- **“Third Circuit’s Suboxone Class Certification Affirmance Clarifies Commonality and Predominance Requirements,”** Swathi Bojedla, Hausfeld Competition Bulletin/Lexology (Fall 2020)
- **“Class Actions & Competition Law, An Overview Of EU and National Case Law,”** Michael D. Hausfeld, Anthony Maton, David R. Wingfield, Concurrences e-Competition Bulletin - Special Issue on Class Actions (August 27, 2020)
- **“Personal Jurisdiction in Federal Class Actions: Three New Rulings but Little Clarity,”** Sarah LaFreniere, Hausfeld Competition Bulletin/Lexology (Spring 2020)
- **“In Defense of Class Actions: A Response to Makan Delrahim’s Commentary on the UK Mastercard Case,”** Michael D. Hausfeld, Irving Scher, Laurence T. Sorokin, Competition Policy International (June 8, 2020)
- **“From Silicon Valley to the Burger Joint: The Evolving Landscape of Vertical ‘No-Poach’ Cases,”** Jeanette Bayoumi, Hausfeld Competition Bulletin/Lexology (Fall 2019).
- **“Social Media and Antitrust: A Discovery Primer,”** Nathaniel C. Giddings & Aaron Patton, Antitrust Magazine (Summer 2018).

# Exhibit B

BISMARCK  
BOSTON  
LOS ANGELES  
MINNEAPOLIS  
NEW YORK  
SILICON VALLEY  
SIOUX FALLS

**ROBINS  KAPLAN<sub>LLP</sub>**

**ANTITRUST LITIGATION  
EXPERIENCE**

**ROBINSKAPLAN.COM**

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## **WHO WE ARE: ROBINS KAPLAN**

**A national firm dedicated to trial work.**

**Robins Kaplan is among the nation's premier trial law firms, with more than 225 attorneys across seven U.S. cities.**

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With one of the nation's top-ranked antitrust practices, we are one of few national firms to have obtained landmark successes on behalf of both plaintiffs and defendants in major antitrust litigation and at trial, including in several of the most significant antitrust cases ever litigated.

We have secured nearly \$10 billion in recoveries for antitrust plaintiffs in the past several years, recovering more than \$2 billion for clients through jury verdicts alone.

Our lawyers secured the first settlement between a state and Big Tobacco using an antitrust theory, and we have forced critical structural reforms in many other industries. Our broad range of experience is reflected in the diverse backgrounds of our legal professionals.

Our persistent trial focus and readiness drives our success in and out of the courtroom.

# DEI | DIVERSITY EQUITY & INCLUSION



ROBINS / KAPLAN LLP

## OUR COMMITMENT

At Robins Kaplan LLP, our commitment to diversity has been constantly renewed and revitalized since the founding of our firm in 1938. We recognize that the professionals we employ are our primary assets. Without skilled human resources, the legal advice and courtroom advocacy we provide to our clients is diminished. We are committed to advancing diversity by ensuring that fairness, respect and professional opportunity for everyone are integral to all of our recruiting, retention and promotion efforts. We believe that the diverse background of our people brings necessary and varied perspectives that enrich our practice of law. Those perspectives make us more than a diverse law firm; they make us a smart one.

**50%**

ATTORNEYS PROMOTED TO PARTNER IN 2020 WHO ARE FROM HISTORICALLY UNDERREPRESENTED GROUPS

**2020**

NAMED A BEST LAW FIRM FOR LGBTQ INDIVIDUALS BY VAULT

## RECOGNITIONS



WANTON INJUSTICE LEGAL DETAIL FOUNDERS CIRCLE



2021 MANSFIELD CERTIFIED PLUS 4.0



LCLD 2020 TOP PERFORMER



LEADERSHIP COUNCIL ON LEGAL DIVERSITY MEMBER



DIVERSITY AND FLEXIBILITY ALLIANCE 2021 LEADER



2020-2021 BEST PLACES TO WORK FOR LGBTQ EQUALITY



MINNESOTA WOMEN LAWYERS 2021 PLATINUM PARTNER



2019 AMERICAN BAR ASSOCIATION LAW FIRM DIVISION'S MARTHA AFRICA GOLDEN HAMMER AWARD



CALIBRATE ID MEMBER ADDRESSING INCLUSION/ DIVERSITY AMONG LAW FIRM BUSINESS SERVICE PROFESSIONALS

## TRIAL VICTORIES

Our trial lawyers have secured billions of dollars in damages in jury and arbitration awards against opponents from Apple to Disney to Starbucks.

**\$6.8 BILLION**

Settlement with Big Tobacco after a historic 15-week trial. With the result, Robins Kaplan became “the vanguard firm in the first successful battle with Big Tobacco” for states and health insurers (Law360). Domino-like settlements with 45 states followed.

*State of Minnesota and Blue Cross & Blue Shield of Minnesota v. Philip Morris Inc., et al.* (Minn.)

**\$2.7 BILLION**

Arbitration award for a Kraft Foods spinoff in breach of contract action against Starbucks, which had terminated Kraft’s exclusive rights to sell Starbucks coffee in grocery and retail stores.

*Kraft Foods Global, Inc. v. Starbucks Corporation* (S.D.N.Y.)

**\$520 MILLION**

Jury verdict against Microsoft for infringing a patent for web browser technology. The Federal Circuit affirmed the award, which increased to \$565 million with pre-judgment interest. The case settled days before a second trial on invalidity.

*Eolas Technologies, Inc., et al. v. Microsoft Corp.* (N.D. Ill.)

**\$320 MILLION**

Federal jury verdict, plus prejudgment interest, against the creators of “Who Wants to Be a Millionaire?” in a dispute over the show’s profits.

*Celador International, Ltd. v. American Broadcasting Cos., Inc., et al.* (C.D. Cal.), aff’d (9th Cir.)



## RECENT TRIAL EXPERIENCE RECOGNITION

THE NATIONAL  
LAW JOURNAL

“Elite Trial Lawyers List”

“Plaintiffs’ Hot List”

THE  
AMERICAN LAWYER

“A-List”

**B T I**  
CONSULTING GROUP

“Most Feared Law  
Firms in Litigation”

“Client Service  
A-Team”

“Honor Roll: Most  
Feared Law Firms”

“Litigation Outlook:  
Awesome Opponent”

**B** BENCHMARK  
LITIGATION

“Top 10 Plaintiffs Firm”

**ALM**  
An Integrated Media Company

“Go-To Law Firms at the Top  
500 Companies”

## WHO WE ARE: ANTITRUST AND TRADE REGULATION GROUP

We are 36 attorneys and financial and economic experts who pursue industry-disrupting antitrust litigation. Most of the attorneys in our group have earned individual recognition for excellence in antitrust work. Highlights include:



### MEEGAN F. HOLLYWOOD

*Crain's New York Business*: Notable Women in Law | *Benchmark Litigation*: Future Star | *New York Law Journal* Rising Star | *The National Law Journal* Rising Star of the Plaintiffs Bar | *Global Competition Review* 40 Under 40 | American Antitrust Institute Outstanding Antitrust Litigation Achievement by a Young Lawyer | American Bar Association On the Rise: Top 40 Young Lawyers | *Global Competition Review* Lawyer of the Year Under 40 Shortlist



### KELLIE LERNER

*The Legal 500*: Leading Lawyer | *Global Competition Review*: Women in Antitrust | *Benchmark Litigation*: Future Star | *Benchmark Litigation*: Litigation Star | *Crain's New York Business*: Notable Women in Law | *New York Law Journal* Distinguished Leader | *Who's Who Legal*: Competition | *New York Law Journal* Antitrust Trailblazer | *Chambers USA*: Antitrust New York: Band 1 | *The Legal 500*: Class Action-Antitrust | *New York Law Journal* Competition Lawyer Under 40 | *New York Law Journal* Distinguished Leader



### WILLIAM V. REISS

*Chambers USA*: Antitrust New York: Band 2 | American Antitrust Institute Outstanding Antitrust Litigation Achievement by a Young Lawyer | *The National Law Journal* Antitrust Trailblazer | *Law360* Competition Rising Star



### AARON M. SHEANIN

*Chambers USA*: Antitrust California: Band 2 | "Top Antitrust Lawyer" by *The Daily Journal* | "California Super Lawyer" by *Super Lawyers* | Finalist for "Consumer Attorney of the Year," Consumer Attorneys of California



### BENJAMIN D. STEINBERG

American Antitrust Institute Outstanding Antitrust Litigation Achievement by a Young Lawyer | "New York Metro Rising Star" by *Super Lawyers*



### K. CRAIG WILDFANG

*Finance & Commerce* and *Minnesota Lawyer*: Minnesota ICON | *Benchmark Litigation*: Local Litigation Star | *Law360* Titan of the Plaintiff's Bar | American Antitrust Institute Antitrust Enforcement Award / Outstanding Antitrust Achievement in Private Law Practice | *Chambers USA*: Antitrust Minnesota: Band 1 and Nationwide: Band 2 | *The National Law Journal* Antitrust Trailblazer

### OUR TEAM INCLUDES:

- » Two former U.S. Attorneys.
- » Former special counsel for the DOJ Antitrust Division.
- » Former chair of Am Law 100 antitrust practice.
- » Former Dean and current President of the International Academy of Trial Lawyers.

## ANTITRUST LITIGATION SUCCESS

Robins Kaplan has a well-established history of successfully leading major antitrust actions.

### FOR PLAINTIFFS

#### **Payment Card Interchange Fee and Merchant Discount Antitrust Litigation**

**\$6.26 BILLION**

For a class of 10 million merchants, Robins Kaplan pursued an innovative theory that Visa's and Mastercard's interchange fee structure and rules are anticompetitive. The \$6.26 billion settlement, which was granted final approval, is the largest known settlement of a private antitrust action in the 120-year history of the Sherman Act.

*In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (E.D.N.Y.)

#### **Air Cargo Shipping Services Antitrust Litigation**

**\$1.2 BILLION**

In a class action against providers of air cargo services, Robins Kaplan collected evidence around the world and compelled deposition testimony through The Hague. The final two of 28 settlements came on the eve of trial.

*In re Air Cargo Shipping Services Antitrust Litigation* (E.D.N.Y.)

#### **Automotive Parts Antitrust Litigation**

**\$1.2 BILLION TO DATE**

In an unprecedented MDL stemming from the largest criminal antitrust investigation in U.S. history, Robins Kaplan has recovered more than \$1.2 billion in settlements for purchasers of price-fixed auto parts. The cumulative figure is the largest indirect purchaser recovery in U.S. history.

*In re Automotive Parts Antitrust Litigation* (E.D. Mich.)

#### **Kirk Dahl, et al. v. Bain Capital Partners, LLC**

**\$600 MILLION**

Robins Kaplan identified private equity firms' alleged conspiracy to suppress acquisition prices for target companies in leveraged buyouts and recovered nearly \$600 million in settlements.

*Kirk Dahl, et al. v. Bain Capital Partners, LLC, et al.* (D. Mass.)

#### **Cathode Ray Tube Antitrust Litigation**

**\$300 MILLION IN SETTLEMENT + \$22.5 MILLION JURY VERDICT**

Robins Kaplan represented Best Buy in an action alleging a conspiracy to fix the prices of cathode ray tubes, which were once integral components of televisions and computer monitors. The case concluded with settlements exceeding \$300 million and a \$22.5 million jury verdict against one defendant.

*In re Cathode Ray Tube Antitrust Litigation* (N.D. Cal.)

#### **Vitamins Antitrust Litigation**

**\$250 MILLION**

The firm represented agribusiness clients as opt-out plaintiffs in litigation over a decade-long price-fixing conspiracy among international vitamin manufacturers. The cases settled before trial.

*In re Vitamins Antitrust Litigation* (D.D.C.)

## ANTITRUST LITIGATION SUCCESS CONTINUED

### FOR DEFENDANTS

#### **Wholesale Grocery Products Antitrust Litigation**

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Robins Kaplan LLP served as lead counsel representing grocery wholesaler Supervalu Inc. in consolidated federal antitrust actions on behalf of putative multi-state class of grocery retailers challenging 2003 asset exchange transaction, and in a related Federal Trade Commission investigation regarding the asset exchange transaction. Robins Kaplan persuaded the FTC to close its investigation without action, and it obtained a ruling excluding plaintiff's economics expert and granting summary judgment and an Eighth Circuit affirmation of judgment in Supervalu's favor in December 2019.

*In re Wholesale Grocery Products Antitrust Litigation* (D. Minn.)

#### **Digital Sun v. The Toro Co.**

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Robins Kaplan secured Rule 12 dismissal of a complaint against The Toro Company by a manufacturer of smart-sprinkler technology, in a case at the intersection between antitrust and patent law.

*Digital Sun v. The Toro Company* (N.D. Cal.)

#### **Insulate SB, Inc. v. Advanced Finishing Systems, Inc.**

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Robins Kaplan obtained a Rule 12(b)(6)/*Twombly* dismissal of a putative nationwide antitrust class action against Graco Inc. and its distributors of spray foam insulation equipment, which had been brought after a Federal Trade Commission decree related to Graco's spray foam business acquisitions. Robins Kaplan represented Graco on appeal, and it obtained an affirmance by the Eighth Circuit.

*Insulate SB, Inc. v. Advanced Finishing Products & Equipment, et al.* (D. Minn.)

#### **In re Union Oil Company of California**

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In another case at the intersection between antitrust and patent law, Robins Kaplan defended Section 5 antitrust allegations by the Federal Trade Commission against UNOCAL based on standard-setting theory for reformulated gasoline patents.

*In re Union Oil Company of California* (Federal Trade Commission, 2004)

#### **Omnicare, Inc. v. Unitedhealth Group, Inc.**

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Represented defendants Unitedhealth Group, Inc. and Pacificare, Inc. in an antitrust lawsuit involving alleged price-fixing and fraud related to prescription drug reimbursement under the federal Medicare Part D program. Plaintiff Omnicare sought damages exceeding \$1 billion and permanent injunctive relief. After summary judgment motion was argued in August 2008, the U.S. District Court granted summary judgment to defendants on all claims in January 2009 which the Seventh Circuit affirmed on appeal.

*Omnicare, Inc. v. Unitedhealth Group* (N.D. Ill.)

#### **In re Farmed Salmon Antitrust Litigation**

---

Defended Norwegian farmed salmon producer in series of lawsuits alleging price-fixing in the market for farmed Atlantic salmon. Obtained voluntary dismissal of all claims in 2019.

*In re Farmed Salmon Antitrust Litigation* (S.D. Fla.)

## **COURT-APPOINTED LEADERSHIP IN ANTITRUST CASES**

*BCBSM, Inc. v. Vvera Pharmaceuticals, LLC, et al.*  
(S.D.N.Y.)

*Sterk et al. v. The Bank of Nova Scotia, et al.*  
(D.N.J.)

*In re Hard Disk Drives Suspension Assemblies Antitrust  
Litigation* (N.D. Cal.)

*In re Brand Name Prescription Drug Indirect  
Purchaser Antitrust Litigation* (multistate)\*

*Ace Marine Rigging & Supply, Inc. v. Virginia  
Harbor Services, et al.* (C.D. Cal.)\*

*In re Abbott Labs Norvir Antitrust Litigation* (N.D. Cal.)\*

*In re Aftermarket Automotive Lighting Products  
Antitrust Litigation* (C.D. Cal.)\*

*In re Pool Products Distribution Market  
Antitrust Litigation* (E.D. La.)\*

*In re Wells Fargo Collateral Protection  
Insurance Litigation* (C.D. Cal.)

*Howard Hess Dental Labs, et al. v. Dentsply  
Int'l, Inc.* (D. Del.)\*

*In re Warfarin Sodium Antitrust Litigation* (D. Del.)\*

*In re Lorazepam and Clorazepate Antitrust  
Litigation* (D.D.C.)\*

*In re Disposable Contact Lens Antitrust  
Litigation* (M.D. Fla.)

*In re Florida Cement and Concrete  
Antitrust Litigation* (S.D. Fla.)\*

*In re Marine Hose Antitrust Litigation* (S.D. Fla.)\*

*In re Photochromic Lens Antitrust Litigation* (M.D. Fla.)\*

*In re Food Service Equipment Hardware Antitrust  
Litigation* (N.D. Ga.)\*

*In re Aftermarket Filters Antitrust Litigation* (N.D. Ill.)\*

*Washington County Health Care Authority, Inc. d/b/a  
Washington County Hospital & Nursing Home, et al. v.  
Baxter International Inc., et al.* (N.D. Ill.)

*Dahl, et al. v. Bain Capital Partners, LLC, et al.* (D. Mass.)



## **COURT-APPOINTED LEADERSHIP IN ANTITRUST CASES CONTINUED**

*In re Automotive Parts Antitrust Litigation*  
(43 separate actions) (E.D. Mich.)

*In re Vehicle Carrier Services Antitrust Litigation* (D.N.J.)

*Animalfeeds International Corp. v. Stolt-Nielsen SA* (S.D.N.Y.)\*

*In re Air Cargo Shipping Services Antitrust Litigation* (E.D.N.Y.)

*In re Bupirone Antitrust Litigation* (S.D.N.Y.)\*

*In re Crude Oil Commodity Futures Litigation* (S.D.N.Y.)

*In re Keurig Green Mountain Single-Serve  
Coffee Antitrust Litigation* (S.D.N.Y.)

*In re Maltol Antitrust Litigation* (S.D.N.Y.)\*

*In re Natural Gas Commodity Litigation* (S.D.N.Y.)\*

*In re Optiver Commodities Litigation* (S.D.N.Y.)

*In re Oxycontin Antitrust Litigation* (S.D.N.Y.)\*

*In re Payment Card Interchange Fee and Merchant Discount  
Antitrust Litigation* (E.D.N.Y.)

*In re Stock Exchanges Options Trading  
Antitrust Litigation* (S.D.N.Y.)\*

*In re Foundry Resins Antitrust Litigation* (S.D. Ohio)\*

*In re Polyurethane Foam Antitrust Litigation* (N.D. Ohio)

*Vista Healthplan, Inc. v. Sanofi-Aventis C.A.* (S.D. Ohio)\*

*In re Flat Glass II Antitrust Litigation* (W.D. Pa.)\*

*Anastasio, et al. v. Total Gas & Power North America, Inc.*  
(S.D.N.Y.)

*In re Merck Mumps Vaccine Antitrust Litigation* (E.D. Pa.)

*In re Puerto Rican Cabotage Antitrust Litigation* (D.P.R.)\*

*In re Interior Molded Doors Indirect Purchaser Antitrust  
Litigation* (E.D. Va.)

*In re Local TV Advertising Antitrust Litigation* (N.D. Ill.)

*County of Monmouth, New Jersey v. Florida Cancer Specialists,  
et al.* (M.D. Fla.)

\*Prior to joining Robins Kaplan LLP.



## ANTITRUST RECOGNITION

“

**I know the plaintiffs’ counsel by experience.  
They are all top-end lawyers.**

**- JUDGE BRIAN COGAN**

Transcript of Civil Cause for Fairness Hearing at 13,  
*In re Air Cargo Shipping Services Antitrust Litigation* (E.D.N.Y., March 24, 2016)

”

**“Each of you have demonstrated extreme competence, respect for the court,  
and diligence in your work . . . You are certainly amongst the best attorneys  
with whom I have had the opportunity to work. Let me thank you for your  
professionalism in this case.”**

**- Judge Marianne O. Battani**

*In re Automotive Parts Antitrust Litigation* (E.D. Mich., June 4, 2020)

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**“[G]reat papers. Great oral argument.”**

**- Judge Andrew J. Guilford**

Transcript of Motion Hearing at 49, *In re Wells Fargo Collateral Protection Insurance Litigation*  
(C.D. Cal., June 18, 2018)

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**“Settlement Class Counsel are highly experienced practitioners  
in complex litigation generally and antitrust litigation specifically.  
In addition, Settlement Counsel has been consistently commended  
in this case, deservedly so.”**

**- Judge John Gleeson**

Memorandum and Opinion Granting Approval of the Lufthansa Settlement at 28,  
*In re Air Cargo Shipping Services Antitrust Litigation* (E.D.N.Y., Sept. 25, 2009)

## ANTITRUST RECOGNITION CONTINUED



Robins Kaplan LLP

The Robins Kaplan National Antitrust Group “has an enviable track record litigating and winning big antitrust cases and securing favorable settlements. Whether it is credit card fees or automobile parts, the results speak for themselves.”

- Interviewee Comment, *Chambers USA*, 2021

Attorneys are “well organized, thorough and whip-smart.”

- Source Comment, *Chambers USA*, 2021

“They are good at making cost efficiencies and understanding the business aspects.”

- Client Comment, *Chambers USA*, 2019

Attorneys were “very responsive” and offered “really good insights into the navigation of the demands and requirements of regulators.”

- Client Comment, *Chambers USA*, 2019

“They are simply amazing; they are forward-thinking, creative and very effective. They do a marvelous job.”

- Peer Comment, *Chambers USA*, 2018

“I think the team is outstanding: Very smart, effective and great to work with – they are top shelf.”

- Peer Comment, *Chambers USA*, 2018

“Receives widespread praise for its capabilities in all types of antitrust matters but has achieved particularly significant success on behalf of plaintiff clients. Demonstrates considerable trial experience and knowledge of government agencies.”

- Client Comment, *Chambers USA*, 2015



**They are easy to get along with, straightforward and get the job done.**

- CLIENT COMMENT, *Chambers USA*, 2019



## **ANTITRUST RECOGNITION CONTINUED**

### *Benchmark Litigation*

Highly Recommended Litigation  
Firm in Minneapolis  
(2021-2022 Editions)

Firm - Tier 1: Antitrust  
(2021-2022 Editions)

### *CHAMBERS USA*

Antitrust Nationwide: Band 1  
2014-2021

Antitrust New York: Band 1  
2014-2021

Antitrust Minnesota: Band 1  
2014-2021

### *GLOBAL COMPETITION REVIEW*

“Regional Firm of  
the Year” Shortlist  
2017-2020

“Litigation of the Year -  
Cartel Prosecution” Shortlist  
*Automotive Parts, 2021*

GCR 100: New York  
2021

### *LAW360*

“Most Feared  
Plaintiffs Firms”  
2014-2015

“Litigation  
Powerhouse”  
2016 inaugural list

“Competition Practice  
Group of the Year”  
2014-2015

### *THE LEGAL 500*

One of the nation’s top firms in the area  
of Antitrust: Civil Litigation/Class Actions  
2016-2021

One of the best plaintiffs’ firms in the country in  
Class Action: Plaintiff Representation - Antitrust  
2015

### *U.S. NEWS & WORLD REPORT: BEST LAWYERS*

Litigation - Antitrust:  
National Tier 1, Minneapolis  
(2019, 2021 Editions)

Litigation - Antitrust:  
Metropolitan Tier 1, Minneapolis  
(2022 Edition)

## **THE ROBINS KAPLAN TEAM**





## KELLIE LERNER

**Co-Chair** | Antitrust and Trade Regulation

**Partner** | New York

### CONTACT

KLerner@RobinsKaplan.com

212.980.7406

### EDUCATION

Rutgers Law School, Dean's Merit  
Scholar, J.D. (2003)

Rutgers University, B.A., cum laude, Phi  
Beta Kappa (1999)

### BAR AND COURT ADMISSIONS

New York

New Jersey

U.S. Court of Appeals, Second Circuit

U.S. District Court, Southern District of  
New York

U.S. District Court, New Jersey

Kellie Lerner is nationally recognized for her work over the last two decades representing clients in high-stakes antitrust disputes across the country. Ms. Lerner has successfully led numerous antitrust class actions and currently serves in leadership positions in *BCBSM, Inc. v. Vyera Pharmaceuticals, LLC, et al.*, *In re Merck Mumps Vaccine Antitrust Litig.*, *In re Hard Disk Drive Suspension Assemblies Antitrust Litig.*, and *Sterk, et al. v. The Bank of Nova Scotia, et al.* Ms. Lerner previously represented a publicly traded corporation where she successfully obtained a complete dismissal of a federal and multi-state antitrust class action filed against her client. She has also counseled generic pharmaceutical, alternative energy, and entertainment companies on competition issues. Ms. Lerner is particularly adept at identifying new antitrust actions, initiating the first antitrust class action lawsuits in the country in dozens of actions that have ultimately resulted in billions of dollars in recoveries for victims of anticompetitive conduct.

*Chambers USA* recognizes Ms. Lerner as one of the country's top plaintiff's antitrust attorneys. Ranked over the last four consecutive years, *Chambers* notes Ms. Lerner "is a brilliant tactician and a fierce litigator. She does this while maintaining a cordial relationship both with other plaintiffs' counsel and with defense counsel." *Chambers* similarly notes that Ms. Lerner has been praised by her peers for her ability to "get large teams of people to work effectively together," as well as for being a "zealous advocate." *The Legal 500 USA* also praised Ms. Lerner for her "superior intellect, determination and political savvy in getting the job done."

Ms. Lerner is a two-time recipient of *Crain's New York Business'* "100 Notable Women in Law" award, has been named to *Global Competition Review's* prestigious "Women in Antitrust list," and is the recipient of the *New York Law Journal's* "Distinguished Leader" and "New York Trailblazer" awards, as well as the *National Law Journal's* "Elite Women of the Plaintiff's Bar" and "Antitrust and M&A Trailblazer" awards. Ms. Lerner was selected by *Benchmark Litigation* as a "Litigation Star" and is the recipient of Inside Counsel's "National Women in Law" award. A frequent author and lecturer, Ms. Lerner is a recognized voice on all issues of antitrust law and her opinions have been quoted in *The Washington Post*, *Bloomberg Businessweek*, *Yahoo News*, and *CBS MoneyWatch*, among other publications.

**EXPERIENCE CONTINUED****KELLIE LERNER CONTINUED**

Ms. Lerner is a member of the Executive Committee and the Chair of Diversity for the Antitrust Section of the New York State Bar Association, a member of the Advisory Board of the Institute of Consumer Antitrust Studies of the Loyola University Chicago School of Law, Co-Chair of the National Association of Women Lawyers' Litigation Affinity Group, Executive Committee Member and Secretary of The Committee to Support the Antitrust Laws (COSAL), and an Editor of the ABA's *Antitrust* magazine.

Ms. Lerner co-founded Roseann's Gift, an organization named for her late mother and dedicated to raising research funding to cure lung cancer. The organization is funding lung cancer research at Weill Medical College of Cornell University. Ms. Lerner is a member of the Tri-State Area Advisory Board of Jumpstart, which works to provide equal access to literacy education for preschool children in under-resourced communities, and was previously a member of the Board of Directors for the Jewish Community Project Downtown, an organization that was formed in the wake of the September 11th attacks to revitalize the Jewish community in lower Manhattan. She currently provides pro bono assistance to KIND (Kids In Need of Defense) and Lambda Legal and has previously provided assistance to the Transgender Legal Defense and Education Fund, AARP and the Lawyers Committee for Civil Rights Under the Law.

**RECENT NOTABLE RECOGNITIONS****AWARDS**

- » *The Legal 500*: Leading Lawyer (2021)
- » *Global Competition Review*: GCR Women in Antitrust (2021)
- » *Crain's New York Business*: Notable Woman in Law (2020-2021)
- » *New York Law Journal*: Distinguished Leader (2020)
- » *Who's Who Legal*: Competition (2020)
- » *New York Law Journal*: New York Trailblazer (2019)
- » *The National Law Journal*: Elite Woman of the Plaintiff's Bar (2019)
- » *Corporate Counsel/InsideCounsel*: National Women in Law (2018)
- » *Profiles in Diversity Journal*: Diversity Leader (2017)
- » *The National Law Journal*: Antitrust and M&A Trailblazer (2016)
- » *Profiles in Diversity Journal*: Woman Worth Watching (2015)
- » *New York Law Journal*: Rising Star (2013)
- » *Law360*: Competition Rising Star (2012)

*\*\*Being named to the list or receiving the award is not intended and should not be viewed as comparative to other lawyers or to create an expectation about results that might be achieved in a future matter.*

**RANKINGS**

- » *Benchmark Litigation*: Litigation Star (2022 Edition)
- » *Benchmark Litigation*: Future Star (2016-2021 Editions)
- » *Chambers USA*: Antitrust New York: Band 1 (2018-2021)
- » *Super Lawyers*: New York Metro Super Lawyer (2018-2021)
- » *The Legal 500*: Recommended in the Field of Class Action-Antitrust (2013-2018)

**WRITINGS**

KELLIE LERNER CONTINUED

- » **A Perfect Storm: Health Care Consolidation and the Lack of Antitrust Enforcement**  
*American Bar Association* (Summer 2020)
- » **No-Poachers Find Themselves in Hot Water**  
*Bloomberg Law* (Aug. 29, 2018)
- » **Judges Can Demand Diversity In Rule 23(g) Applications**  
*Law360* (Aug. 15, 2018)
- » **How Do You Solve a Problem Like Algorithmic Price Fixing?**  
*Bloomberg Law* (Feb. 8, 2018; nominated for a *Concurrences* 2019 Antitrust Writing Award in Business Articles: Concerted Practices)
- » **Addressing the Gender Divide in the Courtroom**  
*New York Law Journal* (Sept. 8, 2017)
- » **Consumer Protection Developments: New Challenges and Unanswered Questions**  
*Antitrust Magazine* (July 10, 2017)
- » **The 9th Circ.'s Rule 6(e) Test For Private Antitrust Cases**  
*Law360* (Oct. 20, 2015)
- » **Early Lessons From The REMS Battlefield**  
*Law360* (Mar. 9, 2015)
- » **Tech-Tying Vs. Section 2 Of The Sherman Antitrust Act**  
*Law360* (Dec. 4, 2014)
- » **The 5 Hidden Benefits of a Diverse Legal Team**  
*InsideCounsel* (Nov. 17, 2014)
- » **It's Time to Revisit Antitrust Penalties**  
*Daily Journal* (Oct. 28, 2014)
- » **DOJ Stays Are Often Unfair To Private Antitrust Plaintiffs**  
*Law360* (Mar. 3, 2014)
- » **5 Overlooked Reasons to Be Class Rep in an Antitrust Suit**  
*Law360* (May 16, 2013)
- » **When You Lose the Race to Corporate Leniency**  
*Law360* (Mar. 15, 2013)

**SPEAKING ENGAGEMENTS/LECTURES**

- » **Should the Antitrust Laws Be Used to Promote Societal Change? An Exploration of the Intersection Between Antitrust Enforcement and the Promotion of Environment and Societal Welfare**  
Moderator, New York State Bar Association's Annual Meeting - Antitrust Law Section Panel (January 24, 2022)
- » **Leading Voices in Private Enforcement: Insights on Bringing and Litigating Successful Antitrust Cases**  
Panelist, 14th Annual Private Antitrust Enforcement Virtual Conference (November 12, 2020)
- » **Are You Down with APP (Algorithmic Pricing)**  
Webinar, American Bar Association (November 3, 2020)
- » **A Conversation With Women in Government Antitrust Enforcement**  
Moderator, New York Women in Antitrust Panel, New York, New York (May 28, 2020)
- » **Noerr-Pennington Immunity and "Sham" Petitioning Developments in the Pharmaceutical Industry**  
New York State Bar Association, New York, New York (April 9, 2019)

**SPEAKING ENGAGEMENTS/LECTURES** CONTINUED

**KELLIE LERNER** CONTINUED

- » **Blunt Instrument or Surgical Blade: Is Section 2 of the Sherman Act the Right Tool to Address Financial Market Manipulation?**  
New York State Bar Association, New York, New York (January 17, 2019)
- » **New Revenue Streams: Analyzing Antitrust Class Action Settlement Claims**  
Bloomberg Law Webinar (Apr. 10, 2019)
- » **Role of Market Power in the Digital Economy**  
New York State Bar Association (January 25, 2018)
- » **Women in Antitrust - The Times They Are A-Changing**  
New York State Bar Association - Antitrust Law Section (January 24, 2018)
- » **Class Action Reform: Necessary or Nocuous?**  
American Bar Association (January 17, 2018)
- » **Class Action Settlements for Antitrust Practitioners and In-House Counsel**  
Practising Law Institute (June 21, 2017)
- » **5 Hidden Benefits of a Diverse Legal Team**  
Robins Kaplan LLP Webinar (March 3, 2015)

**ORGANIZATIONS**

- » New York State Bar Association, Antitrust Section;  
Executive Committee Member and Chair of Diversity
- » National Association of Women Lawyers, Litigation Affinity Group Co-Chair
- » American Bar Association, Section of Antitrust Law; Editor, *Antitrust* Magazine
- » The Committee to Support the Antitrust Laws, Executive Committee Member and Secretary
- » Institute of Consumer Antitrust Studies of the Loyola University Chicago School of Law,  
Advisory Board Member
- » New York Women in Antitrust Group, Chair



## BENJAMIN D. STEINBERG

**Partner** | New York  
Antitrust and Trade Regulation

### CONTACT

BSteinberg@RobinsKaplan.com

212.980.7460

### EDUCATION

University of Minnesota Law School,  
J.D., *magna cum laude* (2013);  
*Minnesota Law Review* 2011-2013;  
Dorothy O. Lareau Legal Writing  
Award; Best 1L Brief; Best 1L Oralist;  
Honors in Practice and Professionalism,

University of Madison-Wisconsin B.A.,  
Journalism, Spanish (2010)

### BAR AND COURT ADMISSIONS

Minnesota

New York

U.S. Court of Appeals, Ninth Circuit

Benjamin D. Steinberg is an antitrust litigator who prosecutes anticompetitive conduct, with a particular focus on conspiracies. He represents consumers and businesses harmed by price fixing, illegal monopolization, and other unlawful business practices. Mr. Steinberg has helped lead several groundbreaking lawsuits across the country, where he has recovered hundreds of millions of dollars on behalf of his clients. In 2020, the American Antitrust Institute honored Mr. Steinberg for “Outstanding Antitrust Litigation Achievement by a Young Lawyer.” Mr. Steinberg is an emerging public voice on antitrust issues and is often published in the national press.

Mr. Steinberg’s antitrust work includes *BCBSM, Inc. v. Vyera Pharmaceuticals, LLC, et al.*, where he serves as Interim Lead Counsel for indirect purchasers alleging that Martin Shkreli and his former companies illegally monopolized the market for the life-saving drug Daraprim; *In re Disposable Contact Lens Antitrust Litigation*, where he represents consumers challenging a series of “minimum pricing” policies imposed by contact lens manufacturers, and *In re Automotive Parts Antitrust Litigation*; a civil action with settlements of \$1.2 billion and stemming from one of the largest Department of Justice criminal investigations in U.S. history.

Mr. Steinberg is a member of the Executive Board of the New York State Bar Association Antitrust Section and serves as Co-Chair of the Section’s Class Action and Private Litigation Committee.

Mr. Steinberg is committed to *pro bono* work and has helped pioneer new legal strategies for women victimized by online sexual harassment.

## RECENT NOTABLE RECOGNITIONS

BENJAMIN D. STEINBERG CONTINUED

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### AWARDS

- » American Antitrust Institute: Outstanding Antitrust Litigation Achievement by a Young Lawyer Award (2020)
- » *Super Lawyers*: New York Metro Rising Star (2020-2021 Editions)
- » Minnesota State Bar Association: North Star Lawyer (named for providing at least 50 hours of *pro bono* legal services, 2015-2016)

*\*\*Being named to the list or receiving the award is not intended and should not be viewed as comparative to other lawyers or to create an expectation about results that might be achieved in a future matter.*

### WRITINGS

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- » **US Antitrust Regulators Should Foster Climate Collaboration**  
*Law360* (April 13, 2021)
- » **States Can Use the Coronavirus Response to Go After Insulin Price Gougers**  
*Slate* (April 9, 2020; nominated for a *Concurrences* 2021 Antitrust Writing Award in Business Articles: Unilateral Conduct)
- » **Unintended Consequences: How a DOJ Antitrust Investigation Could Exacerbate Global Warming**  
*The National Law Journal* (December 17, 2019)
- » **Insight: Defendants Class Actions The Solution to Suing Hundreds of Defendants**  
*Bloomberg Law* (December 8, 2018; nominated for a *Concurrences* 2019 Antitrust Writing Award in Business Articles: Private Enforcement).
- » **Revisiting the Applicability and Scope of Daubert at Class Certification Three Years after *Comcast v. Behrend***  
*Antitrust Health Care Chronicle* (February 2016)

### SPEAKING ENGAGEMENTS/LECTURES

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- » **What Role Will Consumer Litigation Play in the Antitrust Fight Over Tech Platforms?**  
New York State Bar Association Antitrust Law Section and Corporate Counsel Section, New York, New York (January 30, 2020)
- » **Cartel Damages Claims: Economic Approached to Estimating Overcharges**  
New York State Bar Association, New York, New York (September 12, 2017)

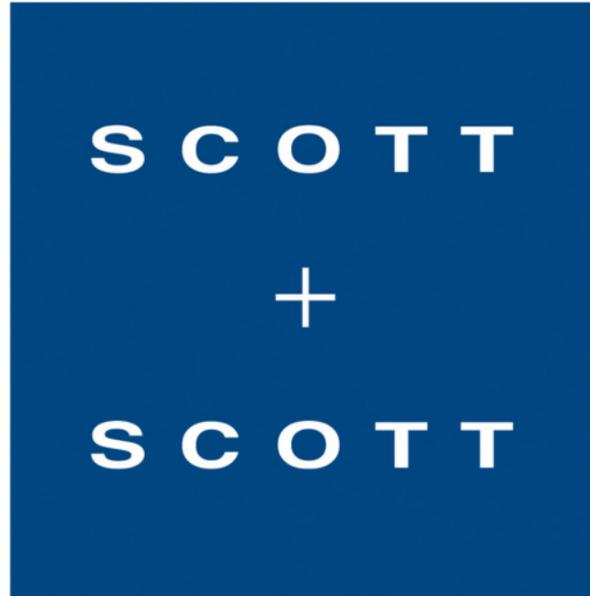
### ORGANIZATIONS

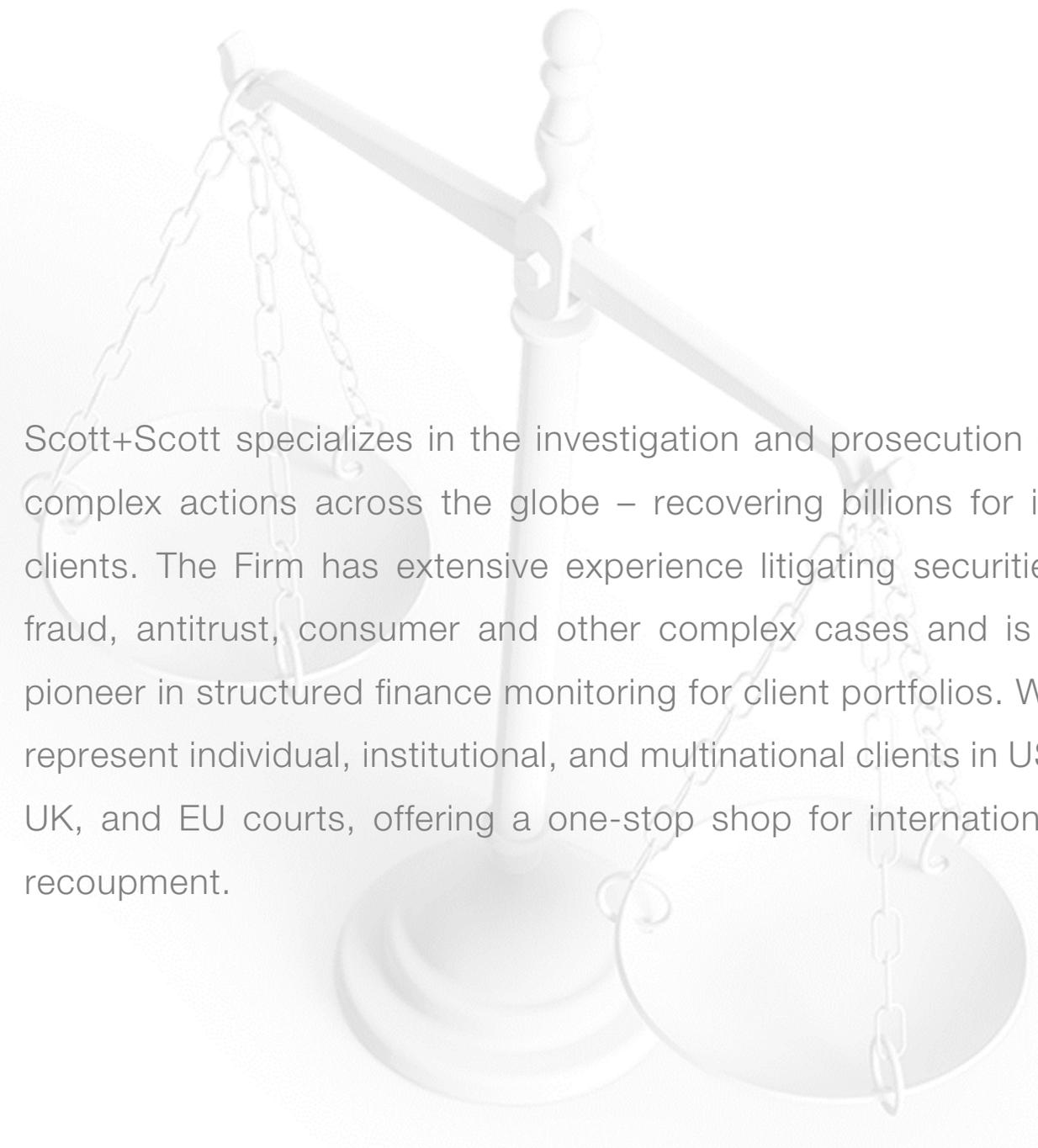
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- » New York State Bar Association Antitrust Section, Executive Board Member; Class Action and Private Litigation Committee Co-Chair

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# Exhibit C





Scott+Scott specializes in the investigation and prosecution of complex actions across the globe – recovering billions for its clients. The Firm has extensive experience litigating securities fraud, antitrust, consumer and other complex cases and is a pioneer in structured finance monitoring for client portfolios. We represent individual, institutional, and multinational clients in US, UK, and EU courts, offering a one-stop shop for international recoupment.











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## JOSEPH P. GUGLIELMO

### PRACTICE EMPHASIS

Joseph P. Guglielmo represents clients in consumer, antitrust and privacy litigation in federal and state courts throughout the United States.

### ADMISSIONS

United States Supreme Court; United States Courts of Appeal: First, Second, Third, Sixth, Eighth, Ninth and Eleventh Circuits; United States District Courts: Southern, Eastern and Northern Districts of New York, Districts of Massachusetts, Connecticut, and Colorado, Northern District of Illinois, Eastern District of Wisconsin; States of New York and Massachusetts; District of Columbia

### EDUCATION

Catholic University of America (J.D., 1995; B.A., cum laude, 1992; Certificate of Public Policy)

### HIGHLIGHTS

Mr. Guglielmo is a partner in the firm's New York office and was recognized for his efforts representing New York University in obtaining a monumental temporary restraining order seeking the recovery of over \$200 million from a Bernard Madoff feeder fund. Specifically, in approving the settlement, New York State Supreme Court Justice Richard B. Lowe III stated, "Scott+Scott has demonstrated a remarkable grasp and handling of the extraordinarily complex matters in this case. The extremely professional and thorough means by which NYU's counsel has litigated this matter has not been overlooked by this Court."

Mr. Guglielmo currently serves in a leadership capacity in a number of complex class actions, including: *Forth v. Walgreen Co, Inc.*, No. 1:17-cv-02246 (N.D. Ill.) (lead counsel, asserting claims on behalf of nationwide class of consumers and third-party payers alleging overcharges for prescription drugs); *Stafford v. Rite Aid Corporation*, 3:17-cv-01340 (S.D. Cal.) (lead counsel, asserting claims that Rite Aid overcharged customers for prescription drugs); *In Re: Disposable Contact Lens Antitrust Litigation*, No. 3:15-md-2626 (M.D. Fla.)(co-lead counsel, settlements obtained in excess of \$45 million on behalf of a class of contact lens purchasers alleging violations of the antitrust laws); *Arkansas Federal Credit Union v. Hudson Bay*, No. 1:19-cv-4492-PKC (S.D.N.Y.) (lead counsel, claims on behalf of financial institutions arising out of data breach); *Sohmer v. UnitedHealth Group Inc.*, No. 18-cv-03191 (JNE/BRT) (D. Minn.) (co-lead counsel, claims on behalf of ERISA plan participants alleging overcharge for pharmaceutical copayments); *Negron v. Cigna Corporation*, No. 3:16-cv-1702 (WWE) (D. Conn.) (chair of executive committee, claims on behalf of ERISA plan participants involving overcharge of copayments for prescription drugs); *McPherson v. American Bank Systems, Inc.*, 5:20-cv-01307-G (W.D. Okla.) (co-lead counsel, claims involving disclosure of personal and financial



information resulting from data breach); In re Sonic Corp. Customer Data Security Breach Litig., 1:17-md-2807 (N.D. Ohio) (Plaintiffs' Steering Committee, claims on behalf of financial institutions involving breach of payment card information); and In re: American Medical Collection Agency, Inc. Customer Data Security Breach Litigation, No. 2:19-md-2904 (D.N.J.), Plaintiffs' Steering Committee, claims on behalf of consumers involving data breach of personal information.

Mr. Guglielmo was recently a member of the settlement team and signatory of a \$92 million settlement in In re TikTok, Inc., Consumer Privacy Litigation, No. 1:20-cv-04699 (N.D. Ill.), involving violations of privacy claims on behalf of consumers. Mr. Guglielmo was also actively involved in In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 1:13-cv-07789-LGS (S.D.N.Y), where settlements in excess of \$2 billion have been obtained on behalf of purchasers of foreign exchange instruments who alleged violations of federal antitrust laws.

Throughout Mr. Guglielmo's career, he has achieved significant victories and obtained numerous settlements for his clients, including: In re Equifax, Inc. Customer Data Security Breach Litigation, No. 1:17-md-02800 (N.D. Ga.) (claims on behalf of financial institutions injured as a result of the 2017 Equifax data breach that exposed the personal and financial information of approximately 150 million U.S. consumers, preliminary approval of settlement valued at \$32.5 million); In re The Home Depot, Inc., Customer Data Security Breach Litigation, MDL No. 2583 (N.D. Ga.) (\$27.25 million settlement on behalf of financial institutions involving data breach and the theft of the personal and financial information of over 40 million credit and debit card holders); First Choice Federal Credit Union v. The Wendy's Company, No. 16-cv-00506 (W.D. Pa.) (\$50 million settlement on behalf of financial institutions involving data breach and the theft of the personal and financial information of over 18.5 million credit and debit card holders); In re Target Corporation Customer Data Security Breach Litigation, MDL No. 2522 (D. Minn.) (\$59 million settlement on behalf of financial institutions injured by the theft of sensitive payment card information); Veridian Credit Union v. Eddie Bauer LLC, No. 2:17-CV-00356-JLR (W.D. Wash.) (\$9.8 million settlement on behalf of financial institutions arising out of data breach of payment card information); Winsouth Credit Union v. Mapco Express Inc., No. 3:14-cv-1573 (M.D. Tenn.) (settlement of the largest dollar-per-card recovery on behalf of financial institutions involving data breach of credit and debit card information).

Mr. Guglielmo was one of the principals involved in the litigation and settlement of In re Managed Care Litigation, MDL No. 1334 (S.D. Fla.), which included settlements with Aetna, CIGNA, Prudential, Health Net, Humana, and WellPoint, providing monetary and injunctive benefits exceeding \$1 billion and played a leading role and obtained substantial recoveries for his clients including Love v. Blue Cross and Blue Shield Ass'n, No. 03-cv-21296 (S.D. Fla.), which resulted in settlements of approximately \$130 million and injunctive benefits valued in excess of \$2 billion; In re Insurance Brokerage Antitrust Litigation, MDL No. 1897 (D.N.J.), settlements in excess of \$180 million; Valle v. Popular Community



## THOMAS K. BOARDMAN

### PRACTICE EMPHASIS

Thomas K. Boardman's practice focuses on antitrust litigation.

### ADMISSIONS

United States Courts of Appeal: Second and Ninth Circuits; United States District Courts: Southern District of New York, Northern and Central Districts of California; States of California and New York

### EDUCATION

University of California, Hastings College of the Law (J.D., 2009); Vassar College (B.A., 2004).

### HIGHLIGHTS

Mr. Boardman is a partner in the firm's New York office and represents plaintiffs in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, *In re GSE Bonds Antitrust Litigation*, *In re Disposable Contact Lens Antitrust Litigation*, and *In re Mexican Government Bonds Antitrust Litigation*. Mr. Boardman recently represented plaintiffs in *Alaska Electrical Pension Fund v. Bank of America Corp.*, a case regarding anticompetitive manipulation of the ISDAfix benchmark rate by large Wall Street banks.

At his prior firm, Mr. Boardman was a member of the trial team in *In re TFT-LCD (Flat Panel) Antitrust Litigation*. For his work on that case, Mr. Boardman was nominated by Consumer Attorneys of California as a finalist for Consumer Attorney of the Year. Mr. Boardman was also an instrumental part of the lead counsel team in *In re Potash Antitrust Litigation (II)*, a case that featured a unanimous victory before an *en banc* panel of the Seventh Circuit, resulting in one of the most influential antitrust appellate opinions in recent memory. Mr. Boardman also represented student-athletes in landmark antitrust litigation against the NCAA: *In re NCAA Athletic Grant-In-Aid Cap Antitrust Litigation* and *In Re NCAA Student-Athlete Name & Likeness Litigation*.

Mr. Boardman co-authored the following articles: *Reverse Engineering Your Antitrust Case: Plan for Trial Even Before You File Your Case*, Antitrust Magazine, Spring 2014, Vol. 28, No. 2, with Bruce L. Simon; and *Class Action for Health Professionals*, chapter from *Advocacy Strategies for Health and Mental Health Professionals*, Springer Publishing Co., 2011, with Bruce L. Simon, Stuart L. Lustig, Editor. Prior to joining Scott+Scott, Mr. Boardman worked at Pearson, Simon & Warshaw, LLP in San Francisco and served as a judicial law clerk to the Hon. Christina Reiss in United States District Court, District of Vermont.

While attending law school, he was a member of the Hastings Science and Technology Law Journal and worked as a research assistant to professors Geoffrey C. Hazard, Jr. and Rory K. Little.



Mr. Boardman has held memberships in the ABA Antitrust Section – Model Jury Instruction Revision Task Force, ABA Antitrust Section – Young Lawyers Division – Litigation Committee, ABA Antitrust Section – Young Lawyers Division – Civil Practice and Procedure Committee, New York State Bar Association – Antitrust Section, Bar Association of San Francisco, and Public Justice Foundation.

In addition, Mr. Boardman has been recognized by Super Lawyers as a leader in antitrust litigation.

Mr. Boardman enjoys running and can regularly be found doing laps of Prospect Park.

