



Jay L. Levine

Jay Levine is a partner in the firm's Washington, D.C. Litigation Department. His practice is concentrated in complex litigation and counseling and he is co-chair of the firm's Antitrust and Consumer Protection Practice Group.

He has extensive litigation experience in a variety of industries, particularly agriculture, health care, pharmaceuticals and consumer products.

Jay represents numerous clients in high-stakes litigation, many of them class actions where the plaintiffs seek billions of dollars in damages. He is currently defending the nation's second largest egg producer against claims of conspiring to raise the price of eggs. He also represents several Japanese auto parts manufacturers accused of price-fixing.

Jay understands the health care industry and is well-versed in what makes it unique among industries. He has represented hospital systems, as well as medical device and pharmaceutical companies, in antitrust and competition-related actions, many of which involved issues not previously litigated.

A significant portion of Jay's practice focuses on counseling clients engaged in mergers and acquisitions. He regularly counsels such clients before the Federal Trade Commission, the Antitrust Division of the Department of Justice, and before states' antitrust authorities. Over the past few years, he has successfully obtained clearance from the antitrust authorities in a number of competitively sensitive transactions. These transactions occurred in a variety of industries, including high-tech, food and beverage distribution, logistics, consumer products, fashion and health care. Jay has successfully defended transactions in administrative and federal court against the Federal Trade Commission and the Department of Justice, respectively. Jay also regularly advises private equity funds concerning their strategic initiatives.

In addition to litigation and merger defense, Jay counsels clients on a wide range of domestic and foreign antitrust and trade regulation

Partner

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SOCIAL MEDIA

Blogs

antitrustlawsource.com
employerlawreport.com
fedseclaw.com
technologylawsource.com

Twitter

@JayLLevine

EDUCATION

Fordham University School of Law,
J.D., *cum laude*, 1990

University of Maryland, B.A., 1987

PRACTICE AREAS

Antitrust & Consumer Protection

- Compliance programs/audits
- Distribution, pricing and promotional allowance programs
- Grand jury investigations/criminal proceedings
- Intellectual property/Internet
- Litigation
- Mergers, acquisitions and joint ventures
- Trade association representation



matters, including pricing and distribution restrictions, joint ventures, exclusive dealing, price discrimination and advertising matters.

In addition to antitrust, Jay advises clients on consumer protection issues, including matters relating to false advertising, marketing, promotion and privacy/data security matters. He represents clients before the FTC's Bureau of Consumer Protection and state consumer protection authorities. Jay has handled data breach notifications for clients and helped them devise privacy protocols, as well as a crisis management response, in the event of a data breach. Jay also defends clients in the subsequent class action that inevitably follows data breaches.

Pharmaceutical industry experience

Jay has advised pharmaceutical companies since 1997 and has represented them in several antitrust and competition-related actions, many of which involved issues not previously litigated. For instance, he represented one of the first generic pharmaceutical companies to sue its brand counterpart for monopolizing the market. The allegations included signing an exclusive with the API manufacturer, filing a baseless Citizens Petition, running an ad campaign that falsely asserted that use of the generic drug required additional blood tests and other anticompetitive tactics. The brand-name company also was accused of violating the Lanham Act in connection with the brand-name drug's advertisement. After defeating motions to dismiss the case and to curtail discovery, Jay was able to engineer a settlement worth over \$100 million for the client. On several occasions he also has defended first-filing generic drug companies accused of antitrust violations by later entrants.

Jay has defended generic pharmaceutical companies in Hatch-Waxman actions, including having counseled many of them in settlements of such actions, particularly with respect to reverse payment issues. He has handled FTC investigations into settlements of Hatch-Waxman actions as well. In addition, Jay has advised brand-name pharmaceutical companies defending against allegations of antitrust violations by consumer groups.

He was a senior member of the trial team that defended a challenge by the Federal Trade Commission to enjoin the merger of two suburban Chicago hospitals. That case, *In the matter of Evanston Northwestern Healthcare Corp.*, presented many novel issues. He played a critical role in *United States v. Long Island Jewish Medical Center*, the Department of Justice's attempt to prevent the merger of two New York health systems. After a six-month investigation and a one-month trial, the court denied the government's request.

Health Care industry experience

Over the past few years, Jay has represented pharmaceutical companies in several antitrust and competition-related actions, many of which involved issues not previously litigated. He also was a senior member of the trial team that defended a challenge by the Federal

Trade Commission to enjoin the merger of two suburban Chicago hospitals. That case, *In the matter of Evanston Northwestern Healthcare Corp.*, presented many novel issues. He played a critical role in *United States v. Long Island Jewish Medical Center*, the Department of Justice's attempt to prevent the merger of two New York health systems. After a six-month investigation and one-month trial, the court denied the government's request.

In addition, Jay has counseled health systems and ancillary service providers on their strategic alliances and negotiations with payers. He also has represented clients before the FTC's Bureau of Consumer Protection, including with respect to health-related claims.

Jay regularly speaks on antitrust, litigation, and consumer protection issues, and can be followed on Twitter @JayLLevine. He is also the managing editor of the firm's innovative *Antitrust Law Source* blog and host of its podcast, as well editor of the firm's *Food And Agriculture Quarterly* and a contributing author to the firm's *Technology Law Source* blog.

Bar Admissions

District of Columbia

New York

U.S. District Court for the District of Columbia

U.S. District Court for the Eastern District of New York

U.S. District Court for the Southern District of New York

Supreme Court of the United States

Presentations

- "Data Breach Simulation," Porter Wright, June 20, 2018
- "Data Breach Simulation," Porter Wright Technology Seminar Series, May 10, 2017
- "PRIS Update: Privacy and Data Security Developments," American Bar Association Section of Antitrust Law, June 20, 2016
- "Recent Developments in Data Breach Law and Practical Pointers When Data is Breached" Porter Wright Technology Seminar Series, June 15, 2016
- "Big Data, Data Analytics and the Law: What Your Company Needs to Know About the Next Big Thing," Porter Wright Technology Seminar Series, May 13, 2015
- "Recent Antitrust Developments in the Health Care and Pharmaceutical Markets," American Bar Association Recent Developments Initiative, November 2015
- "Defending Class Actions: What You Need to Know Today," Annual Ethics & Trends in Litigation Seminar, December 2014
- "Recent Antitrust Developments in the Health Care and Pharmaceutical Markets," American Bar Association Recent Developments Initiative, March 5, 2014
- "Discovery, Data Mining & Digital Footprints – Oh My!" Central Ohio Association of Corporate Counsel, January 2014

PRACTICE AREAS (CONTINUED)

Health Care

- Antitrust counseling and litigation, including clinical integration
- Mergers and acquisitions
- Security breach, malware and ransomware advice
- Clinical integration

Litigation

- Antitrust litigation
- Commercial litigation
- E-Discovery
- Non-competition and trade secrets litigation
- Health care litigation

Mergers & Acquisitions

- Antitrust and regulatory filings

Privacy & Data Security

- Data security and breach notification
- Law enforcement and forensics
- U.S. and international privacy regulation
- Social media

Business Competition, Advice & Litigation

- Antitrust advice and litigation

Corporate & Internal Investigations

Entrepreneurship & Startups

INDUSTRIES

- Agriculture
- Biotech
- Consumer products
- Health care
- Pharmaceuticals
- Retail
- Technology

PROFESSIONAL ASSOCIATIONS

- American Bar Association, *Section of Antitrust Law, Joint Conduct Committee*, Vice Chair, 2011
- Annual Review of Antitrust Law Developments, *Editorial Board*, 2009



Publications

- “A guide through the state action maze,” Member Briefing, American Health Lawyers Association, November 2013
- “No need to be blue about green marketing,” *The Corporate Counselor*, March 2013
- “Green marketing pitfalls to avoid,” *Greener Package/Packaging World*, December 2012
- “Third Circuit provides friendly environment for FTC and plaintiffs challenging certain patent litigation settlements,” *The National Law Review*, August 2012
- “DOJ to standard essential patent holders – ‘We have our eye on you,’” *National Law Review*, February 2012
- “Keeping the dentists away – The FTC’s In re North Carolina Board of Dental,” *Antitrust Health Care Chronicle*, American Bar Association, January 2012
- “Meeting the new challenges for mergers in the health care realm,” Aspatore Books, 2010