



# Jay L. Levine

*partner*

Jay's 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 (FTC), 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 FTC and the Department of Justice, respectively. Jay also regularly advises private equity funds concerning their strategic initiatives.

## CONTACT

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## SOCIAL MEDIA

### Blogs

antitrustlawsources.com  
technologylawsources.com

### Twitter

@JayLLevine

## EDUCATION

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

University of Maryland, B.A., 1987

## SERVICES

### Antitrust & Consumer Protection

#### Health Care

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

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.

### **Agriculture industry experience**

Jay represents agriculture producers, cooperatives and other agribusinesses in antitrust and consumer protection matters. In just the last few years, Jay successfully tried two six-week antitrust jury trials, securing a defense victory for his client, who was accused of price-fixing with other producers. Plaintiffs had sought damages in the billions. He also successfully defended those verdicts in the Court of Appeals. Jay is also representing producers against claims of price gouging and regularly counsels producers, cooperatives and agri-businesses, especially on issues related to the Capper Volstead Act.

### **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.

### **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 FTC *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.

## **SERVICES (CONTINUED)**

### **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

### **International Business & Trade**

- Antitrust and competition law

### **Financial Institutions**

- Representation of financial institution regulatory agencies
- Mergers and acquisitions, and other regulatory matters

### **Investigations, White Collar Defense & Shareholder Litigation**

### **Entrepreneurship & Startups**

### **Cannabis**

### **Intellectual Property**

- International Trade Commission Section 337 litigation

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. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Eighth Circuit
- U.S. District Court for the District of Columbia
- U.S. District Court for the Eastern District of Michigan
- 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

- "Strategies and Tips: Securing and Preparing Your Expert Witness," American Bar Association webinar, Nov. 8, 2021
- "The Egg Case: An Antitrust Win," National Council of Farmer Cooperatives Legal, Tax & Accounting Conference, Feb. 12, 2020
- "Data Breach Simulation," Southwestern Ohio Association of Corporate Counsel, May 14, 2019
- "Data Breach Simulation," Porter Wright, June 20, 2018
- "Data Breach Simulation," Porter Wright Technology Seminar Series, May 10, 2017
- "Investment Protection in Latin America," Inter-American Bar Association, D.C. Chapter, April 11, 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
- "Recent Antitrust Developments in the Health Care and Pharmaceutical Markets," American Bar Association Recent Developments Initiative, November 2015
- "'Made in the USA' Labeling: A Trap for the Unwary," Porter Wright Retailer Roundtable, Oct. 28, 2015
- "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

#### PUBLICATIONS

- "Farmer cooperatives 'take cover:' The Capper-Volstead exemption is under siege," *Arkansas Law Review*, April 2021
- "What you can do now to help protect your business in post-COVID-19 litigation," *Columbus Business First*, May 27, 2020
- "6 antitrust considerations for companies during pandemic," *Law360*, April 29, 2020

PROFESSIONAL ASSOCIATIONS

- National Council of Farmer Cooperatives, Vice Chair, 2024
- American Bar Association, Section of Antitrust Law, Joint Conduct Committee, Vice Chair, 2011
- Annual Review of Antitrust Law Developments, Editorial Board, 2009
- Annual Review of Antitrust Law Developments, Editorial Board and Editor, Chapter on Monopolization, 2004