



## Brian J. Smith

### Partner

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## OVERVIEW

Brian J. Smith is a partner in both the firm's Antitrust, Competition, and Trade Regulation and Investigations, Enforcement, and White Collar practice groups. He focuses his practice on complex commercial litigation, corporate criminal defense, domestic and international internal investigations, and antitrust counseling.

Brian has extensive experience representing clients in government antitrust investigations and enforcement actions brought by the Antitrust Division of the Department of Justice, State Attorneys General, and the Federal Trade Commission. He regularly defends clients in complex commercial litigation—including antitrust class actions and multidistrict litigation—in both federal and state courts. His representations involve a wide range of competition issues, including price-fixing, bid-rigging, market/customer allocation, no-poach/no-hire agreements, monopolization, attempted monopolization, market manipulation, unfair competition, and other restraints of trade.

Brian has conducted numerous domestic and global internal investigations for major corporations across a variety of industries. He regularly defends corporations and individuals who are subjects of federal and state grand jury subpoenas, cross-border investigations, and enforcement proceedings.

Brian also advises clients on the antitrust aspects of mergers, acquisitions, and joint ventures. He has helped guide clients through U.S. merger clearance, and advises on antitrust issues related to both horizontal and vertical mergers, gun-jumping, and pre-merger due diligence and integration planning.

His practice includes counseling clients on antitrust compliance to help companies mitigate antitrust risks, including in representing both U.S. and multinational corporations in the establishment and maintenance of antitrust compliance and audit programs and regularly providing antitrust compliance training for corporate executives and employees.

Brian also advises health care clients on a variety of antitrust and competition issues, including competitor collaborations, information exchanges, and hospital and physician group acquisitions.

Brian serves as vice-chair of the American Bar Association (ABA) Antitrust Section's Civil Practice & Procedure Committee.

Brian is included on the Illinois Rising Stars list for Antitrust Litigation (2021-2023) and is listed in the *Best Lawyers: Ones to Watch®* in America for Antitrust Law (2024). The Firm's Antitrust, Competition, and Trade

Regulation practice group has been top ranked by Chambers USA for Antitrust in Illinois (2020-2022), by *U.S. News - Best Lawyers*® “Best Law Firms” First-Tier Antitrust Law (2017-2023) and as the “Cartel & Trade Regulation Law Firm of the Year in Illinois” by the international review and assessment programs of both Corporate INTL Magazine and Global Law Experts (2016). Brian is a frequent author and speaker on numerous topics relating to antitrust, including government investigations, civil litigation, and compliance issues.

Brian's commitment to providing pro bono legal services includes representing minors in guardian ad litem proceedings and petitioners before the Illinois Torture Inquiry and Relief Commission; drafting legal white papers on foreign evidentiary laws to aid a nonprofit's lobbying against human trafficking; representing a foreign national in an immigration appeal before the 8th Circuit Court of Appeals; representing individuals as part of the Firm's Cyber Civil Rights Project; serving as amicus curiae in a criminal appeal before the 3rd Circuit Court of Appeals; and serving as court-appointed plaintiff's counsel for prisoner § 1983 cases in the Southern District of Illinois.

## PROFESSIONAL BACKGROUND

Brian was a summer associate at K&L Gates in 2014. While attending Northwestern University School of Law, he served as a judicial extern for the Honorable Ann C. Williams of the United States Court of Appeals for the Seventh Circuit, and as a legal extern for the United States Attorney's Office in the Northern District of Illinois. At Northwestern Law, Brian was an Articles Editor on the Executive Board of the *Northwestern University Law Review*, and was a senior law student in the Supreme Court Clinic, for which he drafted certiorari petitions and merits briefs submitted to the United States Supreme Court. Also during law school, Brian clerked for a Chicago-based litigation boutique and interned at a legal aid non-profit, Lawyers for the Creative Arts.

Prior to attending law school, Brian taught English literature and composition at a secondary school in New England.

## ACHIEVEMENTS

- Listed in *Best Lawyers: Ones to Watch*® in America for Antitrust Law in Chicago, 2024
- Selected to Illinois Rising Stars list for Antitrust Litigation, 2021-2023
- Raoul Berger Prize (awarded for best senior research paper of graduating class), Northwestern Law
- Senior Research Honors, Northwestern Law
- Public Service Award, Northwestern Law
- CALI Awards (Legal Writing) (Patents)

## PROFESSIONAL / CIVIC ACTIVITIES

- American Bar Association (Antitrust Section) – Vice Chair of Civil Practice & Procedure Committee
- Federal Bar Association
- Maine State Bar Association

- Chicago Volunteer Legal Services
- Hemingway Society

## SPEAKING ENGAGEMENTS

- “The Use of Special Masters in Antitrust Multidistrict Litigation,” Antitrust Section – Civil Practice & Procedure Committee, American Bar Association, December 2023 (organizer and moderator)
- “Discovery Nuts and Bolts: Structured Data,” Antitrust Section – Civil Practice & Procedure Committee, American Bar Association, June 2021 (panelist)
- “Antitrust Division's Leniency Program: Basic Framework and Questioned Efficacy,” Antitrust Section, Chicago Bar Association, May 2021 (co-presenter)
- “Department of Justice Update,” 2021 Corporate Counsel Section Annual CLE, North Carolina Bar Association, January 2021
- “Navigating Parallel Proceeding Concerns In Complex Antitrust Multidistrict Litigation,” 2020 White Collar Practice Virtual Conference, Pennsylvania Association of Criminal Defense Lawyers, November 2020 (co-presenter)
- Panelist, “An Investigation of Modern Love,” The Durrell School, Corfu, Greece
- Guest Lecturer, “Hemingway's First Thirty Years,” Dartmouth College

## EDUCATION

- J.D., Northwestern University Pritzker School of Law, 2015 (*cum laude*; *Articles Editor*, *Executive Board*, *Northwestern University Law Review*)
- M.A., Dartmouth College, 2009 (*summa cum laude*)
- B.A., Illinois State University, 2006 (*summa cum laude*)
- B.A., Illinois State University, 2004 (*summa cum laude*)

## ADMISSIONS

- Bar of Illinois
- Bar of Maine
- United States Court of Appeals for the Seventh Circuit
- United States Court of Appeals for the Third Circuit
- United States District Court for the Central District of Illinois

- United States District Court for the District of Colorado
- United States District Court for the Eastern District of Michigan
- United States District Court for the Northern District of Illinois
- United States District Court for the Southern District of Illinois

## THOUGHT LEADERSHIP *POWERED BY HUB*

- 24 April 2024, Challenge Accepted: Federal Trade Commission Issues Final Rule Banning Noncompete Agreements for Most Workers
- 23 April 2024, US Anti-Corruption and Cartel Enforcement Update: Recent Trends, Key Developments, and New Tools
- 21 December 2023, DOJ Jettisons Its Last Criminal No-Poach Prosecution, but Antitrust Scrutiny of Labor Markets Is Here to Stay
- 25 July 2023, FTC Joins DOJ in Withdrawing From Long-Standing Health Care Antitrust Policy Statements
- 15 February 2023, DOJ Antitrust Division Indicates Increased Scrutiny of Information Sharing and Use of Pricing Algorithms
- 15 February 2023, DOJ Withdraws Long-Standing Health Care Antitrust Policy Statements
- February 2022, February 2022 Accolades
- 26 January 2021, Department of Justice Brings First-Ever Criminal Charges for Alleged Anticompetitive Conduct in Labor Markets
- 20 April 2020, COVID-19: Another Warning from the U.S. Antitrust Agencies – Anticompetitive Conduct in Labor Markets Risks Criminal and/or Civil Liability
- 25 March 2020, COVID-19: COVID-19 Crisis Increases Risk of Antitrust and Price Gouging Violations: Practical Guidance and Mitigation Strategies
- 27 January 2020, Competition in U.S. Labor Markets: Non-Compete Clauses Increasingly Under Fire
- 25 July 2019, Got An Antitrust Compliance Program?
- 19 March 2019, DOJ Antitrust Division Provides Additional Insight on Its Analysis of No-Poach Agreements that May Be Subject to Criminal Prosecution
- 9 October 2018, “Modernizing Merger Reviews”: DOJ Antitrust Division Aims to Shorten Time and Increase Efficiencies of Merger Reviews with Process Changes
- 24 May 2018, “A Prescription for Competition”: DOJ Antitrust Division Affirms Its Enforcement Focus on the Healthcare Industry

- 31 January 2018, Assistant Attorney General Announces that DOJ Antitrust Division is Building Criminal Cases Against Companies for Anti-Poaching Agreements
- 13 September 2017, Warning from the U.S. Antitrust Agencies: Remain Compliant with Antitrust Laws During Post-Hurricane Harvey and Irma Relief Efforts
- 12 October 2016, Giving Weight to the Failing Firm Defense, FTC Consents to Physician-Services Merger with Caveats: Suspend Enforcement of Non-Competes and Make Departure Payments to Exiting Physicians Creating or Joining Competing Practices
- 10 May 2016, "Take Me Out to the Ballgame?" Asked the Inspector: Saying "Yes" May Now Be a Federal Crime

## OTHER PUBLICATIONS

- Co-author, "Chapter 7 – Ninth Circuit: Apple Case Leads to Additional Clarity on Section 1 Claims," GCR US Courts Annual Review (4th ed.), 2023
- Contributing editor, "Chapter 10 – Criminal Antitrust Enforcement," ABA SECTION OF ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS (9th ed.), 2022
- Contributing editor, "Chapter 9 – Private Antitrust Suits," ABA SECTION OF ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS (9th ed.), 2022
- Contributing editor, "Health Care Institutions - §§ Private Antitrust Litigation and Government Antitrust Litigation," Business and Commercial Litigation in Federal Courts (Thomson Reuters), 2022
- "Pre-Discovery Rule 12 Motions to Strike: Testing Antitrust Class Allegations at the Pleading Stage," *Perspectives in Antitrust*, 21 August 2020
- Co-author, "U.S. Courts Annual Review, Ninth Circuit," *Global Competition Review*, 2020-2022
- "Mitigating Antitrust Risks With DOJ-FTC Pandemic Guidance," *Law360*, 31 March 2020

## NEWS & EVENTS

- 2 January 2024, K&L Gates Names Nearly 30 Partners, Government Affairs Advisors Across Firm
- 11 December 2023, The Use of Special Masters in Antitrust MDLs, Hosted by American Bar Association Antitrust Section - Civil Practice & Procedure Committee
- 26 September 2022, K&L Gates Secures Victory for Koch Foods in Criminal Price-Fixing Case
- 15 June 2021, Discovery Nuts and Bolts Panel 2: Structured Data, hosted by the American Bar Association
- August 2020, K&L Gates Lawyers Provide Insights on Impact of COVID-19 Across Various Industries

## MEDIA MENTIONS

- Quoted, “Pierre Cardin, Licensee May Have Breached Competition Law, Says EU Regulator,” *The Fashion Law*, 31 July 2023
- Mentioned, “T-Mobile Drops Bid To Pause Private Merger Suit,” *Law360*, 13 December 2022
- Mentioned, “CALIFORNIA: Parties Seek to Modify Sealing Procedures,” *Class Action Prospector*, 16 January 2023
- Mentioned, “DOJ Drops Criminal Price-Fixing Case Against Chicken Cos.,” *Law360*, 15 September 2022

## AREAS OF FOCUS

- Antitrust, Competition, and Trade Regulation
- Appellate Litigation
- Class Action Litigation Defense
- Commercial Disputes
- White Collar Defense and Investigations

## REPRESENTATIVE EXPERIENCE

- Representing a U.S. wireless carrier in a nationwide antitrust class action alleging anticompetitive effects of prior merger.
- Representing SK Trading International Co., Ltd., a global trading company, and its U.S. affiliate in state and federal antitrust actions brought by California Attorney General and various purchasers of gasoline in California alleging anticompetitive market manipulation in trading in California gasoline spot markets.
- Representing an individual subpoena recipient in an investigation brought by the U.S. Department of Justice, Antitrust Division, regarding potential cartel conduct in the water and sewage pipe industry.
- Representing individual defendant in nationwide antitrust class action alleging anticompetitive “no-poach” agreements in healthcare industry.
- Representing Mayne Pharma, a global generic pharmaceutical manufacturer, in nationwide multidistrict antitrust class action brought by various purchasers alleging an industry-wide cartel involving price-fixing and customer allocation agreements and conspiracies, and in related direct action litigation.
- Representing Mayne Pharma, a global generic pharmaceutical manufacturer in response to grand jury and investigatory subpoenas from the Department of Justice and state attorneys general concerning the price-fixing and customer allocation of generic drugs.



- Represented Koch Foods, Inc., an international processor and distributor of broiler chickens, in a criminal antitrust investigation and subsequent criminal indictment brought by the Department of Justice Antitrust Division regarding alleged cartel conduct in the poultry product market.
- Represented multinational pharmaceutical company, Teligent, Inc., in nationwide multidistrict antitrust class action brought by various purchasers alleging an industry-wide cartel involving price-fixing and customer allocation agreements and conspiracies, and in related direct action litigation.
- Represented an individual in response to a grand jury subpoena from the Department of Justice, Antitrust Division, concerning anticompetitive “no-poach” agreements in the health care industry.
- Represented Chiyoda Manufacturing Co., Ltd., a Japanese auto-parts manufacturer, and its U.S. subsidiary in nationwide antitrust class action brought by various purchasers alleging a global price-fixing cartel.
- Represented Nichicon Corporation, a Japanese electronic components manufacturer, and its U.S. subsidiary in nationwide multidistrict antitrust class actions brought by various purchasers alleging a global price-fixing cartel. These actions followed a criminal antitrust investigation conducted by the Department of Justice Antitrust Division.
- Represented Nichicon Corporation, a Japanese electronic capacitor manufacturer, in a criminal antitrust investigation conducted by the Department of Justice Antitrust Division. The representation included coordination with investigations conducted in numerous other countries, as well as representation of both the parent and its U.S. subsidiary in numerous follow-on class actions and direct action litigation.
- Representing large university medical provider in response to a third-party subpoena seeking production of data and documents in antitrust civil action alleging anticompetitive scheme to suppress competition from biosimilar pharmaceuticals.
- Advised indoor air quality companies in relation to potential anticompetitive conduct by industry standard setting organizations.
- Represented a U.S. railway component manufacturer in nationwide antitrust class action brought by employees alleging anticompetitive “no-poach”/“no-hire” agreements in railway employee labor markets.ought by employees alleging anticompetitive “no-poach” agreements in railway employee labor markets.
- Represented U.S. wireless carrier in pre-merger antitrust compliance.
- Advised health providers in various antitrust regulatory matters and private disputes.