



## Philip S. Van Der Weele

### Partner

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## OVERVIEW

Philip Van Der Weele is a seasoned antitrust and commercial litigator, chairing many high stakes monopolization/attempt cases, price fixing cases, and contested merger cases. Philip's background in economics, accounting, and mathematics uniquely enables him to work substantively and efficiently with both experts and client representatives on issues such as market definition, barriers to entry, competitive effects, and financial models.

In addition to litigating antitrust cases, Philip also regularly counsels clients, many with annual sales over \$1 billion, on a wide range of antitrust matters across a wide array of industries. These matters include mergers, acquisitions and joint ventures; collaborations between competitors; the interface between intellectual property and antitrust law; tie-ins; parts and services aftermarkets; vertical restraints and resale pricing policies; dealer terminations and other refusals to deal; Robinson-Patman compliance; non-compete agreements; conduct at trade association meetings; and civil and criminal state and federal antitrust investigations.

Philip also creates client antitrust compliance programs, trains employees on antitrust compliance, and speaks at numerous CLE programs on a variety of antitrust topics.

Philip handles business litigation cases in a number of areas, including Articles 2 and 9 of the Uniform Commercial Code; non-UCC contracts; indemnity agreements; shareholder disputes/corporate governance; business valuation; business torts; and statutory unlawful trade practices. Examples include representing a minority shareholder in a dissenting shareholder case; representing a closely-held corporation in a dissenting shareholder case arising out of the acquisition of that corporation; representing an equity fund and affiliates in a dispute with a shareholder following an equity infusion; and representing public corporations in shareholder litigation arising out of M&A where Board member are alleged to have breached fiduciary duties.

## SELECT LITIGATION CLIENTS

It is a matter of public record that Philip has represented the following entities in lawsuits:

### Tech Companies

### Financial Services

- FUJIFILM North America Corp.
- IntellicheckMobilisa, Inc.
- Symbol Technologies
- Thermo Fisher Scientific
- Xerox Corporation
- Amalgamated Bank
- Anthracite Capital
- Bank of America, N.A.
- CitiMortgage, Inc.
- Litton Loan Servicing, LP
- Merrill Lynch Commodity Partners, LP
- MYL Investments (Delaware) Inc.
- Valley Energy Investment Fund, U.S., LP
- Wells Fargo N.A.

#### **Consumer Products**

- American Suzuki Motor Company
- Biocodex Inc.
- Columbia Sportswear Company
- Danone Foods, Inc.
- Desert Lake Technologies, Inc.
- LSG Sky Chefs USA, Inc.
- Newell Rubbermaid, Inc.
- Safeway, Inc.
- Sur La Table, Inc.
- Yo Cream International, Inc.

#### **Industrial Products**

- Boydstun Equipment Manufacturing
- FMC Technologies, Inc.
- Freightliner, LLC
- Huntsman Corporation
- John Bean Technologies
- Northwest Pipeline, Inc. (Williams Companies Inc.)
- Oldcastle Precast, Inc.
- Plexis Healthcare Systems, Inc.
- Valassis Direct Mail, Inc. (fka ADVO, Inc.)

## **ACHIEVEMENTS**

- Named by *Best Lawyers in America*® as the Antitrust Law “Lawyer of the Year” for Portland, OR in 2019, 2017 and 2015.
- Named by *Best Lawyers in America*® as the Litigation - Antitrust “Lawyer of the Year” for Portland, OR in 2016 and 2012.
- Listed in *Best Lawyers in America*® for Antitrust Law every year since the publication created the category in Oregon in 2007. He is also recognized for Litigation - Antitrust and Commercial Litigation.

- Selected for inclusion in *Acritas Stars*, a database of over 10,000 client-nominated, stand-out lawyers in private practice (2020).

## PROFESSIONAL / CIVIC ACTIVITIES

- Former Chairperson, Antitrust and Trade Regulation Section of the Oregon State Bar
- Member, American Bar Association
- Member, Oregon State Bar Association
- Member, Oregon Chapter of the Federal Bar Association

## SPEAKING ENGAGEMENTS

- Speaker at numerous Antitrust Continuing Legal Education Programs sponsored by the Antitrust Section of the Oregon State Bar
- Panelist, IBC Legal Conferences “Advanced U.S. Antitrust Conference” (San Francisco, February 6, 2014)

## EDUCATION

- J.D., University of Michigan Law School, 1984 (*magna cum laude*, *Order of the Coif*, *Executive Note Editor Michigan Law Review*)
- B.A., Calvin College, 1981

## ADMISSIONS

- Bar of Oregon
- United States Court of Appeals for the Federal Circuit
- United States Court of Appeals for the Ninth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States Court of Appeals for the Tenth Circuit
- United States District Court for the District of Oregon

## THOUGHT LEADERSHIP POWERED BY HUB

- 23 April 2020, COVID-19: Will Today's COVID-19 Distressed Businesses Become Tomorrow's Antitrust-Cured Acquisition Targets? (*Alerts/Updates*)

## OTHER PUBLICATIONS

- Fit (Not) to Be Tied: Three Tricky Questions Every Company Must Ask When Selling Discounted Bundles of Products, *Law360*, 16 April 2015
- “Antitrust Issues in Dealing with ‘Cuspetitors’,” (Distributed at CLE Program in Valhalla, New York, 15 December 2012
- “State of Oregon Antitrust Law,” *State Antitrust Practice and Statutes* (4th ed., ch. 40), published by American Bar Association Section of Antitrust Law, 2009

## AREAS OF FOCUS

- Antitrust, Competition, and Trade Regulation
- Complex Commercial Litigation and Disputes
- K&L Gates Trial Academy
- Maritime

## REPRESENTATIVE EXPERIENCE

- Defended multinational manufacturer of electronic components in treble damages class action (Filed: 2015)
- Represented unnamed consumer whose complaint to the Federal Trade Commission led to a consent decree against state-regulated river pilots. (<http://www.ftc.gov/os/1998/12/9410047agr.htm>)
- Following a Second Request, convinced the U.S. Department of Justice not to challenge a merger between two regional bakeries
- Convinced State Attorney General not to file a complaint against client at the end of an industry-wide, multistate NAAG investigation.
- Convinced U.S. Department of Justice not to indict president of a company that had pled guilty to price fixing.
- Convinced U.S. Department of Justice not to indict company following years-long price fixing investigation.
- Obtained favorable Business Review Letter from U.S. Department of Justice approving an exclusive dealing and sales agency arrangement between two providers of medical equipment and devices, Olympus America Inc. and C.R. Bard, Inc. (<http://www.usdoj.gov/atr/public/busreview/8971.htm>)
- Presentation to U.S. Department of Justice on behalf of informant/customer led to dissolution of joint venture between competitors for the licensing of horse racing content.
- Helped convince U.S. Department of Justice not to challenge vertical acquisition, notwithstanding complaints by customers of the upstream entity being acquired.

- EID Passport, Inc. v. IntellicheckMobilisa, Inc., United States District Court for the District of Oregon (Filed: 2009) -- Defended IntellicheckMobilisa (NYSE Amex: IDN) in monopolization/attempt case arising out of refusal to deal and threatened enforcement of an allegedly invalid patent. The Joint Press Release that accompanied the settlement stated that IntellicheckMobilisa was not paying any money to EID.
- Successfully prosecuted Walker Process antitrust counterclaim for auto transport manufacturer, in response to patent infringement lawsuit (2017-2018)
- Defending client in numerous securities lawsuits, including class action, arising under Oregon securities laws.
- Freightliner LLC v. General Motors Corporation, United States District Court for the District of Oregon (Filed: 2006) -- Represented Freightliner in Sherman 2 case arising out of Edge Pricing/Incentive Program adopted by Allison Transmission Division of General Motors. Case settled after Freightliner survived a motion to dismiss; terms confidential.
- Successfully defended Symbol Technologies, Inc. (NYSE:SBL at the time; since acquired by Motorola) in several cases in which companies that Symbol was suing for patent infringement asserted antitrust counterclaims involving all types of alleged abuse of patents.
- Retail Imaging Management Group LLC v. FUJIFILM North America Corporation, United States District Court for the District of Oregon (Filed: 2011) -- Defended FUJIFILM in Sherman 2 case arising out of exclusive dealing provision and pricing in "bundled" contract. Case settled after FUJIFILM defeated a motion by plaintiff for TRO and two motions by plaintiff for preliminary injunction and while FUJIFILM'S Motion to Dismiss was pending.
- Successfully defended Wells Fargo, N.A. in numerous cases, typically arising as counterclaims to foreclosure on mortgages.
- Successfully defended acquiring company in securities case brought by disgruntled shareholder claiming acquisition price was too low.