



Brian J. Smith

Associate

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OVERVIEW

Brian J. Smith is an associate in the Chicago office and a member of the firm's antitrust, competition & trade regulation practice group. He focuses his practice on complex civil and criminal litigation, government enforcement, and white collar criminal defense, particularly in the areas of antitrust, cartel, and trade regulation.

Brian defends clients in federal and state courts, principally in matters involving the Department of Justice and federal antitrust class actions, against allegations of price-fixing, market allocation, bid-rigging, and customer allocation. He also has experience in conducting internal investigations for major domestic and international corporations in response to Department of Justice and state attorneys general investigations and grand jury subpoenas premised on the same conduct. In this role, he has participated in the preparation of investigation reports, the interviewing of senior executives, and the management of complex international electronic-discovery collection, review, and production. Brian also counsels clients in the development of corporate antitrust compliance programs, and conducts antitrust compliance trainings for corporate executives and employees.

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

Brian's pro bono experience 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; and representing individuals as part of the firm's Cyber Civil Rights Project.

Brian has been recognized as a "Rising Star" for Antitrust Litigation in Illinois. The K&L Gates antitrust and competition group has been recognized by Chambers USA for Antitrust in Illinois (2020), by US News-Best Lawyers: First-Tier Antitrust Law (2017-2020) 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).

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

- Selected as a “Rising Star” for Antitrust Litigation in Illinois by Super Lawyers (Thomson Reuters), 2021
- 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
- Chicago Volunteer Legal Services
- Hemingway Society

SPEAKING ENGAGEMENTS

- “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
- 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 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

- 26 January 2021, Department of Justice Brings First-Ever Criminal Charges for Alleged Anticompetitive Conduct in Labor Markets (*Alerts/Updates*)
- 20 April 2020, COVID-19: Another Warning from the U.S. Antitrust Agencies – Anticompetitive Conduct in Labor Markets Risks Criminal and/or Civil Liability (*Alerts/Updates*)
- 25 March 2020, COVID-19: COVID-19 Crisis Increases Risk of Antitrust and Price Gouging Violations: Practical Guidance and Mitigation Strategies (*Alerts/Updates*)
- 27 January 2020, Competition in U.S. Labor Markets: Non-Compete Clauses Increasingly Under Fire (*Alerts/Updates*)
- 25 July 2019, Got An Antitrust Compliance Program? (*Alerts/Updates*)
- 19 March 2019, DOJ Antitrust Division Provides Additional Insight on Its Analysis of No-Poach Agreements that May Be Subject to Criminal Prosecution (*Alerts/Updates*)
- 9 October 2018, “Modernizing Merger Reviews”: DOJ Antitrust Division Aims to Shorten Time and Increase Efficiencies of Merger Reviews with Process Changes (*Alerts/Updates*)
- 24 May 2018, “A Prescription for Competition”: DOJ Antitrust Division Affirms Its Enforcement Focus on the Healthcare Industry (*Alerts/Updates*)
- 31 January 2018, Assistant Attorney General Announces that DOJ Antitrust Division is Building Criminal Cases Against Companies for Anti-Poaching Agreements (*Alerts/Updates*)

- 13 September 2017, Warning from the U.S. Antitrust Agencies: Remain Compliant with Antitrust Laws During Post-Hurricane Harvey and Irma Relief Efforts (*Alerts/Updates*)
- 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 (*Alerts/Updates*)
- 10 May 2016, “Take Me Out to the Ballgame?” Asked the Inspector: Saying “Yes” May Now Be a Federal Crime (*Alerts/Updates*)

OTHER PUBLICATIONS

- “Chapter 10 – Criminal Antitrust Enforcement,” ABA SECTION OF ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS (9th ed.), Forthcoming 2022 (contributing editor)
- “Chapter 9 – Private Antitrust Suits,” ABA SECTION OF ANTITRUST LAW, ANTITRUST LAW DEVELOPMENTS (9th ed.), Forthcoming 2022 (contributing editor)
- “Pre-Discovery Rule 12 Motions to Strike: Testing Antitrust Class Allegations at the Pleading Stage,” *Perspectives in Antitrust*, 21 August 2020
- “U.S. Courts Annual Review, Ninth Circuit,” *Global Competition Review*, 6 July 2020 (co-author)
- “Mitigating Antitrust Risks With DOJ-FTC Pandemic Guidance,” *Law360*, 31 March 2020

NEWS & EVENTS

- August 2020, K&L Gates Lawyers Provide Insights on Impact of COVID-19 Across Various Industries (*Media Mention*)

AREAS OF FOCUS

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

REPRESENTATIVE EXPERIENCE

- 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.
- Representing 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.
- Representing 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.
- 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 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.
- Advised indoor air quality companies in relation to potential anticompetitive conduct by industry standard setting organizations.
- Representing 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.
- Representing a poultry processor and distributor in response to a grand jury subpoena from the Department of Justice Antitrust Division concerning alleged cartel conduct in the poultry product market.
- 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.