

Philip S. Van Der Weele

Senior Of Counsel

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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 US$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.

ACHIEVEMENTS

- Recognized by *The Best Lawyers in America*® in Portland, OR
  - Antitrust Law, 2007-2027
  - Bet-the-Company Litigation, 2025-2027

  - Commercial Litigation, 2015-2027
  - Litigation - Antitrust, 2011-2027
- Recognized by BTI Consulting Group as *BTI Client Service All-Stars 2024*, June 2024
- Recipient of "Lawyer of the Year" award by *The Best Lawyers in America*® for Litigation - Antitrust in Portland, 2024, 2016, and 2012
- Recipient of "Lawyer of the Year" award by *The Best Lawyers in America*® for Antitrust Law in Portland, 2023, 2019, 2017, and 2015
- 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
- "Customers and Competitors and Prices - Oh My!" (Presentation to In-House Legal Department of large client, 7 September 2023)
- "Customer Allocations in Distribution Agreements: Managing the Risk" (Presentation to In-House Legal Department of large client, 8 October 2021)
- Panelist, IBC Legal Conferences "Advanced U.S. Antitrust Conference" (San Francisco, 6 February 2014)
- Antitrust Issues in Dealing with 'Cuspetitors'," (Presentation to In-House Legal Department of large client, (15 December 2012)

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*

- 18 June 2024, June 2024 Accolades
- March 2022, Antitrust Invades the Workplace: What Employers Need to Know About "No Poach" Agreements, Non-Solicitation Clauses, and Employee Non-Competes
- 23 April 2020, COVID-19: Will Today's COVID-19 Distressed Businesses Become Tomorrow's Antitrust-Cured Acquisition Targets?

OTHER PUBLICATIONS

- "State of Oregon Antitrust Law," *State Antitrust Practice and Statutes* (5th ed., ch. 40), published by American Bar Association Section of Antitrust Law, 2023
- Fit (Not) to Be Tied: Three Tricky Questions Every Company Must Ask When Selling Discounted Bundles of Products, *Law360,* 16 April 2015
- "How a Unilateral Policy Morphed into an Illegal Resale Price Fixing Agreement," 2 August 2013
- "State of Oregon Antitrust Law," *State Antitrust Practice and Statutes* (4th ed., ch. 40), published by American Bar Association Section of Antitrust Law, 2009

NEWS & EVENTS

- 17 August 2023, Nearly 400 K&L Gates Lawyers Named Among 2024 Best Lawyers in America, Ones to Watch
- 18 August 2022, More Than 350 K&L Gates Lawyers Named Among 2023 Best Lawyers in America, Ones to Watch
- 19 August 2021, Nearly 300 K&L Gates Lawyers Named Among 2022 Best Lawyers in America, Ones to Watch

OTHER MEDIA MENTIONS

- Mentioned, “Gilead, Generics Co. Beat HIV Drug Antitrust Suit For Now,” *Law360,* 29 August 2023
- Mentioned, “Pitney Bowes Wants Mail Equipment Monopoly Suit Tossed,” *Law360*, 27 January 2023
- Mentioned, “LegitScript Can't Pause Drug Price Check Blacklisting Suit,” *Law360*, 12 December 2022

AREAS OF FOCUS

- Antitrust and Competition
- Commercial Disputes

REPRESENTATIVE EXPERIENCE

- Successfully defended manufacturer of specialized office equipment from claim by former reseller of the equipment that manufacturer had fraudulently induced the reseller to enter into a dealer agreement with the manufacturer. Reseller dismissed fraudulent inducement claim with prejudice after manufacturer filed motion for summary judgment against the claim.
- Successfully defended monopolization and attempt to monopolize claims brought against manufacturers by a former reseller. Plaintiff/reseller dismissed antitrust claims with prejudice after defendant/client filed motion for summary judgment.
- 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 second request, convinced the US 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 US Department of Justice not to indict president of a company that had pled guilty to price fixing.
- Convinced US Department of Justice not to indict company following years-long price-fixing investigation.
- Obtained favorable Business Review Letter from US 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 US Department of Justice on behalf of informant/customer that led to dissolution of joint venture between competitors for the licensing of horse racing content.

- Helped convince US Department of Justice not to challenge vertical acquisition, notwithstanding complaints by customers of the upstream entity being acquired.
- EID Passport, Inc. v. Intellicheck Mobilisa, Inc., United States District Court for the District of Oregon (filed 2009)—Defended Intellicheck Mobilisa (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 Intellicheck Mobilisa 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) 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 a financial institution 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.