

## Antitrust and Unfair Competition

### PRACTICE CONTACTS

- James Robertson Martin
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Our approach to antitrust matters is decidedly different from other firms because we commonly represent clients – multi-national corporations, small businesses and consumers – on either side of the docket. We are selective in the litigation we pursue and consistently position that litigation for success in the courtroom. We have found this approach yields the best results for our clients, whether at the settlement table or at trial. We carefully consider the objectives and economic realities of each client, looking for the best way to achieve an outcome that meets those needs. We are a diverse group (two thirds women and/or of color) of skilled attorneys who elevate our performance through our collaborative approach with our colleagues and clients.

The experience and track record of Zelle attorneys in antitrust is recognized in courts across the nation every day. We have recovered billions of dollars for our clients who are plaintiffs, and we have successfully mitigated other clients' most significant exposures. We have substantial experience not just settling antitrust matters, but trying them. Martindale-Hubbell consistently ranks Zelle as one of the most active antitrust firms in the United States. Our lawyers are often named to lead counsel positions in class action and multi-district matters, but we are also highly effective in representing antitrust defendants and opt-out plaintiffs.

Zelle recognizes that many antitrust matters are increasingly international in scope. We routinely work with clients and foreign counsel in the United Kingdom, European Union, Canada and China to coordinate and fully protect our clients' legal and business interests in a global context.

Because of the breadth and depth of our litigation experience, clients often call on us in counseling situations – including consultation on antitrust compliance programs, mergers and acquisitions, and the formation of joint ventures.

### REPRESENTATIVE MATTERS

*United HealthCare Services, Inc. v. Actavis Holdco U.S., Inc., et al.*, No. 2:19-cv-00629-CMR.

Represents United HealthCare Services, Inc. in three individual antitrust matters against the makers of more than 200 generic pharmaceutical drugs, alleging a widespread price-fixing and market allocation conspiracy; this

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matter has been consolidated with *In re: Generic Pharmaceuticals Pricing Antitrust Litigation*, MDL No. 2724. (*United HealthCare Services, Inc. v. Actavis Holdco U.S., Inc., et al.*, No. 2:19-cv-00629-CMR (E.D. Pa.))

*In re LIBOR-Based Financial Instruments Antitrust Litigation*, MDL No. 2262, No. 1:11-md-02262 (S.D.N.Y.).

Representing Freddie Mac and the FDIC as Receiver for 39 Closed Banks and serves as liaison counsel for more than two dozen DAPs (represented by, among others, Lief Cabraser, Keller Rohrback, and Quinn Emanuel). Freddie Mac and the FDIC allege, among other things, that defendants' horizontal conspiracy reduced product quality in the market for interest-rate benchmarks.

*United HealthCare Services, Inc. v. Celgene Corp.*, 0:20-cv-00686-DSD-ECW. Represents United HealthCare Services, Inc. in an individual antitrust matter against Celgene, alleging it engaged in generic exclusion tactics to maintain its monopoly pricing of the drugs Revlimid and Thalomid.

*California Natural Gas Antitrust Litigation*, J.C.C.P. Nos. 4221, 4224, 4226 & 4228 (Cal. Superior Court, San Diego).

Member, Executive Committee, representing indirect purchasers of natural gas in California, with case settlements totaling nearly \$165 million.

*Ashton Woods Holdings L.L.C., et al. v. USG Corp., et al.*, No. 2:15-cv-01712-MMB.

Retained as co-counsel on behalf of PABCO Building Products LLC in its defense of claims filed by several individual builders that accuse the domestic suppliers of drywall of engaging in a price-fixing conspiracy.

*In re: Hard Disk Drive Suspension Assemblies Antitrust Litigation*, 19-md-02918-MMC.

Co-Lead counsel for indirect purchaser end-user plaintiffs.

*Brown v. 140 NM LLC, et al.*, No. 4:17-cv-05782-JSW.

Defended several Bay Area restaurants accused of engaging in a nationwide no-tipping conspiracy to drive up prices, helping get the case dismissed with prejudice.

*In re: Railway Industry Employee No-Poach Antitrust Litigation*, MDL No. 2850.

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Counsel for railway industry employee settlement class and settlement class representative, with case settlements of \$49 million.

*United HealthCare Services, Inc. v. Cephalon, Inc., et al.*, No. 2:17-cv-00555(E.D. Pa.).

Represented United HealthCare Services, Inc. in an individual antitrust matter against the makers of the branded pharmaceutical drug Provigil and its generic equivalents. The suit alleged a successful pay-for-delay scheme that kept lower-priced generics off the market for several years, allowing the brand manufacturer to continue charging inflated monopoly prices that caused United HealthCare Services, Inc. substantial damages.

*German Automotive Manufacturers Antitrust Litigation*, 3:17-md-02796-CRB (N.D. Cal.).

Member, Plaintiff's Steering Committee, representing direct purchasers of German automobiles.

*In re Vitamins Antitrust Litigation*, MDL No. 1285, Misc. No. 99-197 (D.D.C.). Represented more than 150 direct action plaintiffs, including Kraft Foods and GNC, alleging a 15-year international cartel covering more than a dozen vitamins. The case involved German Defendants BASF, Degussa, and Merck. Recoveries exceeded \$2 billion. Served as liaison counsel for DAPs.

*In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 07-1827 (N.D. Cal.). Co-Lead Counsel for 23 litigated indirect purchaser end payor state damages classes with case settlements totaling \$1.1 billion.

*In re Cathode Ray Tubes (CRT) Antitrust Litig.*, MDL NO. 1917 (N.D. Cal.). Counsel for 22 litigated indirect purchaser end payor state damages classes with case settlements totaling \$580 million, and with central role in obtaining class certification, expert work, trial preparation, and other case matters.

*ZF Meritor LLC v. Eaton Corp.*, No. 06-623-SLR (D. Del.).

Represented a manufacturer of heavy-duty transmissions in a case alleging the dominant producer excluded it from the relevant market. The case went to trial and resulted in a liability verdict for violations of Sections 1, 2, and 3 of the Sherman Act. The Third Circuit upheld the verdict and the case settled for \$500 million prior to the damages trial.

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*In re Urethane Antitrust Litigation*, MDL No. 1616, No. 2:08-cv-05169 (D.N.J). Represented 11 plaintiff families in an international price-fixing case involving three chemicals. The case involved German Defendants BASF and Bayer. Despite a lack of direct evidence, successfully defeated summary judgment motions challenging the existence of a conspiracy and its duration (the parallel class action alleged a shorter conspiracy period). Defeated three *Daubert* motions and handled all experts at trial. Defendant Dow settled during the defense case for \$400 million.

*In re Methionine Antitrust Litigation*, MDL No. 1311, No. 3:00-md-01311 (N.D. Cal.).

Represented, as liaison counsel, more than three dozen DAPs, including Tyson Foods, alleging an international cartel involving, *inter alia*, German Defendant Degussa AG. Recoveries exceed \$400 million.

*In re Linerboard Antitrust Litigation*, MDL No. 1261, No. CIV.A. 98-5055 (E.D. Pa.).

Represented more than 50 Fortune 500 companies, including names such as PepsiCo and Coca-Cola, in a conspiracy among containerboard producers to take “market downtime” to restrict output and cause price increases. Successfully defeated summary judgment motions despite the lack of direct evidence. Served as liaison counsel for direct action plaintiffs. Recoveries exceeded \$200 million.

*Lithium Ion Batteries Antitrust Litigation*, MDL No. 2420 (N.D. Cal.).

Liaison Counsel for direct purchaser plaintiffs and significant responsibilities for industry experts, with case settlements totaling almost \$140 million.

*In re Automotive Parts Antitrust Litigation*, MDL No. 2311, No. 12-md-02311 (E.D. Mich.).

Member, Plaintiffs’ Executive Committee for indirect purchaser end payor plaintiffs, with case settlements of over \$1 billion.

*Smokeless Tobacco Antitrust Litigation*, J.C.C.P. Nos. 4250, 4258, 4259 & 4262 (California Superior Court, San Francisco).

Member, Plaintiffs’ Executive Committee, representing California indirect purchasers of canned smokeless tobacco products with case settlement of

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\$96 million for the California class.

*In re Static Random Access Memory (SRAM) Antitrust Litigation*, MDL No. 1819, No. 4:07-cv-01819 (N.D. Cal.).

Appointed as lead counsel for 25 litigated indirect-purchaser classes with settlements totaling \$41.3 million.

*Novell Inc. v. Microsoft Corp.*, No. 2:04-cv-01045 (D. Utah).

Represented the owners of WordPerfect in a long-running case alleging monopolization of the market for PC operating systems. At trial, the jury split 11-1 in favor of liability. The trial judge granted Microsoft's JMOL, which was upheld by the 10th Circuit (Gorsuch J.).

*In re Marine Hose Antitrust Litigation*, MDL No. 1888, No. 1:08-md-01888 (S.D. Fla.).

Represented, as liaison counsel, Defendant Dunlop Oil & Marine in an international cartel case.

*In Re: Packaged Seafood Products Antitrust Litigation*, 3:15-md-02670-JLS-MDD (S.D. Cal.).

Counsel for indirect purchaser end payor plaintiffs with significant responsibilities in pleading, expert work and class certification efforts.

*Air Cargo Antitrust Litigation – Between Emerald Supplies Limited & Others and British Airways Plc*, Claim No. HC08C2648 (High Court of Justice, Chancery Div., London).

Representing a major international engineering and manufacturing company, shipping goods by air freight all over the world, in an antitrust lawsuit filed in the United Kingdom to recover the overcharges paid by the company as a result of a conspiracy by several of the world's biggest airlines to fix the prices for international air cargo shipping services.

*Sullivan et al. v. DB Investments, Inc. et al., DeBeers Diamonds Antitrust Litigation*, Civil No. 04-02819 (SRC) (D. N.J.).

Court-appointed class counsel for indirect purchaser end payor classes with case settlements of \$295 million.

*Microsoft Antitrust Litigation - California Microsoft Cases*, J.C.C.P. No. 4106

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(Cal. Super. Ct., San Francisco Cty.); *Microsoft Antitrust Litigation*, No. 00-5994 (Minn. Dist. Ct., Hennepin Cty.); *Comes v. Microsoft Corp.*, No. CL 82311

Co-Lead Counsel, Liaison Counsel and/or Member, Executive Committee in these indirect-purchaser class actions in California, Iowa, Minnesota and Wisconsin state courts with collective settlements of nearly \$1.7 billion.

*In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, MDL No. 1486 (N.D. Cal.).

Liaison Counsel for indirect purchaser end payor classes with case settlements of over \$310 million.

*Credit/Debit Card Tying Cases*, J.C.C.P. No. 4335, No. CJC-03-004335 (Cal. Super. Ct., San Francisco Cty.).

Served as lead counsel for a class of California consumers of products and services from retail businesses that accepted and/or issued Visa and MasterCard payment cards, alleging that defendants' violations of the California state antitrust and unfair competition laws resulted in higher prices for consumers. In April 2013, the Superior Court granted final approval to settlements totaling \$31 million in cash with defendants.

*Pet Food Express Ltd. v. Royal Canin USA Inc.*, No. 3:09-cv-01483 (N.D. Cal.).

Represented Pet Food Express, a regional pet-supply retailer, in a breach of contract dispute with supplier Royal Canin where the supplier asserted counter-claims based on California unfair competition law. Zelle successfully obtained the district court's dismissal of the counter-claims on a motion for summary judgment.

*Transpacific Passenger Air Transportation Antitrust Litigation*, MDL No. 1913, No. 3:07-cv-05634 (N.D. Cal.).

Representing purchasers of passenger air transportation services for international flights involving at least one flight segment between the United States and Asia/Oceania. Plaintiffs allege that defendant airlines conspired to fix the price of air passenger travel, including associated surcharges, beginning no later than January 1, 2000.