

# Plaintiffs' antitrust bar

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Facing ever-higher hurdles just to get claims in front of a jury, the law firms representing antitrust plaintiffs in the United States are flexible in their strategies, with several taking up defendants' causes when the right facts arise. **Pallavi Guniganti** reports on some of the leading practices that bring competition claims.

This year's survey of the US antitrust plaintiffs' bar shows how the very concept of a "plaintiffs' bar" may be breaking down. While a few firms on our list remain wholly identified with plaintiffs, others such as Quinn Emanuel, Constantine Cannon and Robins Kaplan move easily between the two sides of the v in lawsuits' captions.

Even practices that consider themselves essentially plaintiff-oriented tout experience in the defence bar. Gregory Ascioffa notes that he and Labaton Sucharow antitrust co-chair Jay Himes have worked for defendants as well as for the government: Ascioffa at the US Department of Justice and three white shoe firms; and Himes at the New York attorney general's office and Paul Weiss. After the demise of defence firm Heller Ehrman, Kit Pierson attracted attention within the US antitrust bar for flipping to plaintiffs' side stalwart Cohen Milstein.

But beyond simple labels and the occasional politicised antagonism toward plaintiffs' attorneys, lawyers simply try to meet their clients' needs – and US plaintiffs' advisers are no exception. Pierson's antitrust co-chair at Cohen Milstein, Daniel Small, estimates that 99 per cent of that practice is for plaintiffs. Yet he currently represents a defendant in front of the US Court of Appeals for the Ninth Circuit; the Service Employees International Union is being sued by a California hospital chain for allegedly conspiring with insurance company Kaiser. Small had established a relationship with the labour group because of its concern about stagnant salaries for nurses, an investigation that resulted in Cohen Milstein's acting for plaintiffs in lawsuits against hospitals in multiple cities for colluding to hold down wages.

Hausfeld LLP, the heaviest hitter in plaintiffs' antitrust work internationally and a US all-star, does not categorically refuse defence cases either. The firm currently represents a defendant in the freight forwarding case who had been one of their plaintiffs in the air cargo matter. Partner Brian Ratner says that while such work is rare, they are open to it in the right circumstances.

Meanwhile, firms in our survey with plenty of defendant clients aver that caseload actually improves their representation of plaintiffs. "One of the things that makes our firm extremely rare is a blue chip practice in representing both plaintiffs and defendants in antitrust," says Stephen Neuwirth, chair of antitrust and competition litigation at Quinn Emanuel. "The fact we work on both the plaintiff and the defence side carries over to economics. While sometimes some of the same people do both, as we

do, there really is a sort of expert point of view on the defence side in these antitrust cases – the way the defences get raised, and some of the potential vulnerabilities you can exploit on the plaintiff side.”

Jeffrey Shinder of Constantine Cannon makes a similar point: whether representing plaintiffs or defendants, “one’s ability to lawyer effectively is helped by having some understanding of how the other side lives, thinks and strategises.”

Though perhaps best known for being co-lead counsel in the interchange, auto parts and air cargo multidistrict litigations, Robins Kaplan has recently had its Minneapolis, Minnesota antitrust team working to defend grocery wholesaler SuperValu from a retailer, and insulation maker Graco against an indirect purchaser.

The firm’s antitrust co-chair Hollis Salzman, formerly of Labaton Sucharow, outlines several challenges that plaintiffs confront under recent US law. “Case law on the Foreign Trade Antitrust Improvement Act, specifically the Motorola decision, will affect the contours of classes we may bring, given that much of commerce is international and the US is not the manufacturing mecca it once was,” she says. In particular, products manufactured in Asia and sold into the US are the source of some of the biggest government investigations, but if a conspiracy occurs entirely overseas it may end up beyond the reach of US plaintiffs.

Salzman sees greater cooperation between private plaintiffs and the DOJ, saying the department is understanding of and sensitive to counsel’s need to speak to the amnesty applicant in order to formulate the appropriate allegations for complaints. “You can see in some of our complaints that have been filed without discovery that there is a significant statement of facts,” she says.

Susman Godfrey partner Barry Barnett views the government differently, calling them stand-offish. “They’re very conscious of pursuing the claims separately from the private plaintiffs and protective of their ability to pursue criminal claims independently of the civil litigation,” he says. While guilty pleas help private litigants prove liability, they still have an additional step the DOJ does not: proving actual damages. Under the Sherman Act, just agreeing to fix prices is a criminal offence, but the private plaintiffs have to show damages and impact across the class.

Eric Fastiff, head of the antitrust practice at Lief Cabraser, says that while he respects the Department of Justice’s efforts to prosecute cartel participants, he thinks the department should work more closely with victims seeking compensation. “Delayed access to discovery because of pending criminal investigations does not help civil plaintiffs who are entitled to receive compensation for the same defendants’ illegal conduct,” he says. “It’s unfortunate when a civil case is stayed and the government investigation either proceeds slowly or terminates, not because of the merits of investigation but because of government staffing and funding issues. That kind of result only hurts victims even more.”

Even as lower courts have assumed that civil litigation will compensate victims, US Supreme Court precedents have been unfriendly to plaintiffs. Salzman says she has been disturbed by a potential trend in which defendants pled guilty to violating antitrust laws, “the court states they’re not going to

order restitution because of the restitution remedies available in civil cases, and then defendants filed a *Twombly* motion,” arguing that the plaintiff’s allegations are insufficient to state a claim.

*Bell Atlantic v Twombly* has established a new norm of pleading standards in federal civil actions since it was decided in 2007. But the latest precedents require still more adjustment. In March 2013, the Supreme Court held that a class cannot be certified until the court has found that its proposed damages model could show damages on a class-wide basis. That was followed in June by a decision that a contract’s mandate of arbitration should be enforced even where it bars a class-based action and the plaintiff’s cost of individual arbitration exceeds its potential recovery. Unlike *Twombly*, which was decided 7-2, the *Comcast v Behrend* and *American Express v Italian Colors Restaurant* rulings obtained only the minimum five votes necessary, with the high court splitting along conservative versus liberal lines.

Salzman watches Congress for an alteration of the Federal Arbitration Act to allow direct purchasers harmed by anti-competitive conduct to recover instead of being forced into individualised arbitration that can be prohibitively expensive. Speaking of expense, she says Comcast’s pushing the motion for class certification until the end of discovery and production of complete expert reports increases costs for both sides.

“Some settle early and some take longer, same as it’s ever been,” Salzman says. “It depends on the defendant and on the strategy of its counsel, whether they think it’s in the best interests of their client to settle early and avoid the expense of litigation, or take chances on class certification.”

Daniel Small of Cohen Milstein considers *Comcast* to be less of a threat to plaintiffs’ claims than the push toward individualised arbitration. He notes that the underlying facts of the *Comcast* case were unusual, with compounding, non-alternative theories of damages that, once some of the theories of liability were knocked out by judicial ruling, left the expert’s model in disarray. The problem he sees is less with the substantive legal standard *Comcast* stated than with the effect on the economic feasibility of cases due to the front-loading of full discovery and expert reports.

Constantine Cannon has been on both sides of antitrust cases, and Shinder says that for plaintiffs, the firm is open to alternative fee arrangements and has worked on contingency. But it is “absolutely true” that there are additional costs inherent in a class case, and his general preference would be to avoid them. However, he calls representation of objectors to and opt-outs from class actions “an interesting adjunct to class action specialisation. While we evaluate each case on its own merits, we are somewhat disinclined to do plaintiffs’ class action work, but I think we have a significant body of experience with class actions here that could be deployed in various ways.”

Shinder adds that in his experience, sophisticated clients are increasingly sensitive to what a class action release of claims entails, which may be contributing to a greater propensity to object. A release could have unintended or problematic consequences, particularly if it includes the traditional “all claims that could have been brought” language.

Asciolla agrees that class certification is now the focal point of discovery, and that a factor in being

appointed lead counsel is having the resources to litigate through trial. He says Labaton Sucharow's preferred business model is to lead the direct purchaser litigation, where the law is perhaps stronger. "The folks representing direct purchasers tend to lead the litigation. Indirect cases tend to follow along the path of the direct purchaser cases," he says.

However, the *Italian Colors* arbitration decision can be tougher on direct purchasers because they are more likely than indirect purchasers to have contracts with the alleged antitrust violator. "There are cases where language in the purchase agreements makes it difficult to get into federal court. It almost guarantees there will have to be some form of arbitration to resolve. Not only is there the arbitration clause, but also the class action waiver," Ascioffa says.

While most direct purchaser cases have yet to be derailed by arbitration, he predicts that the effect of *Italian Colors* will be seen many years from now, once savvy businesses have had the opportunity to revise agreements to include the language mandating arbitration and barring class actions. When more agreements have these languages, more potential cases will be forced into individual arbitration.

Daniel Berger, a co-chair of the antitrust practice at Berger & Montague, says arbitration agreements at the retail level are usually confined to consumers. He is sceptical that sophisticated direct purchasers represented by counsel will be forced to sign such contracts. For example, Berger says 80 to 90 per cent of the pharmaceutical market is controlled by three national wholesalers and a handful of regional wholesalers, all of which have lawyers and would not enter into contracts with unconscionable terms. Moreover, the large businesses are often in a position to sue on their own if they have significant damages, whereas small retailers and consumers are not.

Barnett says he is optimistic that plaintiffs' attorneys will find a viable way to aggregate antitrust claims that must be arbitrated as a result of *Italian Colors*. "I think I've figured out a way to do it," he adds, at least when an ongoing relationship between the defendant and the plaintiff accumulates the amount of purchases to meet a threshold of claims worthwhile to pursue. Broadly, plaintiffs would establish a trust that would retain counsel to pursue the claims through an award and judgment, and then use the victories in later arbitrations about the same conduct. Once certain issues have already been decided against the defendant, each claimant would not have to reinvent the wheel in litigating those points.

"We now have a system that's very good at ferreting out weak cases, but also killing good cases that are not economical because of all the procedural complexity," Barnett says. In the old days, there would be perhaps three expert reports; now in the remanded *Comcast* case, he says they are up to 35. "Defendants are constantly saying we need to put more expert reports in; we need an evidentiary hearing; we need *Daubert* challenges [to experts' bases for their conclusions]. Because of Supreme Court rulings, district courts feel like they have to do everything the defendants want them to do."

Fastiff says expert bills can be enormous, particularly when coupled with electronic discovery costs, making it incumbent on lawyers to take cases on contingency or on some alternative fee arrangement, so the victims' rights can be pursued. He notes that in the LCD case, Lieff Cabraser

spent more than \$5 million on experts. But some claims are simply uneconomic. For example, current law makes a price fixing claim under section 1 of the Sherman Act easier to bring than a section 2 monopolisation claim. Fastiff says that just to establish market definition in a section 2 case, expert costs can swamp client's potential damages.

An attorney who does both plaintiffs' and defence work says major corporations are increasingly receptive to using private right of action to cover overcharge damages or for other strategic purposes, a particularly fortuitous trend as class actions become more difficult. Aside from tightening legal standards, "infighting among class counsel has become more unpleasant," he says. "Our motto is to take on hard cases for real clients: corporations harmed, real issues, and not just ambulance chase by filing a class action based upon the latest cartel investigation or that's gotten an immunity deal with the DoJ."

Ratner says Hausfeld LLP has good relationships with people at the Department of Justice, but that the biggest challenge is the DoJ's vaunted leniency programme. For example, in the air cargo case, the government obtained a stay on the civil action that remained for three years. After 15 guilty pleas, plaintiffs asked the judge to lift the restriction on moving their case forward. This can be frustrating for the private plaintiffs, Ratner says, but the DoJ does not want to put their investigations at risk. On the other hand, he says sometimes letting the government move forward to get more evidence is strategically useful, as the stay freezes the statute of limitations and the complaint can be amended to reflect what the DoJ has discovered.

The DoJ is bringing fewer cases than it once did, as it focuses on a smaller number of large conspiracies such as the auto parts matter, Ratner says. Relative to its US counterpart, the European Commission is more active and productive in the breadth and volume of its cases. "We like the trends outside the US," he says. The cultural barriers to bringing lawsuits are coming down, now that companies see their antitrust claims as business assets.

Firm	Head(s) of competition	Size
Berger & Montague	H Laddie Montague Jr Merrill G Davidoff Eric L Cramer Daniel Berger	11 partners 2 of counsel 10 associates
Cohen Milstein Sellers & Toll	Kit Pierson Daniel Small	11 partners 11 associates
Constantine Cannon	No named head	14 partners 1 counsel 11 associates
Hausfeld LLP	Michael Hausfeld	29 attorneys
Labaton Sucharow	Gregory Ascioffa Jay Himes	4 partners 2 associates 3 staff attorneys
Lieff Cabraser Heimann & Bernstein	Eric Fastiff	4 partners 3 associates 3 contract lawyers
Quinn Emanuel Urquhart & Sullivan	Stephen Neuwirth	N/A
Robins Kaplan Miller & Ciresi	Hollis Salzman Craig Wildfang	9 partners 2 of counsel 7 associates
Susman Goldfrey	No named head	N/A

## Berger & Montague

Berger & Montague prides itself on its history as one of the oldest still-active antitrust class action firms in the United States. When David Berger and H Laddie Montague Jr founded it in 1970, they began primarily in antitrust and then grew to encompass securities, consumer protection, environmental and other claims. The firm has represented plaintiffs in some of the biggest multidistrict litigations of each decade since then: Master Key in the 1970s; Corrugated Container in the 1980s; Infant Formula and Brand Name Prescription Drugs in the 1990s; High Fructose Corn Syrup; and Foreign Currency Conversion Fee in the 2000s.

Today, Berger & Montague is co-lead counsel in the interchange fee litigation against Visa/MasterCard, which initially settled for \$7.5 billion but has been cut by opt-outs to \$5.5 billion; and in the chocolate confectionary direct purchaser case now on appeal to the Third Circuit. Recent national class action settlements include High-Tech Employees, Titanium Dioxide, and independent truck stops' lawsuit against payment processor Comdata. Yet the Philadelphia firm retains a local flavour; its only antitrust defence representation at the moment is of a Pennsylvania company that grows Kennett Square mushrooms.

Pharmaceuticals, a better-known industry with a strong presence in Berger & Montague's neighborhood, have become the subject of much of its current litigation. It represents plaintiffs alleging illegal pay-for-delay deals to block generic version of drugs including Effexor, Nexium, Opana and Androgel, and product-hopping by Warner Chilcott to prevent meaningful competition for Doryx.

Daniel Berger, son of founder David and a co-chair of the competition practice, says the firm has been spearheading private litigation against reverse payment settlements since the Federal Trade Commission began its enforcement against such agreements. Berger & Montague is usually co-lead counsel in those cases on behalf of the direct purchaser class and suing under federal antitrust law, which he says is much stronger than state law.

The obstacles presented by federal law, such as the *Comcast* requirements on class certification, have less of an effect on the cases against branded pharmaceutical companies for impeding generic entry than they might on price-fixing claims, Berger says. Where generic entry is delayed or totally suppressed, the effect of the anti-competitive activity is obvious because of the massive difference in price between brand exclusivity versus generic entry.

He sees some pre-*Comcast* precedents as having created more trouble for plaintiffs than the Supreme Court case has. For example, the US Court of Appeals for the Third Circuit ruled in the Hydrogen Peroxide antitrust litigation that damages must be proven on an exclusively class-wide basis. If this standard became the law in all other circuits, Berger warns, certifying a class action would be almost impossible.

“What’s really disappointing is that the defence bar hasn’t changed their arguments opposing class certification, but as courts have become filled with right wing judges schooled by the Federalist

Society, the defence bar is getting more traction with arguments that had been rejected for decades,” he says.

## **Cohen Milstein Sellers & Toll**

This year promises to be a trial-heavy one for the antitrust team at Cohen Milstein. They are co-lead counsel in the e-books case against Apple, which is in its damages phase at the same time as the company’s appeal of the liability finding. They also represent north-eastern dairy farmers suing a milk cooperative, Detroit-area nurses against a hospital, and the indirect purchasers of Nexium in pay-for-delay litigation.

Health care is an area of focus beyond pharmaceuticals and the nurse wage cases. Along with three other firms, Cohen Milstein represents a labour organisation’s pension fund that sued Sutter Health in April, claiming that the California hospital system used its market power to overcharge for millions of workers’ care. Another lawsuit faults an insurer for the high cost of hospital services; Cohen Milstein is co-lead counsel in a follow-on action against Blue Cross Blue Shield of Michigan for the most-favoured-nation provisions that previously brought on a DoJ investigation and state legislation forbidding such clauses in health insurance contracts.

Practice co-chairs Daniel Small and Kit Pierson perceive potential for a great deal of antitrust activity across the health-care sector. Both payors and providers have cases, because each side may put anti-competitive provisions in contracts. Moreover, in many areas of the US these are small markets with a single dominant player due to consolidation, which in turn grants market power, Pierson says.

Small estimates class actions to be more than 90 per cent of the firm’s antitrust caseload, but it is diversifying into individual, non-direct purchaser claims. He and Pierson see recent changes in the law, particularly the Italian Colors decision, as having an adverse effect on direct purchaser claims because such plaintiffs likely had contracts with the company that violated antitrust law – and now that contract can have an arbitration clause forbidding class-wide resolution. Purchasers without such contractual provisions will be those with negotiating clout, for which it would be worthwhile to bring an individual claim anyway.

The upside of stricter standards for advancing a case past class certification and a motion to dismiss is that “if you run the gauntlet successfully, the defendant knows it’s a good case” and is more likely to settle, Pierson says. “Our business model depends on bringing strong cases, and if anything, there is underenforcement” of the antitrust laws.

## **Constantine Cannon**

A boutique with three quarters of its 43 lawyers concentrated in antitrust, Constantine Cannon has become a go-to for competition law since its founding 20 years ago. Two years after it came into existence, Constantine Cannon filed a case accusing Visa and MasterCard of tying acceptance of debit cards to credit cards, and in a 2003 settlement it secured \$3 billion in cash and fee reductions worth as much as \$86 billion for the merchants. Co-founder Lloyd Constantine published a book in

2009 titled *Priceless: The Case That Brought Down The Visa/MasterCard Bank Cartel*.

Nowadays, the firm is opposing pending class settlements against credit card companies, as counsel to large groups of opt-out merchants in the Visa/MasterCard interchange settlement and of objecting merchants in the American Express anti-steering rules settlement.

“Payments are a major portfolio of our practice,” partner Jeffrey Shinder says, with many of the opt-out and objecting clients coming from prior representations or contacts with trade associations and the firm’s work on payment matters. “We have a long history on this issue.”

Other current litigations include a class action against Sutter Health by California residents who claim the monopolistic hospital system drives up their premiums indirectly through its high costs to insurance companies; and a lawsuit on behalf of TruePosition, a geolocation technology provider that alleges other companies conspired to block it from contributing to the standard-setting process to create the 3G wireless standard.

“The quality of an antitrust lawyer is intricately connected to his or her command of the industries,” Shinder says. He was special counsel to the FTC in the Rambus standard-setting case, and calls technology “a critically important area,” as the US economy is increasingly driven by it.

“An awful lot of what we do day-to-day, the technology we interact with, is a product of standards set cooperatively, often by competitors and with a substantial possibility for abuse. But standards can be necessary and therefore pro-competitive,” he says. “Those are cases that from time to time need to be brought, and there will probably be plenty more.”

## **Hausfeld LLP**

The eponymous firm Michael Hausfeld started after his 2008 split from Cohen Milstein has become internationally well-known, but it continues to be a major player in the US plaintiffs’ bar. And with regard to antitrust and competition law, the Hausfeld website declares, “This Is What We Do.”

Most of the firm’s cases in the US are class actions, and several have international aspects. It is among the counsel to plaintiffs in a host of multidistrict litigations regarding common products and services: Aftermarket Automotive Lighting; Air Cargo; Air Passenger; Blood Reagents; Refrigerant Compressors; CRTs; Processed Egg Products; LCDs; Municipal Derivatives; Optical Disc Drives; Polyurethane Foam; Potatoes; Rail Freight; Tomatoes; Transpacific Passenger Air Transportation and Vitamin C.

The case that has put Hausfeld in the news most often lately, however, is the NCAA Student-Athlete Name & Likeness Licensing antitrust litigation. At the time of going to press, the case had begun trial and the requested relief had been limited to an injunction to change the National Collegiate Athletic Association’s rules forbidding players from being compensated for the use of their names and images.

Partner Brian Ratner says various legal precedents have made defendants more resistant to resolving

matters early, resulting in more antitrust cases going to trial and being appealed. However, there is a silver lining to the greater amount of work demanded for cases: he says fee objections are tougher to make successfully.

## **Labaton Sucharow**

While recurring clients are somewhat rare in plaintiffs' work, Labaton Sucharow's strong securities practice developed relationships with hundreds of public pension funds and similar entities, which of late needed counsel in financial benchmarking and pay-for-delay matters. They did not have to go far, thanks to the firm's antitrust expertise.

The competition law team has filed complaints in Libor, Brent Crude Oil, Credit Default Swaps, Foreign Exchange and Gold, and is investigating a number of other industries for collusion. Its suit against a reverse payment settlement for Cipro was stayed for years but has been reopened since the Supreme Court's decision in *Actavis*, and Labaton has brought cases claiming delayed generic entry for other drugs as well.

Though the pay-for-delay cases are on behalf of indirect purchasers, practice co-chair Greg Ascioffa says the overwhelming majority of complaints the firm files are for direct purchasers. It is among the counsel in the settled Aftermarket Auto Lights and Pool Products cases, as well as the massive Air Cargo Shipping Surcharge cases.

Ascioffa says increased international enforcement of antitrust law, as foreign antitrust agencies have become more active in uncovering price-fixing conspiracies with direct effects on US commerce, has created potential new cases. "We've had to become experts on foreign issues such as discovery. For example, in Air Cargo, we're getting discovery from Asia, Australia, Europe," he says. "This has raised interesting, complex issues, particularly regarding where you can take depositions," with jurisdictions such as China not permitting them.

## **Lieff Cabraser Heimann & Bernstein**

Antitrust practice head Eric Fastiff says in 42 years, his firm never has represented defendants. But on the plaintiffs' side, it represents consumers, government entities and businesses, with major cases including High Tech Employees, TFT-LCD, Libor, Lithium Ion Batteries, Cipro, Comdata and the NCAA Name and Likeness antitrust litigations.

Fastiff says the firm taps the skills of all its lawyers to best represent clients, so that employment specialist Kelly Dermody led the High Tech Employees matter and Richard Hyman leads antitrust tech cases. Meanwhile, antitrust partners Brendan Glackin and Dean Harvey are "facile with economics in a way many antitrust lawyers are not," Fastiff says. They work with economic experts in the firm's antitrust and securities cases.

"Good facts are always paramount in achieving success for your client, as in the cold-calling [high-tech employees] and LCD cases," Fastiff says. "Right now the law is in flux in terms of class

certification and the Foreign Trade Antitrust Improvements Act, and with more clarity from the courts or Congress, I think victims of anti-competitive actions will continue to gain vindication in federal and state courts.”

He considers state courts, particularly California’s, still to be a great place to bring plaintiff claims; it is where the firm initially brought its Cipro pay-for-delay case. The firm handles its own appeals, and currently has a case pending in the Ninth Circuit that alleges an antitrust conspiracy to increase price of steel in tomato cans.

“We are continuing to represent clients in both class actions and individually,” Fastiff says, with governments and corporations an expanding part of the practice.

## **Quinn Emanuel Urquhart & Sullivan**

Though not a traditional plaintiffs’ firm, Quinn Emanuel is nonetheless bringing claims in several of the biggest class actions currently active in the US. These include leading the Polyurethane Foam Multidistrict litigation for a national, certified class of direct purchasers who are scheduled to go to trial in October. Along with some of the other firms in this survey, Quinn Emanuel represents plaintiffs in the Comdata litigation and helped in December 2013 to achieve a \$130 million cash settlement as well as hundreds of millions more in non-cash relief.

On the more difficult side of plaintiffs’ work, the firm is co-lead counsel in the rail freight fuel surcharge case, in which the DC Circuit vacated class certification last year, based on its reading of the Supreme Court’s Comcast decision.

Even where the firm is not among lead counsel, such as the Egg Product antitrust litigation, it insists on what practice head Stephen Neuwirth calls “an active and visible role” in the case.

“The way we got into [plaintiffs’ work] was natural, in the sense that we are a firm that already does a lot of work on both sides of the ‘v’. A lot of our practice, not only in antitrust, involves doing that,” Neuwirth says. “We are probably the leading firm bringing claims against banks and other financial service companies, in part because we don’t have a corporate practice so we are free from the conflicts that would keep other major firms from suing the banks.”

The firm focuses its plaintiffs’ side work on direct purchaser antitrust cases on behalf of companies that purchased products allegedly to have been subject to price-fixing or other anti-competitive conduct. Neuwirth says cases come to the firm when it is approached by a victim of the alleged conduct, or another person who knows about the conduct.

“We’ll investigate and determine whether we think the case merits being pursued. We do have a very careful evaluation process and we are very selective about what we do on the plaintiffs’ side,” he says.

## Robins Kaplan Miller & Ciresi

With offices in nearly every region of the United States and more than 600 employees, Robins Kaplan has grown far beyond its 1938 roots in Minneapolis, Minnesota. Its antitrust team moves easily between plaintiffs and defence side work, particularly in the health care industry. Close ties to health insurance company Blue Cross Blue Shield, including a successful jury verdict awarding \$10 million in damages, recently took long-time partner Joel Mintzer to the general counsel office of Blue Cross and Blue Shield of Minnesota.

Since antitrust practice co-chair Hollis Salzman joined the firm less than two years ago, it has played a role for plaintiffs in the Auto Parts litigation, which involves 29 separate actions, and in the Visa/Mastercard interchange case. Air cargo now totals nearly \$1 billion in settlements, and the remaining defendants keep the case active, with a ruling still pending from class certification evidentiary hearing.

Robins Kaplan is also taking on tough matters that have not been preceded by government investigations that found collusion: it is among plaintiffs' counsel in a lawsuit by investors against Bain Capital, Blackstone, Carlyle, JP Morgan and a host of other financial companies that claims a conspiracy to rig bids on takeovers. The firm's case on behalf of indirect purchasers of chocolate candy is on hold as direct purchasers ask the Third Circuit to reverse an unfavourable district court ruling.

Perhaps the rockiest antitrust case has not been a class action, but the individual complaint brought on behalf of Best Buy against LCD makers. Although Robins Kaplan obtained a trial verdict technically in favour of its client, the payout of damages has been intensely disputed and may result ultimately in no recovery – and a significant cut to attorneys' fees.

## Susman Godfrey

Attorneys at Susman Godfrey pride themselves on being trial lawyers ready to bring any kind of case. Even after being named to the Who's Who Legal: Competition Lawyers & Economists along with four colleagues, partner Barry Barnett insists that there are no chairs of practices and no one spends half of his or her time on antitrust cases. He says the firm as a whole principally handles class action cases; though for him personally, the balance tips to representing individuals.

The firm's antitrust successes began with the Corrugated Container price-fixing litigation in the 1980s. More recently, Susman Godfrey helped secure a \$162.3 million verdict for direct purchasers of vitamin C against two Chinese manufacturers; and \$86 million in settlements for airline passengers against Korean and Asiana Airlines, although appeals are pending in both cases. It represents a putative class of tour bus ticket buyers that reached a \$19 million settlement with two New York companies. Other settlements include the Egg Producer, Dram Indirect Purchasers, and Rambus cases.

There are plenty of ongoing cases to keep Susman Godfrey's lawyers busy. They are among the lead

counsel in the Comcast matter that gave rise to the Supreme Court holding, which was remanded to district court. Barnett says there is a “tentative non-binding settlement” of cable subscribers’ claims, but the terms are confidential. The firm is also involved in Libor, Auto Parts For Indirect Purchasers, and is co-lead counsel on a municipal derivatives case in which a \$38 million settlement with Bank of America and General Electric was recently approved but several defendants remain.

While name partner H Lee Godfrey has retired and his co-founder Steve Susman is 73, their firm maintains a stream of new talent. One such example is associate Amanda Bonn, who argued for the US Court of Appeals for the Ninth Circuit to revive an antitrust case on behalf of purchasers against Panasonic and a patent pool that allegedly raised prices for the memory cards used in cameras and smart phones. The appeals court reversed in consumers’ favour.