

HEALTH CARE & PHARMACEUTICAL ANTITRUST PRACTICE

Constantine Cannon is nationally recognized for its experience in prosecuting and defending complex, bet-the-firm, healthcare antitrust cases. We are regularly lead trial-counsel in healthcare antitrust cases, and we frequently represent healthcare and pharmaceutical clients in State and FTC/DOJ investigations. We provide strategic advice on merger review, joint ventures and other collaborative associations such as IPAs, intellectual property licensing agreements, and distribution agreements in these areas.

Constantine Cannon also provides day to day corporate regulatory compliance counseling to General Counsels and Chief Compliance Officers, including on general compliance matters (e.g., consumer marketing practices, conflicts of interest, corporate investigations, false claims, anti-kickbacks), and on implementing effective antitrust compliance programs -- from policies to training to monitoring and auditing.

We have achieved substantial success in litigating antitrust healthcare cases – including the rare feat of obtaining a significant jury verdict in favor of our client. For example, we have represented Ortho Biotech, a subsidiary of Johnson & Johnson, in a Sherman Act Section 1 and 2 litigation against Amgen, Inc. in the District of New Jersey. Ortho alleged that Amgen used its monopoly in the market for white blood cell growth factor (WBCGF) drugs to the detriment of consumers that purchase red blood cell growth factor (RBCGF) drugs. WBCGF and RBCGF drugs are given to patients undergoing cancer chemotherapy that have sustained substantial losses in either white or red blood cells. Specifically, Ortho alleged that Amgen engaged in its exclusionary tactics by providing massive rebates to cancer clinics on its WBCGF drugs only on the condition that the clinics purchase all or substantially all of their RBCGF drugs from Amgen (as opposed to Ortho). Ortho alleged that this conduct led to anticompetitive effects by, among

other things, foreclosing it from substantial portions of RBCGF sales and that this conduct constitutes an illegal tying arrangement, a maintenance of monopoly power and/or an unlawful attempt to monopolize. Ortho sought damages and injunctive relief in this matter. In a settlement that the parties announced on July 11, 2008, Amgen agreed to pay Ortho \$200 million.

Constantine Cannon has also represented several groups of outpatient diagnostic imaging clinics in Sherman Act Section 1 litigations in the Southern and Eastern Districts of New York against a health insurance company "gatekeeper" previously owned by competing diagnostic imaging providers. The plaintiffs alleged that the defendant had exclusive contracts with some of the largest health insurance companies in New York and that plaintiffs and other competitors have been excluded from servicing patients covered by these insurance companies due to the acts of exclusion and market allocation by the defendant and its co-conspirators.

Our attorneys frequently lecture and write on healthcare and pharmaceutical antitrust issues. The following articles concerning these issues have been published by our partners.

A Watchful Antitrust Eye in Healthcare
BNA Antitrust & Trade Regulation Report (Matthew Cantor with Marlene Koury)
(December 7, 2012) [download PDF](#)

Getting To A Rule For Reverse Payments, *Competition Law360*
(June 28, 2012) [download PDF](#)

Cautioning Bilateral Monopoly Markets In Health Care
Law360 (Axel Bernabe with Taline Sahakian) (Oct. 17, 2011) Click [here](#) to read the article.

Affordable Care Act Signals New Direction for Antitrust Enforcement in Healthcare
BNA Antitrust & Trade Regulation Report (Axel Bernabe with Douglas E. Rosenthal and Dan Vitelli) (June 24, 2011) [download PDF](#)

Antitrust Issues Faced by Accountable Care Organizations
[download PDF](#)

Dealing With Antitrust Fallout From Health Care Reform *BNA Health Law Reporter* (Axel Bernabe with Dan Vitelli) (Dec. 9, 2010)
Click [here](#) to read the article.

Let innovators flourish

National Law Journal (Matthew Cantor with Axel Bernabe) (April 27, 2009) Click [here](#) to read the article.