

WILSON SONSINI

Kenneth O'Rourke

PARTNER

Antitrust and
Competition
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FOCUS AREAS

Antitrust Civil Enforcement
Antitrust Compliance and
Business Strategy
Antitrust Criminal
Enforcement
Antitrust Litigation
Antitrust and Competition
Antitrust and Intellectual
Property
Government Investigations
Third-Party Merger and
Non-Merger Antitrust
Representation

HIGHLIGHTS

- An Experienced Antitrust Litigator**
For more than 30 years, Ken has represented clients in multi-forum litigation, class actions, "bet-the-company" cases, M&A litigation, and high-stakes antitrust and IP disputes, including several international matters.
- A Recognized Practitioner**
Ken is recognized for his work by leading industry publications, including *Chambers Global*, *Chambers USA*, and *Global Competition Review*. The latter honored Ken as being among the world's "Competition Thought Leaders."
- An Antitrust Leader**
Ken serves as vice chair of the ABA Antitrust Section's Global Private Litigation Committee. He chaired *The Antitrust Litigation Forum* for 10 years, from 2010 to 2019. He chaired the California State Bar Antitrust & Unfair Competition Law Section from 2013 to 2014.

EXPERIENCE

Kenneth (Ken) O'Rourke is a partner in the antitrust department at Wilson Sonsini Goodrich & Rosati, where his practice focuses on litigating complex cases and high-stakes U.S. and international disputes, as well as defending against government investigations. Ken is based in the firm's Washington, D.C., office with a continuing presence in California. He represents companies pursuing remedies for wrongful conduct by others, as well as defends companies being sued in complex cases.

For more than three decades, Ken has represented established and emerging companies in multi-forum civil litigation, class actions, "bet-the-company" cases, government enforcer investigations, merger litigation, and high-stakes antitrust and intellectual property disputes, including several international matters. His experience includes litigating class actions and other international price-fixing cartel follow-on actions, monopolization and attempted monopolization cases, pending mergers contested by government enforcers and private litigants, IP disputes involving the refusal to license standard essential patents (SEPs) on reasonable and non-discriminatory (RAND) terms, and pharmaceutical antitrust lawsuits alleging delayed market entry of generic drugs due to reverse payment patent settlements.

He is a lawyer admitted to practice in California and the District of Columbia, as well as a solicitor of the Senior Courts of England & Wales (with current practising certificate) and a former solicitor of the Republic of Ireland.

Ken is recognized by leading industry publications. *Chambers Global 2024*: Antitrust - USA Cartel states that he is "highly regarded for his antitrust cartel work" and *Chambers USA: California Antitrust*

2019 reports that he is “a spectacular lawyer” who “takes on large-scale civil and criminal antitrust litigation.” *Global Competition Review's* 2016 edition of *Who's Who Legal - Competition* called Ken “one of California's foremost litigators” and praised him for both his competition and IP experience. In 2019 and 2020, the publication honored Ken as being among the world's “Competition Thought Leaders,” noting that peers extol him as “a really excellent antitrust litigator.”

Prior to joining Wilson Sonsini, Ken was a senior antitrust and business litigation partner with another top law firm, where he practiced law for nearly 35 years in California and (more recently) Washington, D.C. He also served for nearly 18 months as the interim chief legal officer of Health Care Service Corporation (HCSC), one of the country's largest health insurers and operator of the BlueCross BlueShield health plans in Illinois, Montana, New Mexico, Oklahoma, and Texas.

CREDENTIALS

Education

- J.D., Loyola Law School, 1985
St. Thomas More Law Honor Society; Editor-in-Chief, Loyola International and Comparative Law Journal
- B.A., University of California, Los Angeles, 1982

Associations and Memberships

- Chair or Co-chair, The Antitrust Litigation Forum, 2010-2019
- Chair, California State Bar Antitrust & Unfair Competition Law Section Executive Committee, 2013-14, and Vice Chair, 2012-13
- Vice Chair, ABA Antitrust Section's Global Private Litigation Committee, 2021-2022
- ABA Antitrust Section's International Cartel Task Force, 2013-2018
- Additional ABA Antitrust Section Leadership Positions, 2017-present
- Former Co-chair, Trade Secrets Subcommittee of the ABA Litigation Section's Intellectual Property Committee
- UCLA Department of Neurology Board of Advisors

Honors

- *Chambers Global: Antitrust - USA Cartel* 2019-2024 (Band 3)
- Selected for inclusion in the 2023 edition of *Global Competition Review/Who's Who Legal: Competition* and named a 2019-2020 “Thought Leader” by the publication
- Recognized in the 2019-2023 editions of *Chambers USA: America's Leading Lawyers for Business*
- Frequently recognized in *The Legal 500*, Antitrust; *Southern California Super Lawyers*, Antitrust; *Who's Who Legal - The International Who's Who of Competition Lawyers*, Antitrust; and *Irish Legal 100*

Admissions

- Bar of the District of Columbia
- State Bar of California
- Solicitor, Senior Courts of England & Wales
- U.S. District Court for the Central District of California
- U.S. District Court for the Eastern District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Southern District of California
- U.S. District Court for the District of Columbia
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Supreme Court

MATTERS

Select Representations

- Representing leading companies investigated by government enforcers and sued by class action plaintiffs and civil claimants for allegedly participating in international price-fixing cartels.
- Representing Seagate, a world-leading hard disk drive maker, in federal court litigation seeking to recover overcharges and other relief stemming from an antitrust price-fixing and market allocation conspiracy involving manufacturers of high-tech components used in hard drives.
- Defending NextEra Energy in antitrust conspiracy and monopolization claims in federal court. All federal antitrust claims were dismissed with prejudice via successful motion to dismiss.
- Defending AT&T and Time Warner through litigation and trial brought by the U.S. Department of Justice seeking to block their merger. The district court approved the merger and the appeals

- court affirmed.
- Defending US Airways in litigation filed by the U.S. Department of Justice seeking to block its merger with American Airlines. The combined airline is now the world's largest by some measures.
- Representing Alaska Airlines in defending its proposed acquisition of Virgin America over allegations of a substantial lessening of competition in a federal court antitrust action filed by travel agents and air passengers seeking to block the acquisition. The merger was approved.
- Defending SK Hynix Inc., one of the world's leading semiconductor manufacturers, against a decade-long campaign by a Silicon Valley start-up that sought to impose patent royalties worldwide on industry-standard memory chips.
- Serving as a senior leader of a trial team that obtained a complete defense victory from a San Francisco jury against \$12 billion antitrust claims.
- Defending pharmaceutical FTC investigations and defending class actions by plaintiffs alleging anti-competitive "reverse payment settlements" that supposedly delayed generic drug competition.

INSIGHTS

Select Publications and Speaking Engagements

International Cartel Litigation

- Speaker/Commentator, ABA/IBA International Cartel Workshop, San Francisco, February 2020
- Discussion Co-leader, "Beyond Traditional Price Fixing Cartels: Litigating New Age Cartels," *Antitrust Litigation Forum*, Charleston, SC, October 2019
- Speaker, "Can I See That? Discovery Across Borders," American Bar Association Section of Antitrust Law Global Private Litigation Conference, Berlin, Germany, June 2019
- Guest Lecturer, "Extraterritoriality," The Globalization of Cartel Enforcement, George Mason's Antonin Scalia Law School, Arlington, VA, April 2019
- Chair and Moderator, "Antitrust Developments in Asia," Legal Talk Network, an ABA Antitrust Section Podcast, March 2019
- Panel Chair and Moderator, "Global Class Action Developments," ABA Antitrust Section's Spring Meeting, Washington, D.C., March 2019
- Program Chair and Speaker, "Trying Cartel Cases: Effective Strategies for Proving and Defending the Case," ABA Antitrust Section's Global Seminar Series, Hong Kong, October 2018
- Co-Discussion Leader, "Current Administration's Approach to Antitrust Enforcement," The Antitrust Litigation Forum, October 2018
- Speaker, "International Price-Fixing Cartels: Dawn Raids, Criminal Investigations & Civil Litigation," Irish-American Society's 2018 Law Symposium, Cleveland, OH, September 2018
- Speaker, "Cartel Enforcement Update 2018," Legal Talk Network (LTN) ABA Antitrust Podcast, August 2018
- Roundtable Participant, "Cartel Investigations and Litigation," Corporate Disputes, July - September 2018 Issue
- Panelist, "Private Damages Actions - A New Frontier," ABA Antitrust in Asia Conference, Seoul, Korea, May 2018
- Co-Discussion Leader, "Parallels Between EU and US Antitrust Law and Practice," European Forum on Competition Litigation, London, November 2017
- Speaker, "Class Certification in Cartel Cases," IBA/ABA International Cartel Workshop, Tokyo, Japan, February 2016
- Panelist, "Sir, please step out of the line - Criminal Cartel Developments," GCR Antitrust Live - Miami, February 2015
- Co-Discussion Leader, "Convergence of Continuity: Litigating and Settling US Cases with Private Actions Outside the US," Antitrust Litigation Forum, Napa, California, October 2014
- Co-author, "Guilty Pleas in Antitrust Civil Litigation," *Antitrust Report*, September 2014
- Panelist, "Civil Litigation in the Aftermath of Criminal Prosecution: How to Use and Diffuse Guilty Pleas," ABA Antitrust Spring Meeting, Washington, D.C., March 2014
- Speaker, "Opting Out of Class Actions in Cartel Cases," IBA/ABA International Cartel Workshop, Rome, Italy, February 2014
- Panelist, "GCR Live: 2nd Annual Law Leaders Asia-Pacific Conference - Singapore," Global Competition Review, Singapore, March 2013
- Co-author with Ian Simmons, "Reflections on Cartel Enforcement," *ABA Antitrust Magazine* - 25th Anniversary Edition, December 2012
- Discussion Co-Leader, "Antitrust Litigation Trials," 2012 Antitrust Litigation Forum, Napa Valley, California, December 2012
- Moderator, "Big Stakes' Antitrust Trials," 22nd Annual Golden State Antitrust and Unfair Competition Law Institute, San Francisco, October 2012

- Moderator, “Defense 9, Plaintiff 3: Winning Over the Jurors in the \$12 Billion Rambus Antitrust Trial,” Association of Business Trial Lawyers (ABTL), Orange County, CA, April 2012
- Panel Leader and Panelist, “Internal Investigations,” 2012 ABA International Cartel Workshop, Vancouver, B.C., February 2012
- Moderator and Panelist, “Winning Strategies in U.S. Jury Trials,” In-House Counsel Forum, Seoul, Korea, January 2012

Intellectual Property Rights Intersecting Antitrust Law

- Panelist, “Antitrust and IP Developments for the High Tech Sector,” KNet365 Law’s Antitrust USA: West Coast Conference, San Francisco, February 2019
- Co-author with Stephen McIntyre, “Intellectual Property and Antitrust: Getting the Deal Through,” *Global Competition Review*, USA Chapter, 2012-2018
- Co-author with Julia Schiller, “Promoting Competition and Standards: The D.C. Divide,” ABA Antitrust Section’s Fall Forum, October 2010
- “California Intellectual Property Law Developments,” *California Litigation Review*, October 2009 and October 2010
- Speaker, “Antitrust Laws & Lessons from Standard Setting Organizations,” International Seminar on Anti-Monopoly Issues in the Industry of New and High Technology, China’s Ministry of Industry & Information Technology (MIIT), Beijing, PRC, June 2010
- Co-author, “*Ashcroft v. Iqbal*: The Sleeper 2009 Supreme Court Decision For Patent Litigators?” *Intellectual Property & Technology Law Journal*, Vol. 21, No. 12, December 2009

Complex Civil Litigation

- Co-author, “‘Off-Ramps’ in US Private Damages Antitrust Actions,” prepared for ABA Antitrust in Asia Conference, April 2018
- Co-author with Michael Tubach, “Corporations and the Privilege Against Self-Incrimination: Current Issues Under US Law,” prepared for ABA/IBA International Cartel Workshop, February 2018
- Panelist, “Ethics in Joint Defense and Common Interest Groups,” Los Angeles County Bar Association, Los Angeles, California, July 2017
- Panelist, “Joint Defense Group Ethics: A Debate & Discussion,” ABA Antitrust Spring Meeting, Washington, D.C., April 2017
- Co-author with Scott Schaeffer, “Three Paths to Class Action: Rule 23(b) and the Nature of Class Claims in America,” prepared for ABA/IBA International Cartel Workshop, February 2016
- Co-author with Stephen McIntyre, “The Continuing Violations Doctrine: Limitation in Name Only, or a Resuscitation of the Clayton Act’s Statue of Limitations?” *Competition*, Spring 2015
- Panelist, “Resolving Antitrust Disputes: Arbitration, Mediation, and Settlement,” CLE International Antitrust Law Conference, San Francisco, February 2013
- Co-author with Stephen McIntyre and Katelyn Denby, “Preserving Legal Privileges in the U.S., California, and the EU,” *Antitrust Report*, December 2012

Pharmaceutical Antitrust Litigation

- Moderator, “Big Stakes Antitrust Trials - *In re Solodyn Antitrust Litigation*,” California Lawyers’ Antitrust Section Annual “Golden State Institute,” San Francisco, California, November 2018
- Co-Discussion Leader, “Healthcare Industry and Pharmaceuticals,” Antitrust Litigation Forum, New Orleans, Louisiana, October 2015
- Co-author with Anna Fabish, *Drafting Pharmaceutical Patent Settlements With Actavis in Mind*, Corporate Disputes Magazine, June 2015
- Panel Chair, “Beyond Reverse Payments: The New Frontiers in Pharmaceutical Antitrust,” ABA Antitrust Spring Meeting, Washington, D.C., April 2015
- Co-author with Anna Fabish, “New Frontiers in Pharmaceutical Antitrust,” submitted for ABA Antitrust Spring Meeting, March 2015
- Co-author with Stephen McIntyre and Ian Simmons, “Patent Validity and Scope Can Be Litigated in Antitrust Suits,” *Law360*, August 1, 2014
- Co-author with Stephen McIntyre and Ian Simmons, “The Continuing Relevance of Patent Validity in Reverse-Payment Litigation,” *Concurrences*, May 2014
- Co-author with Ian Simmons and Scott Schaeffer, “Viewing *FTC v. Actavis* Through the Lens of Clayton Act Section 4,” *ABA Antitrust Magazine*, Fall 2013
- Co-author with Jon Sallet and Katrina Robson, “*FTC v. Actavis*: Reconciling Conflicts In Rules of Reason,” *Law360*, July 2, 2013

Agricultural Antitrust Litigation

- Panelist, “The Capper-Volstead Exemptions in an Era of Supply Management and Vertical Integration,” American Bar Association Antitrust State Enforcement, Agriculture & Food, Exemptions & Immunities Committees, September 2012
- Discussion Co-Leader, “The Capper-Volstead Act Exemption and Supply Restraints in Agricultural Antitrust Actions,” New York State Bar Antitrust Section Executive Committee, New York, New York, February 2011
- Co-author with Andrew Frackman, “The Capper-Volstead Act Exemption and Supply Restraints in Agricultural Antitrust Actions,” *Competition: The Journal of the Antitrust and Unfair Competition Law Section of the State Bar of California*, Vol. 19, No. 2, pp. 69 et seq., Fall 2010

VIDEO

"Antitrust Litigation," February 9, 2022

