



Richard Hernandez

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Business Litigation | Antitrust | Class Action & Multidistrict Litigation | Healthcare | Sports & Entertainment

Noted as a “brilliant litigator” with “a command of facts and the law that is sometimes scary,” sources say Rich is “Extraordinarily hard-working and extraordinarily energetic...a zealous and dogged representative of his client.” He is also known for his “excellent tactical and strategic advice” and for being “very thorough and diligent.”
—*Chambers USA*

Richard Hernandez chairs McCarter’s Antitrust and Sports Law practices. He focuses on antitrust litigation, counseling and compliance as well as complex commercial litigation and sports law. He has represented a variety of industry leaders, litigating antitrust matters, including complex class actions, in federal courts throughout the country.

Rich’s antitrust law experience extends to matters involving price-fixing, tying, exclusive dealing, product distribution (e.g., resale price maintenance policies, drafting, implementation and enforcement of distribution agreements, minimum advertised pricing policies, and other vertical restraints), franchising, monopolization, competitor collaborations/joint ventures, trade association conduct, and patent/antitrust matters, including reverse payment settlements, fraud on the Patent Office, and the licensing and enforcement of intellectual property rights. Rich also advises on Hart-Scott-Rodino pre-merger notification, merger analysis and seeking clearance for transactions reviewed by the Federal Trade Commission (FTC) and the Department of Justice (DOJ). He represents clients in government investigations conducted by the FTC, DOJ, and various state attorneys general into anticompetitive practices, and he often provides antitrust compliance training to help clients avoid future regulatory scrutiny.

Rich also focuses a significant amount of his practice on the business of sports. He represents industry stakeholders including MetLife Stadium, the New York Giants and the New York Jets in a wide range of complex disputes and commercial transactions, and regularly provides counseling to address other business concerns as they arise. Rich has regularly represented professional sports franchises and amateur and professional sports leagues in a number of high profile matters, experience which includes favorably resolving a highly publicized litigation over the alleged sale of fraudulent memorabilia in a settlement reached after obtaining dismissal of the core claims against his clients. Rich also defeated a putative class action filed in New Jersey federal court alleging his client’s requirement that season ticket holders purchase a “personal seat license” violated antitrust and consumer fraud laws. Rich also served as co-counsel to the NCAA, NFL, NBA, MLB and NHL in obtaining injunctions against implementation of New Jersey’s Sports Wagering Law in violation of the Federal Professional and Amateur Sports Protection Act. Rich also served as co-counsel to the NFL in an employment discrimination lawsuit brought by a player. In addition to representing sports clients involved in litigation, Rich regularly counsels professional teams and stadium operators in commercial transactions and other high profile and sensitive matters, including ticket resale issues, legalized sports betting, and crisis management.

In his diverse counseling and litigation practice, Rich also frequently represents banks, tech companies, hospital systems and other health care providers, food and beverage

manufacturers and distributors, franchisors, franchisees, doctors and manufacturers of pharmaceuticals, medical devices, and automobile parts. Rich has also acted as local counsel in over 50 New Jersey federal district court cases, including pharmaceutical, antitrust, and securities fraud matters.

Rich also serves on the Firm's Partnership Selection, Professional Personnel, Diversity, and Associate Retreat Planning Committees. Rich is also a member of the ABA Section of Antitrust Law and contributing author of the 8th Edition of Antitrust Law Developments Treatise published in 2017 by the Section and the update published in 2018.

Rich is also a Fellow of the American Bar Foundation. The Fellows of the American Bar Foundation is an honorary organization of attorneys, judges, law faculty, and legal scholars whose public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. Membership in The Fellows is limited to one percent of lawyers licensed to practice in each jurisdiction. Members are nominated by their peers and elected by the Board of the American Bar Foundation. Rich also serves as a trustee of the Association of the Federal Bar of New Jersey. The Association is the preeminent bar association for the federal court of New Jersey, which among other things, links members of the private bar with federal judges to share views on topics of mutual interest affecting federal practice. Rich also serves as the Chairman of the Board of Great Oaks Legacy Charter School in Newark, New Jersey, which serves over 2000 Newark students in grades K-12.

Representative Matters

National Football League—Employment discrimination

Represented the NFL in an employment discrimination case filed in New Jersey State Court by an NFL player.

New York Football Giants—All claims dismissed

Defended the New York Football Giants and the team's former equipment manager in a New Jersey state court action filed by a defunct business and one of its former owners alleging our clients assisted co-defendants in their theft of the failed company's shoulder pad design technology which was used to launch a new business in the same industry. We secured an order dismissing all claims against our clients, including claims for conversion, civil conspiracy, and negligent supervision, which were all dismissed with prejudice. The remaining claims were dismissed without prejudice and are the subject of Motion to Dismiss currently pending.

Variety of sports clients—Firearms and weapons policy

Advising a professional sports league, professional sports teams and a stadium operator on firearms and weapons policy issues. Also represented the clients in related discussions with the New Jersey State Attorney General.

New York Football Giants and New York Jets—Contract litigation

Successfully represented the New York Football Giants and the New York Jets as co-counsel in litigation brought against Triple 5 Group Ltd. and the New Jersey Sports and Exposition Authority following the agency's approval of the developer's addition of amusement and water parks to the unfinished project, known as "American Dream." The teams, which play at nearby MetLife Stadium, contended that a 2006 agreement covering the former Xanadu project gave them consent over significant changes, and argued that the approved plans were a major modification that would harm their stadium rights, posing a traffic and parking nightmare. The dispute was favorably resolved.

MLB, NCAA, NBA, NFL, and NHL—NJ sports betting

Co-counsel representing the Office of the Commissioner of Baseball, NCAA, NBA, NFL, and the NHL in the wake of the U.S. Supreme Court's ruling declaring the Professional and Amateur Sports Protection Act (PASPA) unconstitutional. The ruling reversed a win before the Third Circuit which had rejected the

State of New Jersey's attempts to challenge the PASPA. After a successful win at the trial court level, we are currently co-counsel to the leagues in the Third Circuit in their response to a New Jersey horse racing association's attempt to collect an alleged \$150 million in betting revenue that it claims to have lost as a result of our clients' successful efforts to block legalized sports betting in New Jersey.

New York Jets—Disability discrimination claim

Defending the New York Jets in a New Jersey federal court action filed by a former player alleging wrongful termination and disability discrimination under the American Disabilities Act for being placed on the non-football injury list.

New York Football Giants—Successful litigation defense

Defended the New York Football Giants and team executives in a high profile New Jersey state court litigation alleging a wide-ranging conspiracy among members of the Giants organization to defraud memorabilia collectors by creating fake "game-worn" helmets and jerseys. We secured the dismissal, with prejudice, of nearly all of the 18 claims asserted against our clients, positioning them for an extremely favorable settlement that resolved the plaintiffs' few surviving causes of action.

Automobile dealer group—Oppressed minority shareholder

Represented an automobile dealer group seeking to import and sell cars manufactured in China in an action alleging violations of New Jersey's Oppressed Minority Shareholder Statute and other fiduciary obligations.

Manager of commercial real estate—Unlawful information exchange

Represented a large manager of commercial real estate in an action alleging unlawful information exchange among owners and managers of commercial real estate buildings and their corresponding trade associations that denied a telecommunications company access to various properties.

Partners of major law firm—Conspiracy action

Represented two partners of major law firm in an action alleging a conspiracy between them and their client to harm a distributor in the electronics market by, among other things, committing NJ RICO violations and tortuously interfering with the distributor's business relationships.

Aerospace manufacturer—Section 1 conspiracy action

Represented a major aerospace manufacturer in an action alleging a Section 1 conspiracy between competing defense contractors to prevent a rival defense contractor from bidding on a large, long-term government contract.

Aluminum distributor—Group boycott

Represented a large aluminum distributor in a group boycott case alleging that competing service centers conspired to induce aluminum mills to refuse to sell to a rival service center.

Buzzi Unicem—Antitrust counseling

Represented a major cement manufacturer in a variety of antitrust counseling matters, including in connection with purchasing certain assets that the Federal Trade Commission required to be divested as a condition to approval of the merger of two of the largest cement manufacturers in the world.

New Jersey hospital systems—FTC merger review

Three large New Jersey hospital systems in three separate acquisitions potentially subject to merger review by the Federal Trade Commission.

PNY Technologies—Prosecution of a lawsuit

Represented USB flash drive and Micro SD manufacturer in the prosecution of a lawsuit alleging violations of federal and California state antitrust laws including tying, exclusive dealing, monopolization and attempted monopolization of flash memory technology and related markets, as well as patent misuse and unfair competition.

Hercules/Ashland—Sherman Act

Represented a medical device manufacturer in an action filed in New Jersey Federal Court by a terminated distributor alleging violations of Section 1 of the Sherman Act and price discrimination.

Valeant Pharmaceuticals—Over 30 lawsuits

Acted as co-counsel representing multinational, specialty pharmaceutical and medical device company in over thirty lawsuits filed New Jersey Federal Court alleging violation of federal securities laws and RICO claims.

Large pharmaceutical manufacturers—Hatch Waxman Act

Represented large pharmaceutical manufacturers in actions by generic pharmaceutical manufacturers pursuant to the Hatch-Waxman Act.

Hayward Industries Inc.—Distribution and competition matters

Pool products manufacturer in a variety of distribution and competition matters, including in an investigation by the FTC of anticompetitive practices and an action alleging monopolization and exclusive dealing.

Producer of deli meats—Product distribution matters

Producer of deli meats in a variety of product distribution matters, including in an action by former distributors alleging violations of California and federal franchise laws.

Direct purchaser of polyurethane foam—Price fixing class action

Represented a large direct purchaser of polyurethane foam used for bedding products in a multidistrict class action litigation alleging a price-fixing conspiracy among certain manufacturers of polyurethane foam.

Power plant manufacturer—Oppressed minority shareholder

Represented a power plant manufacturer in an action alleging violations of New Jersey's Oppressed Minority Shareholder Statute and other fiduciary obligations.

MetLife Stadium—Class action litigation

Advising and representing third party MetLife Stadium in connection with class action litigation alleging violation of the ticket withholding provisions of the New Jersey Consumer Fraud Act, an longstanding issue of great importance to all sports teams and entertainment venues in the State of New Jersey until a recent New Jersey Supreme Court opinion and legislative action taken by the State of New Jersey.

New York Football Giants—Breach of contract

Representing the New York Football Giants in a New Jersey state court action against defendants alleged to have breached a multi-year Suite Licensing Agreement by failing to pay the annual license fee and failing to purchase tickets to Giants' home games as required under the licensing agreement.

New York Football Giants—Fraud and RICO matter

Represented major professional sports team in a variety of matters, including an action alleging violations of various state consumer fraud acts and tying in connection with the sale of season tickets, and an action alleging RICO, malicious prosecution, and various memorabilia-related claims.

New York Football Giants—Successful class action defense

Defended the New York Football Giants in a putative class action targeting the Giants and the New York Jets alleging the requirement that the teams' season ticket holders purchase a "personal seat license" at the newly constructed stadium violated antitrust and consumer fraud laws, and breached their implied contract of a right to renew their annual season tickets in the same seat location. After dismissing the class action claims and allowing discovery to move forward on the plaintiff's claim of the implied right to renew his season tickets only, a New Jersey federal judge granted summary judgment in favor of our client, finding that no implied contract existed between the Giants and the plaintiff.

Mayne Pharma—Class action

Defense of a putative class action filed in the Eastern District of Pennsylvania against an Australian pharmaceutical manufacturer alleging Sherman Act Section 1 and 2 claims, as well as tortious interference with prospective economic relationships, based on a novel product-hopping antitrust theory of liability.

Hayward Industries, Inc.—Multidistrict class action

Defense of a multidistrict putative class action litigation in the Eastern District of Louisiana asserting Sherman Act Section 1 and 2 claims against the three largest manufacturers and the largest distributor in the pool products industry.

Glaceau (Vitamin Water)—Three federal court preliminary injunction actions

Represented major beverage manufacturer in three federal court actions by distributors seeking to invoke the protections of the New Jersey Franchise Practices Act to prevent termination, and in other actions seeking to collect amounts owed by terminated distributors that asserted counterclaims.

Boylan Bottling and Emigrant Bank—ICC arbitration and oppressed minority shareholder lawsuit

Represented premium beverage manufacturer and bank entities in an International Chamber of Commerce (ICC) arbitration regarding a dispute with a supplier, and in a separate action alleging violations of New Jersey's Oppressed Minority Shareholder Statute and other fiduciary obligations in New Jersey State Court.

Education

University of Pennsylvania Carey Law School, JD, 2001

Dartmouth College, BA, 1998

Bar Admissions

New Jersey

New York

Court Admissions

U.S. Court of Appeals, Third Circuit ,

U.S. District Court, District of New Jersey,

U.S. District Court, Eastern and Southern Districts of New York,

Memberships & Certifications

American Bar Association

Section of Antitrust Law

American Bar Foundation

International Franchise Association

The Association of the Federal Bar of the State of New Jersey

Board of Trustees

Great Oaks Charter School in Newark, New Jersey

Chairman of the Board

McCarter & English Diversity and Professional Personnel Committees

Member

Recognitions

Chambers USA, Litigation: General Commercial, New Jersey, 2017–2021

New Jersey Rising Star, *Super Lawyers*, 2013–2016

Top 50-Under-40, *New Jersey Law Journal*, 2014

“Richard Hernandez is routinely sought out by clients within the sports sector.” One interviewee notes “He’s very good with difficult topics.” —*Chambers USA, 2020*

A “brilliant litigator” with “a command of facts and the law that is sometimes scary.” “Extraordinarily hard-working and extraordinarily energetic...a zealous and dogged representative of his client.” —*Chambers USA, 2018*

Known for his “excellent tactical and strategic advice” and for being “very thorough and diligent.” —*Chambers USA, 2017*

Sources say that Richard Hernandez is “a tremendous attorney who is really smart.” One interviewee notes, “He is excellent; he is patient and takes the time to understand the business issues.”

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Alerts

Hart-Scott-Rodino Thresholds to Increase Effective February 27, 2020, Antitrust Alert, 1.31.2020

Hart-Scott-Rodino Thresholds to Increase Effective February 25, 2016, Antitrust & Trade Regulation Alert, 2.9.2016

Articles

Best Practices in Pre-Litigation Dispute Resolution, IFA 50th Annual Legal Symposium Background Paper , 4.1.2017

Antitrust Law Developments, ABA Section of Antitrust Law - 8th Edition , 1.1.2017

Speaking Engagements

Business Litigation Roundtable—Expert Testimony, New Jersey State Bar Association, 12.5.2018

Business Litigation Roundtable—Franchise Termination, New Jersey State Bar Association, 11.30.2017

Practical Alternates to Termination Panel, 50th Annual International Franchise Association Legal Symposium, 5.8.2017

Business Litigation Roundtable, New Jersey State Bar Association, 5.17.2016

Business Litigation—The Year in Review Panel, Business and Commercial Litigation Special Committee of the NJSBA, 12.11.2015

In-House Management of Large and Complex Claims, Hispanic Bar Association of New Jersey, 11.10.2015