

SCOTT D. RUSSELL

Senior Counsel

As Senior Counsel at Hancock Daniel, Scott Russell leads the firm's antitrust practice, with 15+ years experience representing healthcare providers, pharmaceuticals, medical devices, and technology companies through all phases of antitrust enforcement, namely: merger control, joint venture formation, government investigations, civil antitrust litigation, and business strategy compliance counseling.

Working closely with the firms' Healthcare Transaction group, Scott's primary focus is helping clients assess potential antitrust risk early in the deal process, to put them in the best position to customize the deal structure and obtain the safeguards needed to meet their business objectives. "My goal is to help clients understand the most likely deal outcomes, strategize to maximize deal value and certainty of close, and generally position the transaction to close as quickly and with minimal disruption as possible. While the goal is always to avoid investigation, when the authorities do call, we take pride in being prepared in advance to contain the scope of and quickly resolve the investigators' concerns."

Scott is recognized for his collaborative approach of working with investigators to quickly focus the inquiry on the core, lynch-pin issues that resolve their concerns. "I have a long history of working with antitrust authorities. I know how they think, and we've developed a mutual trust, that allows us to short-cut process and reduce burdensome discovery, to prioritize focusing on the issues that matter." Scott has successfully defended his clients in over 40 formal merger and civil-conduct investigations from federal and state antitrust authorities, including some of the highest-profile consolidation deals, involving cutting edge issues, in heavily scrutinized industries, that remain at the forefront of antitrust enforcement.

On the rare occasion that a transaction is challenged, Scott has substantial experience and a track record of successfully defending clients in "bet the company" antitrust litigation. Most notably, Scott was a key member of the trial and appellate team (in charge of all substantive briefing, preparing experts, setting the defense strategy), in *FTC v. Lunbeck Pharma*, in the first merger challenge litigated under the current "Horizontal Merger Guidelines." The trial victory was affirmed unanimously by the 8th Circuit, and widely recognized in antitrust bar as the "Antitrust Win of Year."



Practice Areas

- Antitrust
- Clinically Integrated Networks & Organizations
- Fraud & Abuse
- Governance
- Mergers, Acquisitions & Transactions
- Physician Services

Licensure

- California
- District of Columbia
- Virginia

Academic Credentials

College of William & Mary, BA

College of Williams & Mary - Thomas Jefferson Public Policy Program, MPP (Masters in Public Policy), Highest Honors.

George Mason University - Antonin Scalia Law School, JD, Cum Laude

Stanford Law School, Visiting Researcher for the Law, Science & Technology LLM Program

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Additionally, Scott was the “point person” and “substantive expert” for many other noteworthy antitrust litigations, such as *O’Bannon v Electronic Arts & NCAA*, and all American Express antitrust litigation.

More broadly, Scott has substantial expertise counseling clients on their business strategies and collaborations. Scott is at the forefront of evolving antitrust law standards, and provides nuanced, pragmatic, and innovative advice that helps clients efficiently achieve their commercial objectives, while steering them clear of potential liability. Specifically, Scott regularly advises healthcare providers on joint ventures, clinical integrations, contracting and managed care issues. Additionally, Scott has guided pharmaceutical, medical device, and supply distributors in implementing pricing and distribution policies and guidelines to manage complex channel conflict issues, resale price maintenance concerns, IP licensing, exclusivity provisions and price bundling strategies.

Scott is frequent contributor to the antitrust bar. He has written and edited numerous articles and books for all of the ABA’s flagship publications: *Antitrust Law Developments Treatise* (“Mergers & Joint Ventures” Chapter), *The Antitrust Law Journal*, *Antitrust Magazine*, *Antitrust Source*, and *Antitrust & Intellectual Property Handbook* (“Licensing and Standard Setting” chapter).

Prior to joining Hancock Daniel, Scott served as of counsel and an associate at Tier 1 international antitrust law firms. Scott also completed a two-year federal clerkship and a Master’s Degree in regulatory economics and policy analysis.

Career Highlights

Faculty, Practicing Law Institute, Annual Intellectual Property and Antitrust Conference

Faculty, George Mason University – Antonin Scalia Law School.

Awarded “Antitrust Win of the Year” by Law360 & Global Competition Review for *FTC/Minn. v. Lunckbeck Pharma. (D.Minn)* (litigated antitrust merger challenge)

Awarded “Antitrust Win of the Year” (by Law360) for *FTC/Minn. v. Lunckbeck Pharma. (8th Cir)* (lead and primary brief writer)

Awarded “Antitrust Practice Group of Year” by Law360 (two years in row) (leading role in 4 of the 6 signature “antitrust victories” cited)

Publications & Speaking Engagements

“Circuits Reinforce Split over When Noerr-Pennington Shields Serial Litigants,” *The Antitrust Source*, Feb 2021 (co-author with Dylan Carson)

West Group Treatise: Successful Partnering Strategies for In-House and Outside Counsel, Chapter 79, *Antitrust Counseling* (co-author with Karen Silverman) (updated annually)

“Intellectual Property and Antitrust Handbook,” Chapter 10, *Counseling Guidelines for the Licensing of Intellectual Property*, ABA Antitrust Law Section (2nd edition, updated 3rd edition soon forthcoming).

“Analytical Framework for Assessing Antitrust Risk in IP Licensing Arrangements,” published with the Practicing Law Institute (updated annually).

Faculty presenter at Practicing Law Institute’s Annual Conference: *Understanding the Intellectual Property License*.

“Developments in Conglomerate Merger Enforcement, *FTC v. Ovation Pharmaceuticals*,” Working Paper Submitted for Panel Presentation at 2011 ABA Antitrust Spring Meeting.

“Vertical Restraints,” Working Paper Submitted for Presentation at Practicing Law Institute: *Advanced Antitrust Seminar: Distribution & Marketing* (48th Annual Conference) (co-author with Karen Silverman).

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"Resolving Patent Disputes Through Merger: A Comparison of Three Potential Approaches," Vol. 75 Antitrust Law Journal, 657 (2008) (Co-author with Scott Sher & Susan Creighton)

"Comment on the EC's Pharmaceutical Dawn Raids," Global Competition Policy, February 2008 (co-author with Susan Creighton)

Fearing and Revering Intellectual Property: Misplaced Reliance on Presumptions in the Federal Circuit's Independent Ink, Competition Vol. 14, No. 2, Fall/Winter 2005 (co-author with Scott Sher)

Adding Bite to Exclusive Dealings?: An Analysis of the Third Circuit's Dentsply Decision, The Antitrust Source, May 2005 (co-author with Scott Sher)

ABA Treatise: Antitrust Law Developments: Mergers & Acquisitions, 2004 Annual Supplement (co-author with Scott Sher)

Monopolist Defeats Charges of Illegal Exclusive Dealing: Dentsply International, Vol. 3 Antitrust Wire Issue 2, Fall 2003.

FTC Sets Forth Its Method For Analyzing Agreements Between Direct Competitors: "The Three Tenors," Vol. 3 Antitrust Wire Issue 2, Fall 2003.