



Eric Grannon

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Bars and Courts

US Supreme Court

US Court of Appeals for the District of Columbia Circuit

US Court of Appeals for the Second Circuit

US Court of Appeals for the Fourth Circuit

US Court of Appeals for the Eleventh Circuit

US District Court for the District of Columbia

US District Court for the District of Maryland

District of Columbia Bar

Maryland Bar

Education

JD, Howard University, *cum laude*, Howard Law Journal, 1998

BA, Brooklyn College, *magna cum laude*, Phi Beta Kappa, 1995

Awards and Recognition

Eric Grannon Named a "Litigator of the Week" by *Global Competition Review* for Defeating Direct-Purchaser Class Certification

Chambers USA – Antitrust (since 2014)

Practice Experience

Mr. Grannon helps clients with antitrust matters, including civil and criminal defense as well as counseling for mergers and acquisitions and settlements of pharmaceutical patent litigation. Since 2001, he also has helped clients with concerns under the Foreign Corrupt Practices Act (FCPA) and other anti-corruption issues. Mr. Grannon began at the firm as a summer associate in 1997 and has been a partner since 2007.

A former prosecutor, Mr. Grannon returned to White & Case after serving as Counsel to the Assistant Attorney General in charge of the Antitrust Division of the United States Department of Justice (DOJ) in 2003-04, where he helped formulate US antitrust enforcement policy and manage the civil and criminal investigations and court cases brought by the Antitrust Division. He ended his DOJ service with a detail as a Special Assistant US Attorney in the District of Columbia, trying twenty bench and jury trials as lead counsel.

In private practice, Mr. Grannon has argued on behalf of clients in district courts across the country, including a successful verdict for defendants in an antitrust jury trial, argued appeals in the Eleventh and DC Circuits, and worked on eleven matters before the US Supreme Court, ten of which were antitrust cases.

Mr. Grannon clerked for the Honorable Walter K. Stapleton, US Court of Appeals for the Third Circuit, 1999-2000, and the Honorable Federico A. Moreno, US District Court for the Southern District of Florida, 1998-99.

He is a member of the Legal Policy Board of the Washington Legal Foundation.

Mr. Grannon is currently serving a three-year term on the American Bar Association's Standing Committee on Amicus Curiae Briefs.

He previously served as Vice-Chair of the Health Care and Pharmaceuticals Committee of the American Bar Association Section of Antitrust Law, and prior to that as Vice-Chair of its Compliance and Ethics Committee.

Mr. Grannon has served as an adjunct faculty member at the Howard University School of Law, where he taught a seminar on advanced antitrust law.

Representative results for clients include:

In re Zetia (Ezetimibe) Antitrust Litigation: Mr. Grannon currently serves as lead counsel for a pharmaceutical company defending against class-action antitrust claims, recently winning a contested motion for centralization under 28 U.S.C. § 1407, before the Judicial Panel on Multidistrict Litigation, to the client's preferred venue in *In re Zetia*

Legal 500: "Recommended" for US Antitrust – Civil Litigation/Class Actions (since 2017)
"Outstanding" Washington, D.C. antitrust practitioner by the *Global Competition Review* (since 2017)
Best Antitrust Business Article – Intellectual Property Category, *Concurrences* Antitrust Writing Awards (2018)
Who's Who Legal: Competition – Future Leaders 2017, world's leading competition experts aged 45 or under
Euromoney's Guide to the World's Leading Competition and Antitrust Lawyers/Economists (since 2014)
Best Lawyers in America for Commercial Litigation (since 2015)
Burton Award for Distinguished Legal Writing (2013)
Washington, DC "Super Lawyer" for Antitrust Litigation (since 2013)
Antitrust "MVP", *Competition Law360* (2012)
"Litigator of the Week", *Am Law Litigation Daily* (2012)
Top ten antitrust attorneys in the United States then under the age of 40, *Competition Law360* (2010)

Languages

English

Citizenship

United States

(*Ezetimibe*) *Antitrust Litigation*, MDL No. 2836 (J.P.M.L. June 8, 2018).

FTC v. Actavis: Mr. Grannon currently serves as lead trial counsel for two pharmaceutical companies defending against class-action antitrust claims. His role in this matter has included:

- (i) Successfully opposing direct-purchaser plaintiffs' motion for class certification, which appears to be only the second time that direct purchasers have been denied class certification in a reverse payment case in the approximately twenty years that such cases have been litigated (2018);
- (ii) successfully arguing a Daubert motion to exclude and limit the testimony of plaintiffs' proposed pharmaceutical manufacturing valuation expert (2018);
- (iii) obtaining the voluntary dismissal with prejudice of the FTC's complaint with zero damages, no liability, and no injunctive relief beyond that already agreed to previously by the client's corporate parent in a separate matter (2017);
- (iv) obtaining the voluntary dismissal with prejudice of all indirect-purchaser actions with zero damages, no liability, and no injunctive relief (2016);
- (v) defeating the FTC and private plaintiffs' motion to compel the production of common-interest privileged communications, establishing an important precedent for protecting the confidentiality of joint-defense antitrust advice for settling patent litigation, *In re AndroGel Antitrust Litigation*, No. 09-MD-2084, 2015 WL 9581828 (N.D. Ga. Dec. 30, 2015);
- (vi) serving as counsel of record in the US Supreme Court for two respondents opposing the FTC on the merits, and previously opposing the FTC's petition for a writ of certiorari, in *FTC v. Actavis, Inc.*, 133 S. Ct. 2223 (2013) (5-3 decision reversing and remanding *FTC v. Watson Pharm., Inc.*, 677 F.3d 1298 (11th Cir. 2012));
- (vii) successfully arguing a motion for summary judgment against the sham-litigation claims of putative class-action plaintiffs in *In re AndroGel Antitrust Litigation*, 888 F. Supp. 2d 1336 (N.D. Ga. 2012);
- (viii) successfully arguing in the US Court of Appeals for the Eleventh Circuit against the FTC's appeal in *FTC v. Watson Pharm., Inc.*, 677 F.3d 1298 (11th Cir. 2012);
- (ix) successfully arguing a motion to dismiss against the FTC's

"pay for delay" lawsuit, *In re AndroGel Antitrust Litigation*, 687 F. Supp. 2d 1371 (N.D. Ga. 2010);

- (x) winning a contested motion for centralization under 28 U.S.C. § 1407, before the Judicial Panel on Multidistrict Litigation, to the clients' preferred venue in *In re AndroGel Antitrust Litigation*, MDL No. 2084 (J.P.M.L. 2009);
- (xi) winning a contested transfer motion under 28 U.S.C. § 1404 to transfer both the government and private antitrust actions to the original patent judge to defeat FTC and private-plaintiff forum shopping, *FTC v. Watson Pharm., Inc.*, 611 F. Supp. 2d 1081 (C.D. Cal. 2009); and
- (xii) defending clients and their executives in the underlying two-year FTC investigation, including at six investigational hearings.

Counseling Pharmaceutical Patent Settlements: Mr. Grannon also has counseled more than thirty pharmaceutical patent settlements that have avoided challenge by the FTC and class-action bar.

Class-action Arbitration:

- Co-lead counsel for petitioners in the defense win in *Stolt-Nielsen, S.A. v. AnimalFeeds Int'l Corp.*, 130 S. Ct. 1758 (2010), which changed US law by making it more difficult for plaintiffs to assert class-action claims in arbitration. This victory won the Litigation Category that year in the *Financial Times US Innovative Lawyers Report*. *Competition Law360* featured this win in naming White & Case one of the top five class-action defense firms in 2010.

Civil Antitrust:

- Co-lead counsel for respondents in *Mississippi ex rel. Jim Hood v. AU Optronics Corp.*, 134 S. Ct. 736 (2014), which concerns the removability of state attorney general actions to federal court under the Class Action Fairness Act of 2005 (CAFA).
- Lead counsel for the Chamber of Commerce of the United States of America as *amicus curiae* in *Jock v. Sterling Jewelers Inc.*, 646 F.3d 113 (2d Cir. 2011), a class-arbitration case turning on the application of *Stolt-Nielsen, S.A. v. AnimalFeeds Int'l Corp.*, 130 S. Ct. 1758 (2010).
- Co-lead author of successful motion to dismiss a predatory pricing case in *In re Parcel Tanker Shipping Servs. Antitrust Litig.*, 541 F. Supp. 2d 487 (D. Conn. 2008), which is one of the first decisions obtaining dismissal under the Supreme Court's

decisions in *Twombly* and *Weyerhaeuser*.

- Part of the team defending respondents in a putative class-action arbitration involving claims of international price fixing and customer allocation in the shipping industry; co-lead author of successful petition to vacate class-arbitration award in *Stolt-Nielsen, S.A. v. AnimalFeeds Int'l Corp.*, 435 F. Supp. 2d 382 (S.D.N.Y. 2006).
- Co-lead author of brief in opposition to certiorari in the then-leading case on settlement of pharmaceutical patent litigation: *FTC v. Schering-Plough Corp. and Upsher-Smith Laboratories, Inc.*, Supreme Court docket No. 05-273, cert. denied June 26, 2006 (defeating the FTC's certiorari petition and garnering the *amicus* support of the United States in opposition to the FTC).
- Co-lead counsel successfully defending Malaysian producers of extruded rubber thread against claims of price fixing in *Dee-K Enterprises, Inc. v. Heveafil Sdn. Bhd.*, including: (i) verdict for defendants after a jury trial in federal district court; (ii) unanimous affirmance on appeal to Fourth Circuit, 299 F.3d 281 (4th Cir. 2002); and (iii) lead author of brief in opposition to certiorari, Supreme Court docket No. 02-649, cert. denied June 27, 2003 (garnering the *amicus* support of the United States). *Dee-K v. Heveafil* is the leading precedent on the extraterritorial application of the Sherman Act under the "substantial effects" test from the Supreme Court's decision in *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993).

Criminal Antitrust:

- Lead counsel for a Taiwanese semiconductor manufacturer in both the DOJ's static random access memory (SRAM) antitrust grand jury investigation (which concluded in no indictment despite the cooperation of the amnesty applicant) and the parallel class-action litigations.
- Co-lead author of petition for a writ of certiorari in *White & Case LLP v. United States*, challenging Ninth Circuit's reversal of district court order quashing DOJ grand jury subpoenas that sought all discovery in parallel, follow-on class actions alleging cartel in thin-film transistor, liquid crystal display panels (TFT-LCD), and lead counsel coordinating support of eight *amici curiae* for same, Supreme Court docket No. 10-1147, cert. denied June 27, 2011.
- Co-lead counsel defending a non-US executive in the DOJ's cartel investigation of the dynamic random access memory (DRAM) industry. Lead author of successful motion for a bill of

particulars forcing the Antitrust Division to supplement its barebones, formulaic indictment with detailed factual allegations. *United States v. Kim*, No. 06-0692, (N.D. Cal. Mar. 1, 2007).

- Lead author of petition for a writ of certiorari in the *Stolt-Nielsen, S.A. v. United States* litigation to enforce an antitrust amnesty agreement against the Antitrust Division of the US Department of Justice, and lead counsel coordinating support of nine *amici curiae* for same, Supreme Court docket No. 06-97, cert. denied Oct. 30, 2006.
- Part of the team successfully defending against former co-conspirators' attempt to reverse the grant of leniency from the European Commission to Stolt-Nielsen, S.A.

Mergers:

- Co-lead merger counsel advising an innovator pharmaceutical company in successful FTC Hart-Scott-Rodino (HSR) clearance of the acquisition of another innovator pharmaceutical company (2018)
- Co-author of petition for a writ of certiorari in *Anthem, Inc. v. United States et al.*, Supreme Court docket No. 16-1342 (filed May 5, 2017), seeking review of *United States v. Anthem, Inc.*, No. 17-5024, 2017 U.S. App. LEXIS 7521 (D.C. Cir. Apr. 28, 2017) (Rogers and Millett, JJ., Kavanaugh, J., dissenting), which affirmed an injunction under Section 7 of the Clayton Act of the proposed merger between Anthem, Inc. and Cigna Corporation.
- Lead antitrust counsel advising a leading US tobacco company on the formation of a joint venture for the development of intellectual property.
- Lead US antitrust counsel for an innovator pharmaceutical company in a cross-border acquisition and pharmaceutical product development agreement.
- Lead merger counsel obtaining early termination of the HSR waiting period for review of Iron Mountain Inc.'s acquisition of Archives One, Inc.; anticipated and resolved DOJ's market share concerns within two days.
- Lead counsel for regional wireless service provider as third-party witness concerning a multi-billion dollar telecommunications acquisition; worked with DOJ to achieve

divestiture of significant asset of target as sought by client.

- Co-lead merger counsel obtaining early termination of the HSR waiting period for the acquisition of Kos Pharmaceuticals, Inc. by Abbott Laboratories.
- Part of the team litigating the first merger efficiencies defense under the then newly revised horizontal merger guidelines in *FTC v. Staples, Inc.*, 970 F. Supp. 1066 (D.D.C. 1997),

Antitrust Litigation against the Government: In addition to his wins against the FTC in *AndroGel*, Mr. Grannon's experience includes several other headline victories against the federal antitrust agencies, including:

- *US v. Stolt-Nielsen*, 524 F. Supp. 2d 609 (E.D. Pa. 2007) (successfully enforcing amnesty agreement against DOJ's attempted revocation);
- *FTC v. Schering-Plough*, 402 F.3d 1056 (11th Cir. 2005) (defeating FTC's first "pay for delay" suit); and
- *US v. Sungard Data Systems*, 172 F. Supp. 2d 172 (D.D.C. 2001) (defeating DOJ's merger challenge).

Foreign Corrupt Practices Act (FCPA):

- Lead counsel advising a Fortune 200 company on the due diligence, contractual, and operational compliance issues implicated in the creation of a long-term contract manufacturing relationship with a partner in China.
- Lead counsel representing a UK consulting firm on pre-acquisition due diligence and transaction structuring for an acquisition in Moscow, Russia; led interviews of target's personnel and on-the-ground investigation for same.
- Lead counsel advising board of directors of a Canadian company on FCPA consequences of listing on a US stock exchange; revised corporate compliance program as a result of listing.
- Lead counsel representing a Fortune 10 company by handling the FCPA and other compliance negotiations for the company's formation of a joint-venture, real-estate investment vehicle with the investment arm of a leading Middle Eastern government; designed compliance program and employee manual for the j.v. entity.

- Lead counsel representing a Fortune 100 company by conducting the due-diligence investigation and negotiations concerning the FCPA and Mexican-law implications of a proposed acquisition; handled the self-report to US enforcement authorities.
- Representing a Fortune 100 company by running more than one dozen compliance investigations on four continents for issues under the FCPA, and managing the investigation self-reports to US enforcement authorities; drafted compliance policies and procedures following conglomerate-wide risk assessment.
- Designing a corporate compliance manual for a multinational construction concern for non-US anti-bribery laws enacted pursuant to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Foreign Sovereign Immunities Act (FSIA):

- Co-lead counsel defending various foreign sovereigns and their agencies and instrumentalities in motion and appellate practice in four different litigations under the FSIA and act-of-state doctrine.
- Lead author of petition for a writ of certiorari in one of the main precedents on attachment and execution under the FSIA: *Ministry of Finance of the Republic of Indonesia v. Karaha Bodas Co.*, Supreme Court docket No. 05-1571, cert. denied Oct. 2, 2006.

General Representation: Mr. Grannon serves as outside general counsel to the leading corporate advocacy association in the United States.

Publications

- Lead author of the "United States: Pharmaceutical Antitrust" chapter in the *Global Competition Review's Antitrust Review of the Americas 2016, 2017, 2018*
- Author, "Are Antitrust Violations Crimes Involving Moral Turpitude?," *The Champion* magazine, published by the National Association of Criminal Defense Lawyers (April 2012 issue)

Speaking Engagements

- "2018 West Coast White Collar Conference: Criminal Antitrust",

June 21, 2018: sponsored by the National Association of Criminal Defense Lawyers, (moderator/panelist)

- "Institutional Shareholdings: Is There Really an Antitrust Issue?", June 1, 2018: Global Antitrust Economics Conference at New York University's Stern School of Business sponsored by *Concurrences*, (panelist). There is a video summary of Mr. Grannon's presentation on the adverse implications of proposals to limit institutional investors to 1% ownership of industry participants due to alleged common ownership antitrust concerns.
- "Trump Antitrust Policy After One Year: The United States Department of Justice", January 23, 2018: sponsored by the Heritage Foundation, (panelist)
- "Antitrust and Intellectual Property" October 18, 2017: American Bar Association's Antitrust Judicial Law and Economics Institute for Judges at the University of Chicago Law School, (moderator)
- "The US Supreme Court: October Term 2017 Preview," September 28, 2017: a media briefing hosted by the Washington Legal Foundation, (moderator)
- "Small Wagers, Big Results: How the Supreme Court's *Tyson Foods* Decision Could Affect Your Practice", October 20, 2016: at the 20th Annual National Institute on Class Actions of the American Bar Association, (panelist)
- "Counseling the Alleged Monopolist: Recent Developments," May 17, 2016: sponsored by the Unilateral Conduct Committee of the American Bar Association Section of Antitrust Law (panelist)
- "Freeing Off-Label Use Information: Three Lingering Questions for Medical-Product Innovators & Regulators," May 2, 2016: Washington Legal Foundation media briefing panel, (moderator)
- "Leniency Programs and Cooperation Post-Financial Crisis," April 7, 2016: at the 64th Annual Antitrust Law Spring Meeting of the American Bar Association, (moderator)
- "How to Settle a Patent Case After Actavis", April 16, 2015: at the 63rd Annual Antitrust Law Spring Meeting of the American Bar Association, (presenter)
- "Hot Topics in the Appellate Courts", November 6, 2014: 2014 Fall Forum of the Antitrust Section of the American Bar

Association, (panelist)

- "The US Supreme Court: Previewing the October 2014 Term," October 1, 2014: a media briefing hosted by the Washington Legal Foundation, (moderator)
- Antitrust Implications for Cross-licensing", August 8, 2014: at the annual meeting of the American Bar Association, Section of Intellectual Property Law *IP Central* conference, (presenter)
- "A Discussion with the Director of the Bureau of Competition of the Federal Trade Commission on the Supreme Court's *Actavis* Decision", June 12, 2014: at the 2014 Bates White Life Sciences Symposium, (panelist)
- "*Actavis*: One Year Later", June 11, 2014: sponsored by the Intellectual Property and Health Care & Pharmaceuticals Committees of the Antitrust Section of the American Bar Association, (panelist)
- "Counseling Pharmaceutical Patent Settlements After *Actavis*", May 13, 2014: at the Antitrust in Healthcare Conference sponsored by the American Bar Association's Antitrust and Health Law Sections and the American Health Lawyers Association, (presenter)
- "Defense counsel in the mock trial program on 'reverse payment' settlements of pharmaceutical patent litigation under the Supreme Court's new standard announced in '*FTC v. Actavis*'", March 27, 2014: 62nd Annual Antitrust Law Spring Meeting of the American Bar Association
- "Liability Risks for Globally Active Companies: Anti-bribery/FCPA and Competition/Antitrust", November 14, 2013: at the Seventh Annual Transatlantic Business Conference sponsored by the American Chamber of Commerce in Germany e.V., (presenter)
- "Waking the Sleeping Giant: Competition Issues in the Pharmaceutical Industry", October 3, 2013: at the Annual Competition Law Fall Conference of the Canadian Bar Association, (panelist)
- "Working with the DOJ and FTC: How the Agencies Differ at the Investigation Stage", July 30, 2013: sponsored by the Federal Civil Enforcement Committee of the Antitrust Section of the American Bar Association, (panelist)
- "Reverse Payments Update: Key Strategies to Bring to the

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- Settlement Table", July 17, 2013: American Conference Institute's Legal and Regulatory Summit on Generic Drugs, (panelist)
- "The U.S. Supreme Court: Reviewing the October 2012 Term", June 25, 2013: Washington Legal Foundation, (presenter at the media briefing) (host)
 - "Reverse Payment Patent Settlements: The Supreme Court Has Spoken", June 18, 2013: sponsored by the Health Care and Pharmaceuticals Committee of the Antitrust Section of the American Bar Association, (panelist)
 - "Reverse Settlements", June 10, 2013: 2013 Bates White Healthcare & Life Sciences Symposium, (panelist)
 - "Representing Foreign National Defendants Before the Antitrust Division of DOJ", June 5, 2013: sponsored by the Antitrust Subcommittee of the White Collar Crime Committee of the Criminal Justice Section of the American Bar Association, (panelist)
 - "*Federal Trade Commission v. Actavis, Inc., et al.*: Supreme Court Showdown on 'Reverse Payment' Settlements", March 13, 2013: 2013 Patent Litigation Seminar sponsored by the New Jersey Intellectual Property Law Association, (presenter)
 - "The Dispute Over 'Reverse Payment' Settlements in Pharmaceutical Cases: Will the Supreme Court Have a Cure?", January 24, 2013: Annual Meeting of the Antitrust Law Section of the New York State Bar Association, (panelist)
 - Antitrust Law & Economics Institute for Judges, sponsored by the American Bar Association Section of Antitrust Law and the George Mason University School of Law Judicial Education Program on October 10, 2012, (instructor)
 - "*FTC v. Watson (a.k.a. AndroGel)*: The Latest Word on Reverse Payment Pharmaceutical Patent Settlements", sponsored by the Health Care and Pharmaceuticals Committee of the American Bar Association Section of Antitrust Law on July 23, 2012, (panelist)
 - "Pharma: Hot Topics in Antitrust", at the Antitrust in Healthcare Conference sponsored by the American Bar Association Sections of Antitrust and Health Law and the American Health Lawyers Association on May 4, 2012, (panelist)
 - "Criminal Antitrust – Government Perspective", at the

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Conference on International Business and Crime: FCPA – Criminal Antitrust, sponsored by the Institute of Continuing Legal Education in Georgia on April 25, 2012, (panelist)

- "Are 'Reverse Payments' Dead? Current Industry Practices in Pharmaceutical Patent Litigation Settlements", sponsored by the Health Care and Pharmaceuticals Committee of the Antitrust Section of the American Bar Association on November 10, 2011, (moderator)
- "Nowhere to Run, Nowhere to Hide: Antitrust Defense in the Age of Amnesty Agreements & Corporate Self-Reporting", at the National Association of Criminal Defense Lawyer's First Annual West Coast White Collar Conference on June 17, 2011, (panelist)
- "Drug Patent Suit Settlements Under Fire: How Developments in the Courts and Agencies Shape the Future of 'Reverse Payments'", Washington Legal Foundation Web Seminar on June 8, 2011, (panelist)
- "Reverse Payment Update", sponsored by the Health Care and Pharmaceuticals Committee of the Antitrust Section of the American Bar Association on February 18, 2011, (panelist)
- "Without Intent: How Congress Is Eroding the Criminal Intent Requirement in Federal Law", sponsored by the Heritage Foundation and the National Association of Criminal Defense Lawyers on May 24, 2010, (panelist)
- "The DOJ's and FTC's New Antitrust Policies and Their Impact on Enforcement Trends", at the Ninth Annual Minority Corporate Counsel Association CLE Expo on March 18, 2010, (panelist)
- "Free Enterprise & Criminal Law: Is Today's Brand of Federal Enforcement Compromising Business Civil Liberties?", hosted by the Washington Legal Foundation on March 17, 2010, (featured presenter and editor of accompanying 150-page *Special Report: Federal Erosion of Business Civil Liberties*)
- American Conference Institute's "Paragraph IV Disputes" Conference: "News from the Front Lines: *Late-Breaking Developments in the FTC's Most Recent Case Against a Paragraph IV Settlement*" on April 27, 2009 (keynote speaker with J. Mark Gidley)
- "Ethics: How to Satisfy Auditors and the SEC and Still Comply with Ethics Rules", at the 57th Annual Antitrust Law Spring Meeting of the American Bar Association on March 25, 2009,

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(moderator and session chair)

- "Ethical Conundrums — When Speaking Up Means You Are Forced to Walk Out", at the Eighth Annual Minority Corporate Counsel Association CLE Expo on March 20, 2009, (panelist)
- "Creating and Implementing an Effective Antitrust Compliance Program", sponsored by American Bar Association Section of Antitrust Law on September 26, 2007, (panelist)