

[Long Form Bio]



Peter J. Carney

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Bars and Courts

Virginia State Bar, 1996

District of Columbia Bar, 1997

US Supreme Court, 2000

US Court of Appeals for the District of Columbia Circuit, 1998

US Court of Appeals for the Federal Circuit, 1998

US Court of Appeals for the First Circuit, 2014

US Court of Appeals for the Second Circuit, 2005

US Court of Appeals for the Third Circuit, 2005

US Court of Appeals for the Fourth Circuit, 1997

US Court of Appeals for the Seventh Circuit, 2008

US District Court for the Western District of Virginia, 1997

US District Court for the Eastern District of Virginia, 1997

US District Court for the District of Columbia, 1998

US Court of Federal Claims, 1998

US Court of Veterans Appeals, 1999

Practice Experience

Peter J. Carney is a litigator who represents clients in complex litigation at all levels in federal and state courts and in government investigations and proceedings. His practice focuses on civil and criminal antitrust defense.

Legal directories *Chambers USA* and *Legal 500* (U.S.) rank Mr. Carney as a top antitrust lawyer in the United States, describing him as "a very solid litigator" (*Chambers USA* 2018). Law360 named Mr. Carney as one of the Competition Law MVPs in the United States (2016).

In addition to defending clients in price-fixing cases brought by the United States Department of Justice Antitrust Division and the Federal Trade Commission, Mr. Carney routinely represents clients in cartel investigations brought by antitrust enforcers in a variety of non-US jurisdictions, including Europe, Japan, Korea, Brazil, Canada, Australia, New Zealand, and Indonesia. His clients include both US and non-US companies, as well as foreign sovereign entities.

For nearly two decades, he has successfully represented pharmaceutical clients in complex civil antitrust litigation involving patent-settlement agreements (sometimes called reverse-payment cases), both in federal court class actions and at trial before the Federal Trade Commission. Mr. Carney also represents pharmaceutical companies in investigations and high profile antitrust litigations concerning life-cycle management strategies, now challenged as "product hopping" and "switching" strategies.

Mr. Carney also has experience representing clients in international arbitration, including the World Bank's ICSID forum and ad hoc international arbitration. He was counsel in one of the leading US Supreme Court cases regarding the issue of class arbitration. He also advises clients on the Foreign Sovereign Immunities Act and has litigated FSIA cases.

Prior to joining White & Case, Mr. Carney served as a law clerk to the Honorable H. Emory Widener, Jr. of the US Court of Appeals for the Fourth Circuit.

Significant experience includes:

Civil and Criminal Antitrust Representations

- Counsel in successful US Supreme Court appeal for parcel tanker shipping company Stolt-Nielsen SA in *Stolt-Nielsen S.A. v. Animalfeeds International Corp.*, 559 US 662 (2010). The Court reversed a Second Circuit decision and vacated the underlying international arbitration award. The Court in *Stolt-Nielsen* held that where the arbitration agreement was silent as to class arbitration, *Stolt-Nielsen* had met the high standard of showing that the arbitrators had "exceeded their powers" under

US Bankruptcy Court for the Eastern District of Virginia, 1997

Court of Appeals for the District of Columbia, 1998

Education

JD, American University, Washington College of Law, *summa cum laude*, Federal Circuit Editor, American University Law Review, 1996

BA, with Honors, Colby College, *summa cum laude*, 1992

Awards and Recognition

Peter Carney was named a "Litigator of the Week" by Global Competition Review for securing reversal of class certification in the Asacol® product-hopping litigation.

Ranked Chambers USA, 2018

Recommended Legal 500 (U.S.)

Antitrust: Civil Litigation/Class Actions: Defense and Antitrust: Cartel, 2016-2018

Competition Law MVP, *Law360*, 2016

Distinguished Alumnus Award, AU Law Review, 2015

"Rising Legal Stars Under 40," *Law360*, 2010

2010 Irish Legal 100, *The Irish Voice*

Lura Turley Writing Prize, 1996

Languages

English

Spanish

Citizenship

United States

British

§10 (a)(4) Federal Arbitration Act by imposing class arbitration absent any "contractual basis for concluding the party agreed to do so."

- Won summary judgment for CertainTeed Gypsum in national class action litigation alleging price fixing among producers of dry wall products. Pursuing an aggressive approach to developing the factual record and its defenses, CertainTeed was the only defendant to win summary judgment. *In re Domestic Drywall Antitrust Litig.* 2016 U.S. Dist. LEXIS 19487 (E.D. Pa. Feb. 18, 2016).
- Counsel for Nexans in a victory in the DOJ Antitrust Division Power Cables grand jury investigation. In 2015, the DOJ Antitrust Division dropped its price-fixing investigation, despite the cooperation of other parties and parallel investigations on five continents. The case is a rare instance of the Antitrust Division abandoning a criminal grand jury probe, despite an amnesty applicant, MLAT applications, and parallel investigations on five continents. The Nexans representation involved unprecedented victories around the globe by White & Case, including winning the right to the first search-and-seizure rights against the European Commission and winning the right to unmask secret, anonymous witnesses in Australia.
- Counsel for international building materials manufacturer in investigation by FTC.
- Lead counsel for Taiwanese auto parts manufacturer and its US subsidiary in criminal grand jury investigation of the aftermarket auto lights industry by the Department of Justice Antitrust Division. Resolved clients' criminal exposure in 2011 at roughly one third of the US Sentencing Guidelines recommended minimum based on reduction under USSG Section 8C3.3.
- Counsel for international building materials manufacturer in successfully obtaining closure of criminal grand jury investigations by Department of Justice Antitrust Division.
- Counsel for US subsidiary of Asian shipping company in criminal grand jury investigation by Department of Justice Antitrust Division.
- Counsel for Fortune 100 pharmaceutical company in criminal grand jury investigation by Department of Justice Antitrust Division.
- Counsel for Japanese company in connection with criminal grand jury investigation by Department of Justice as to the

capacitor industry.

- Counsel for supervisory board of German auto-part company in criminal grand jury investigation by Department of Justice Antitrust Division.
- Counsel for US subsidiary of Japanese shipping company in criminal grand jury investigation by Department of Justice Antitrust Division.
- Counsel for French cable manufacturer Nexans in Power Cable proceedings by European Commission under Article 101 EC concerning the European market for electric cable, including successful challenge to scope of dawn raid. Power Cables, AT.36910.
- Trial counsel Stolt-Nielsen SA in criminal and civil litigation to enforce an Amnesty Agreement with the Department of Justice. On November 30, 2007, after a three-week evidentiary hearing, a federal district court in Philadelphia ruled in Stolt-Nielsen's favor and dismissed the indictment of the company and two of its executives, thereby enforcing the Amnesty Agreement (*United States v. Stolt-Nielsen S.A.*, 524 F. Supp. 2d 609 (E.D. Pa. 2007)).
- Successfully defended International Finance Corporation against allegations of bid rigging in proceedings before Indonesian antitrust regulators (KPPU).
- Counsel coordinating the defense for Stolt-Nielsen of antitrust class actions in federal and state courts, including before the Multidistrict Litigation Panel (MDL). This included the successful appeal to the Second Circuit in *JLM Industries, Inc. v. Stolt-Nielsen SA*, 387 F.3d 163 (2d Cir. 2004) requiring class action plaintiffs to arbitrate their horizontal federal antitrust claims and related state claims under maritime arbitration agreements.
- Co-lead counsel in dismissal of a shipping competitor's predatory pricing case in *In re Parcel Tanker Shipping Servs. Antitrust Litig.*, 2d 487 (D. Conn. 2008). This was one of the first cases to dismiss predatory pricing claims under the Supreme Court's then-recent Twombly and Weyerhaeuser precedents.

Antitrust Litigation re Pharmaceutical Patent Settlements and IP Issues

- Counsel for Warner-Chilcott in the Doryx[®] Antitrust Litigation, successfully obtaining dismissal of claims by a competitor in federal court that new versions of drug constituted

anticompetitive "product hopping" rather than competition through innovation. The District Court granted summary judgment for Warner-Chilcott holding there was no exclusionary conduct where branded drug maker discontinued older versions of drugs to focus on newer versions. The Third Circuit affirmed the district court's grant of summary judgment in September 2016, cautioning, "courts should also be wary of second-guessing Congress's legislative judgment and of turning courts into tribunals over innovation sufficiency."

- Trial counsel for Allergan in antitrust litigation concerning Alzheimer's treatment Namenda[®] brought by the New York Attorney General. As part of a settlement, the NY Attorney General dropped its claims for damages and disgorgement related to Allergan's announced plan to terminate its older twice-daily version of Namenda[®] in favour of its new patented once-daily version. As part of the settlement, the NY Attorney General confirmed the lack of any consumer injury and that generics seeking to enter did so unimpeded by Allergan.
- Counsel to Actavis and Warner-Chilcott in *In re Loestrin[®] Antitrust Litigation* (D. R.I.), a complex antitrust MDL involving Walker-Process antitrust claims, and reverse payment and product hopping allegations.
- Counsel to Boehringer Ingelheim in *In re Aggrenox Antitrust Litigation MDL* (D. Conn.) concerning competitive effects of patent settlement agreement.
- Counsel to Allergan and Warner Chilcott in antitrust class actions brought as to the branded drug Asacol[®] concerning the competitive effects of a patent settlement agreement and alleging "product hopping."
- Counsel to Allergan in antitrust litigation brought in the federal courts by the Federal Trade Commission and State Attorney Generals concerning the branded drug Lidoderm[®] and the competitive effects of a patent settlement agreement.
- Counsel to major U.S. branded pharmaceutical company in investigation by the Federal Trade Commission of multiple patent settlements. Matter terminated with no adverse actions.
- Trial counsel for Upsher-Smith Laboratories in defense against the Federal Trade Commission's claims related to patent settlement that permitted the introduction of a generic pharmaceutical product. The Upsher-Smith case presented a number of novel antitrust, economic and intellectual property issues in the complex and unique regulatory context of the

pharmaceutical industry. Following a 40-day trial, the Commission's Administrative Law Judge ruled in favor of Upsher-Smith on all counts, dismissing claims based on illegal agreements, attempted monopolization and monopolization.

- Counsel for Upsher-Smith in *In Re-K-Dur Antitrust Litigation*, coordinating the defense in MDL proceeding of more than 40 follow-on antitrust civil actions. This included consolidation of federal class actions, opt-out actions and state Attorney General actions in MDL proceedings and supervision of the defense of separate state court actions.
- Advise generic pharmaceutical clients on parameters for proposed patent settlement agreements.

International Arbitration and Class Arbitration

- Counsel for Stolt-Nielsen in multi-year putative class-arbitration proceeding and successful petition for vacatur of partial final award that had permitted the claimant-plaintiffs to bring class actions for damages under the applicable maritime arbitration clauses (ASBATANKVOY and VEGOILVOY). *Stolt-Nielsen, SA v. Animalfeeds Int. Corp.*, 435 F. Supp. 2d 382 (SDNY 2006).
- Counsel client in complex commercial dispute on strategy for challenge to arbitral award in SDNY involving manifest disregard of law.
- Counsel for defendant producer of manufactured housing in putative class arbitrations and related Florida state court proceedings regarding whether class arbitration could be required where the arbitration clause was silent as to class arbitration and defendant was not objecting class litigation in courts.
- Counsel for Stolt-Nielsen in various ad hoc international arbitrations by customers seeking treble damages under the Sherman act.
- Member of counsel team representing Czech bank CSOB in jurisdictional phase of arbitration against the Slovak Republic in the World Bank's ICSID forum (*Ceskoslovenská obchodní banka, a. s. v. Slovak Republic*). Team won landmark decision confirming jurisdiction.
- Counsel for investor in jurisdictional phase of ICSID arbitration against South American government. Obtained decision affirming jurisdiction.

Foreign Sovereign Immunity Act (FSIA)

- Counsel for Government of Vietnam in federal action to determine current ownership of US assets that had been frozen upon the 1975 fall of Saigon. Won US\$3 million dollar judgment.
- Counsel in US antitrust litigation for transportation sector client that is part of German state.
- Member of counsel team for Republic of Indonesia in long-running litigation regarding various government bonds.

Internal Investigations

- Lead internal investigation for Fortune 100 company concerning to national price fixing allegations.
- Counsel for supervisory board of German corporate conducting internal investigation of whistleblower antitrust claims.
- Handled sensitive internal investigation and criminal antitrust inquiry for nationally prominent publicly-traded company. Succeeded in working with authorities to have inquiry closed prior to reaching level of full-blown investigation and without any publicity.

General Litigation

- Trial counsel for parcel tanker client defending employment action by client's former general counsel. The litigation involved cutting-edge ethical issues regarding former lawyer's duty of confidentiality and obligation to take concerns up the company ladder.
- Appellate counsel for Alaska Native Corporation in successful tax appeal before Federal Circuit involving the intersection of Alaska Native Claims Settlement Act and alternative minimum tax provisions.
- Counsel to Governor George W. Bush in litigation arising from 2000 Presidential election in Florida.
- Trial counsel representing a South American airline in dispute with aircraft lessor. Successfully defeated multiple motions for summary judgment, overcoming "hell or high water" clauses and permitting airline to retain aircraft even though rent was not being paid. Won favorable settlement for client.
- Pro bono counsel for mother in custody proceedings and

successful appeal to the D.C. Court of Appeals reversing and rejecting as unfounded Superior Court's ruling against mother and counsel.

- Pro bono counsel for US veteran in proceedings before the Board of Veterans' Appeals and Court of Appeals for Veterans Claims. Successfully established service connection for Marine's Vietnam-era injuries.

Publications

"Cartel Regulation 2015: Global Overview Chapter," *Getting the Deal Through* (co-author with Mark Powell and Martin M. Toto)

"Cartel Regulation 2014: Global Overview Chapter," *Getting the Deal Through* (co-author with Mark Powell and Martin M. Toto)

"Cartel Regulation 2013: Global Overview Chapter," *Getting the Deal Through* (co-author with Mark Powell and Martin M. Toto)

"Do Your Suppliers Use Unauthorized IP?," *White & Case Antitrust Alert*, July 2013 (co-author with Toshio Dokei, Arthur Mitchell, Noah Brumfield, and Jacquelyn MacLennan)

"Supreme Court's Stolt-Nielsen Decision Limits Use of Class Arbitration," *The Antitrust Counselor*, Vol. 4.4 June 2010 (with Charles Moore)

"Resale Price Maintenance Agreements After Leegin," *Conurrences*, No. 3, 2008 (with Kristen McAhren)

"International Forum Non Conveniens: 'Section 1404.5'- A Proposal in the Interest, Sovereignty, Comity, and Individual Justice," *American University Law Review*, 1995

Speaking Engagements

"Global Antitrust Pharma Webinar: A Transatlantic Perspective on Product Hopping and Excessive Pricing," November 30, 2017 (presenter)

"Incremental Improvements v. Product Hopping," November 2016: CNDC Comparative Law Conference, Buenos Aires, Argentina (presenter)

"Antitrust Enforcement: Both Sides of the Story: Hottest Competition Law Topics from Each Side of the Atlantic," November 2016: CEDEF Law & Finance Workshop, Buenos Aires, Argentina (presenter)

"US Cartel Enforcement and Follow-on Private Damages Actions,"

October 2013: Universidad de Chile, Santiago, Chile, (presenter)

"A Case Study of Responding to US Antitrust Enforcement and Civil Litigation: Perspectives from the Aftermarket Auto Lights Investigation,"
January 2013: Taiwan Fair Trade Commission, Taipei, Taiwan,
(presenter)

"US/Brazil Merger Review Update," May 2012: Sao Paulo, Brazil, (co-presenter)

"The GCR Cartel Roundtable," Panelist, ABA/IBA International Cartel Workshop, Vancouver, Canada, February 12, 2012

"US Cartel Regulation Recent Developments," Panelist, Latin American Antitrust Symposium, Buenos Aires, Argentina, April 7, 2011

"Deal or No Deal? Settlements and Plea Bargains in Competition Law,"
Panel Presentation, ABA Section of International Law, International Antitrust Law Committee, February 25, 2009

"Multi-Jurisdictional Competition Developments," Panel Presenter, 2009 Competition Law & Policy Forum, Langdon Hall, Langdon, ON, Canada, February 11-13, 2009

"Emerging Trends in Global Antitrust Law: What You Need to Know about Multi-Jurisdictional Antitrust/Competition Law Issues in the Next Five Years," Tokyo, September 2008

"Commercial Arbitration in the Americas," Washington College of law and IABA Symposium, Washington, D.C., April 2008

"Global Cartel Investigations and Recent Antitrust Law Developments: Mexico, the E.U. and the U.S.," Mexican Trade Association Presentation, Mexico City, February 2008

"Current Trends in U.S. Antitrust Enforcement," The Canadian Institute's Competition Law Compliance Conference, Toronto, Canada, May 2005

"Patent Settlements Agreements and the Upsher-Smith FTC Trial," New Jersey Corporate Counsel Association, Whippany, NJ, May 2003