



Jeffery M. Cross

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Areas of Practice

Antitrust and Trade Regulation | Arbitration | Litigation/Trial Practice

Jeffery M. Cross is Counsel in the Litigation Practice of Smith, Gambrell & Russell, LLP. Mr. Cross was a Partner at Freeborn & Peters, which merged with SGR in 2023.

Mr. Cross has over 40 years of trial experience representing a variety of corporations and businesses throughout the country on antitrust, securities fraud, contract, real estate, environmental regulations, libel and slander, false advertising, commercial code, and trade regulation issues. He also has experience in distribution and franchise law, not only litigating distribution and franchise cases, but also counseling clients in distribution, marketing, sales, and pricing programs. Mr. Cross has experience in mergers and acquisitions, including counseling clients in the area, working with economists to develop economic support for mergers and acquisitions, responding to government requests for documents and data, and negotiating with the government.

Mr. Cross has taught antitrust law as an Adjunct Professor at University of Illinois Chicago School of Law (formerly John Marshall) for 12 years. He has also co-taught an online antitrust course for Loyola University Chicago's School of Law for two years. Jeff was also retained by the Federal Judicial Center, the educational arm of the federal courts, to prepare a monograph for federal judges on private antitrust actions.

Mr. Cross earned his J.D. from the Syracuse University College of Law, where was a member of the Order of the Coif, graduating *magna cum laude*. He served as Research Editor for the Syracuse Law Review. He earned his B.S. from the University of Illinois where he graduated *cum laude*.

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Representative Experience

- Co-counsel in patent antitrust jury trial involving Walker Process fraud and sham litigation resulting in jury verdict after trebling of \$315 million.
- Member of trial team for a private equity client in the 13-day jury trial of its securities fraud claim, resulting in \$5 million recovery for our client.
- One of the lead counsel for the Noranda defendants in the Sulfuric Acid Antitrust Litigation in the Northern District of The case was an antitrust class action which alleged price fixing and output restraints. The case resulted in a decision in defendants' favor before the Seventh Circuit Court of Appeals in a decision by Judge Richard Posner. Jeff also represented the Noranda defendants in the concurrent criminal investigation which resulted in the Department of Justice closing the investigation without any indictment.
- Lead antitrust counsel for McKee Food's acquisition of the Drake's brand snack cakes from Hostess Brands.
- Lead antitrust counsel for a chemical manufacturer in its acquisition of assets from competitors.
- Lead counsel for Burlington Northern Santa Fe Railway in an antitrust case in San Francisco. The case involved allegations of tying, violations of the essential facilities doctrine, attempted monopolization, vertical foreclosure, coerced reciprocity and price fixing, resulting in a summary judgment in BNSF's favor on all counts, which was affirmed in the Ninth Circuit.
- Lead counsel for a Santa Barbara, California defendant in an antitrust class action in the Southern District of Illinois. Jeff played a lead role on behalf of all defendants in defeating class certification.
- Counsel to the Vice President of Marketing at a well-known national snack food company regarding the Robinson-Patman Act, including the sections of the Act dealing with promotions and allowances.
- Counsel to a major international human resources consulting firm on the antitrust issues of collecting wage and benefit data and disseminating this data to clients.
- Counsel to a well-known Japanese manufacturer involving a proposed sales and pricing program.
- Lead trial counsel for BP America, Inc. in a ten-week antitrust jury trial in Los Angeles. The case involved allegations of horizontal allocations of markets, price fixing and monopolization. The jury acquitted all defendants on one count and hung on a second A favorable settlement ensued as a result of the fact the jury had voted 7 to 1 for the defendants on the hung count.
- Lead trial counsel for Mobil Oil Company in a bench trial involving a dealer termination that resulted in a favorable decision for Mobil.
- Lead trial counsel for Fina Oil and Chemical Company in a jury trial in Sioux Falls, South Dakota involving the termination of a dealer. The jury reached a verdict for Fina. The case also involved an appeal in the Eighth Circuit Court of Appeals that Jeff successfully argued.

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- Lead trial counsel for BP America Inc. and the Standard Oil Company in a 21-day bench trial in the Circuit Court of Cook County involving claims of breach of contract and breach of warranties following the sale of BP's coal mining business to the The case resulted in a favorable ruling for BP and Standard Oil. The plaintiff appealed to the Illinois Appellate Court and Jeff successfully argued the appeal.
- Lead trial counsel for Fina Oil and Chemical Company in a two-week jury trial in Hammond, Indiana involving allegations of libel and The jury awarded only the nominal damages that Fina's expert asserted were appropriate.
- Co-lead counsel for a Canadian mining company in its \$17 billion acquisition of another Canadian mining company. Involved with responding to the government's "second request" for documents and data and negotiated the initial consent decree with the government.

Admissions

Illinois

United States Supreme Court

United States Court of Appeals for the Sixth, Seventh, Eighth and Ninth Circuits

United States District Court for the Northern District of Illinois (including Trial Bar), Central and Southern Districts of Illinois

United States District Court for the Eastern and Western Districts of Wisconsin

United States District Court for the Northern District of Indiana

United States District Court for the Western District of Michigan

Memberships

- Columnist and Member of the Editorial Advisory Board of Today's General Counsel magazine
- American Bar Association Antitrust Section
- Former Officer, various ABA Antitrust Section Committees, including Vice Chairman of the Criminal Practices and Procedure Committee, Vice Chairman of the Committee on Computer Technology, and Chairman, Subcommittee on RICO and other Related Crimes
- Drafting Committee for the ABA Antitrust Section's Sample Jury Instructions in Criminal Antitrust Cases (1984) and Member, Drafting Committee for the ABA Antitrust Section's Model Criminal Antitrust Jury Instructions (2009)
- Chairman, Illinois State Bar Association Antitrust Law Section Council
- President, The Lawyers Club of Chicago

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Recognitions

Leading Lawyers, Antitrust

Chambers-USA Guide to America's Leading Lawyers for Business - Antitrust - 2023 (cited in multiple years)

Recognized in PLC's *Competition Handbook* for 2006-2012 as having a "respected general litigation practice with an emphasis on antitrust."

Illinois Super Lawyers - 2021 - Antitrust Litigation, Civil Litigation, Mergers & Acquisitions (cited in multiple years)

Publications

- Author, "It's Time to End Baseball's Antitrust Exemption," *Today's General Counsel* (April 2024).
- Author, "The Antitrust Revolution," *Today's General Counsel* (March 2024).
- Author, "Is Criminal Enforcement of Section 2, the Sherman Act Coming?," *Today's General Counsel* (November 2023).
- Author, "Ruling Redefines "Rule of Reason" in McDonald's Antitrust Case," *Today's General Counsel* (October 2023).
- Author, "Unfair Competition Under Section 5 of the FTC Act," *Today's General Counsel* (July 2023).
- Author, "The Exchange of Information: Per Se or Rule of Reason?" *Today's General Counsel* (May 2023).
- Author, "The FTC Rule Banning Non-Compete Agreements," *Today's General Counsel* (February 2023).
- Author, "No-Poach Agreements and Antitrust," *Today's General Counsel* (October 2022).
- Author, "Amending the Antitrust Laws to Address Big Tech," *Today's General Counsel* (July 2022).
- Author, "Recent Developments in Arbitration: The Supreme Court's Viking River Cruises Decision," *Powerhouse Points - A Quarterly Litigation Update* (Summer 2022).
- Author, "Antitrust Lessons From Footnotes and Citations," *Today's General Counsel* (March 2022).
- Author, "The Federal Judicial Center Antitrust Monograph: Lessons on Employee Restrictive Covenants," *Powerhouse Points - A Quarterly Litigation Update* (Winter 2022).
- Author, "Epic Games v. Apple: The Antitrust Analysis," *Today's General Counsel* (December 2021).
- Author, "Antitrust Lessons From the Supreme Court's NCAA Decision," *Today's General Counsel* (October 2021).
- Author, "Can an Antitrust Agreement Apply to Conduct in One Entity?" *Today's General Counsel* (June 2021).
- Author, "Refusal to Deal," *Today's General Counsel* (February 2021).
- Author, "How the Courts Are Enforcing Proportionality in Discovery," *Today's General Counsel* (November 2020).
- Author, "Who Decides Arbitrability?" *Today's General Counsel* (August 2020).
- Author, "Compliance Reboot At The Antitrust Division," *Today's General Counsel* (January 2020).
- Presenter, "Antitrust Issues in Licensing," *PLI's Understanding the Intellectual Property License* (2017).
- Moderator, "Compliance and Ethics Forum," *Today's General Counsel The Exchange Chicago Conference* (2017).

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- Author, "Eliminate The Antitrust Exception To Corporate Charging Guidelines," Today's General Counsel (July 2014).
- Co-presenter, "The Legal and Economic Issues of Standard Setting: SSOs, SEPs and F/RAND," An Antitrust and IP Breakfast Seminar (2014).
- Co-presenter, "After FTC v Actavis, Now What," ALM Webinar (2013).
- Lead-author, "Franchising: Antitrust Considerations," Chapter 9, Antitrust Counseling and Litigation Techniques, Matthew Bender & Co. (von Kalinowski ed.).
- Lead-author, "Sentencing," Chapter 65, Antitrust Counseling and Litigation Techniques, Matthew Bender & (von Kalinowski ed.).
- Lead author, "An Effective Compliance Program Under the Sentencing Guidelines," Chapter 2, Corporate Legal Compliance Handbook, Aspen (Banks ed.).
- Author, "Corporate Antitrust Liability and Compliance Programs," Chapter 4, Corporate Legal Compliance Handbook, Aspen (Banks ed.).
- Author, chapter on "Antitrust Considerations" in Illinois Institute of Continuing Legal Education Health Care Handbook (1988 ed.).
- Lead-author, "Problems of Access to Health Facilities and Equipment: New Competition for Limited Resources," 55 Antitrust Law Journal 599 (1987).
- Lead-author, "Hospital Peer Review and the State Action Doctrine After Patrick," Antitrust Magazine, Fall, 1988.
- Lead-author, "FTC Ticor Title Insurance: Supreme Court Puts State Action Immunity Under the Lens," Antitrust Magazine, Fall/Winter, 1992.
- Co-author, "Antitrust Issues Involving Cooperation Among Competitors in Japan," (Unpublished).
- Co-author, "The Future of Antitrust Liability for Vertical Restraints Between Manufacturers and Distributors," ILS International Legal Strategy, 1995 (in Japanese).
- Author, "Antitrust Compliance Programs: A Basic Primer of the Whys and Wherefores," The Metropolitan Corporate Counsel, June, 1997.
- Author, "The Use of Technology at Trial: Some Practical Thoughts on the Bells and Whistles," The Metropolitan Corporate Counsel, December, 1997.