

## Michelle D. Miller

### RETIRED PARTNER

BOSTON

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Michelle Miller concentrates her practice on antitrust litigation and on advising clients on antitrust compliance issues and strategies for avoiding litigation. In addition to litigating in federal and state courts, she represents clients before the Federal Trade Commission and the Antitrust Division of the Department of Justice in connection with mergers and other government investigations. Ms. Miller has served as a co-chair of the Antitrust and Competition Practice Group and as vice chair of the Litigation Department. She joined the firm in 1980.

Ms. Miller has represented clients in litigation involving:

#### *Monopolization Claims*

- Represented a prominent cell phone and tablet manufacturer in the US District Court for the Northern District of California and elsewhere in multiple cases asserting claims under Section 2 of the Sherman Act and for breach of contract arising out of a competitor's refusal to license patents declared essential to ETSI standards on FRAND terms
- *Research in Motion Ltd., et al. v. Motorola, Inc.* Asserted antitrust and breach of contract claims in the US District Court for the Northern District of Texas arising out of a competitor's refusal to license patents declared essential to ETSI and IEEE on fair reasonable and non-discriminatory (FRAND) terms
- *Braintree Laboratories, Inc. v. Schwarz Pharma, Inc.* and related cases. Successfully defended a branded pharmaceutical company through trial in the US District Court for the District of Delaware against an antitrust counterclaim arising from the company's assertion of patent infringement claims against a generic competitor. Thereafter, successfully moved to dismiss follow-on claims by a putative class of indirect purchasers and reached a favorable settlement of direct purchaser claims
- *DIK Drug Company v. Wyeth Pharmaceuticals, Inc., et al.* and related cases. Defending a branded pharmaceutical company against claims by a putative class of direct and indirect purchasers alleging that the company's patent infringement suit

against a generic competitor under the Hatch-Waxman Act is objectively baseless

- *Northland Cranberries, Inc. v. Ocean Spray Cranberries, Inc.* Defended a cooperative of cranberry producers against claims of conspiracy and monopolization asserted by competitors, a class of California consumers, and a national class of consumers for the remaining 49 states
- *Nikon Corporation v. ASM Lithography B.V. Asserted*, on behalf of a manufacturer of microlithography tools, an antitrust counterclaim arising from a competitor's attempted enforcement of patents allegedly obtained by fraud on the Patent Office
- *Comverse Network Systems, Inc. v. Priority Call Management, Inc.* Defended a telecommunications technology firm against an antitrust counterclaim arising from the company's enforcement of its patent in the underlying infringement lawsuit
- *Addamax Corp. v. Open Software Foundation, Inc.* Defended a joint venture of computer hardware vendors through trial in the US District Court for the District of Massachusetts against claims of monopolization, group boycott and price fixing

#### *Price-Fixing/Market Allocation Claims*

- *Outokumpu Oyj/Carrier Corporation and Class Actions*. Prevailed, on behalf of a major European copper producer, on a motion to dismiss claims of price fixing and market allocation arising out of cartel proceedings before the European Commission
- *Ciardi v. BASF Corporation*. Defended a manufacturer of vitamin products in a class action by indirect purchasers asserting claims of industry-wide price-fixing and market allocation
- *Sweeney v. BASF Corporation*. Defended a manufacturer of magnetic audio tape in a class action by indirect purchasers asserting a claim of industry-wide price fixing
- *Ursus, Inc. v. RSA Security, Inc.* Defended a vendor of computer security solutions in connection with price-fixing, market allocation and breach of contract claims asserted by a terminated distributor

#### *Unfair Competition and Other Claims*

- *General Insulation Company v. John Manville Corporation*. Defended a manufacturer of insulation products in connection with unfair competition claims asserted by a terminated distributor
- *Bussie v. Allmerica Financial Corporation*. Defended an insurance company in a class action alleging unfair sales practices, including the marketing of so-called "vanishing premium" policies
- *In re Microsoft Corporation*. Represented the European Commission in federal courts in Massachusetts, New York and California against Microsoft's attempt to use US courts to circumvent EU confidentiality rules in the Commission's investigation as to whether Microsoft had complied with its disclosure obligations under the Commission's order requiring Microsoft to share interoperability data with rivals

Ms. Miller is presently on the team representing an oilfield service company in connection with a DOJ investigation regarding the pending acquisition of its company. Examples of other

transactions include:

- Applix/Cognos. Represented a vendor of business intelligence and performance management solutions in connection with its sale to a competitor
- SkillSoft/NETg and SkillSoft/Element K. Represented a company producing corporate training materials in connection with its acquisitions of competitors
- Akamai/Speedera. Represented a company providing web content delivery services in connection with the acquisition of a competitor
- Dragon Systems/Lernout and Hauspie. Represented a speech recognition software company in connection with its acquisition by another vendor of speech software
- Williams Holdings PLC. Represented an overseas holding company in connection with its sale of several door hardware companies to a firm that owns several other door hardware companies

In advising clients on antitrust matters, Ms. Miller has been instrumental in the formation and ongoing operations of several high-technology joint ventures. Among those she has represented are:

- The Travel Partnership Corporation, an entity formed to sponsor a new top-level Internet domain for the travel industry
- The Structural Genomics Consortium, a joint venture of major pharmaceutical companies and other industry participants formed to generate three-dimensional structures of proteins encoded by the human genome
- The SNP Consortium Ltd., a joint venture of major pharmaceutical companies and other industry participants formed to create a high-density single nucleotide polymorphism (SNP) map of a portion of a human genome
- The ATM Forum, a group of telecommunications equipment vendors and service providers engaged in promoting Asynchronous Transfer Mode (ATM) technology and applications, based on national and international standards
- The Open Group, a joint venture of computer hardware and software vendors engaged in joint research and development of operating-system software, and development of industry-standard specifications
- The Petrotechnical Open Software Consortium (POSC), a joint venture formed to provide an open, integrated software platform to the exploration and production segments of the petroleum industry
- The Bankers' Roundtable, an association of financial institutions engaged in various industry initiatives, including a study of the privacy and security requirements of electronic banking
- The Silicon Integration Initiative (Si2), a consortium formed to provide collaborative technology and services that enable higher levels of semiconductor design integration, leading to industry-accepted standards

On behalf of PhRMA, Ms. Miller prepared a white paper for submission to the European Commission in connection with the pharmaceutical sector inquiry on the topic of FTC

challenges of settlements between branded and generic drug companies.

Ms. Miller has taught various continuing legal education courses, such as "Antitrust Basics" (MCLE), "Class Action Practice in Massachusetts and Federal Court" (MCLE), "Class Action Roundtable" (MCLE), and a panel sponsored by the Antitrust Section of the American Bar Association, entitled "Effective Discovery in Large Antitrust Cases" (ABA Antitrust Litigation Course). Her most recent publication is:

- Miller and Ordovery, *Intellectual Ventures v. Capital One: Can Antitrust Law and Economics Get Us Past the Trolls?*, CPI Antitrust Chronicle, January 2015

## *Professional Activities*

Ms. Miller is a member of the Litigation and Antitrust Sections of the American Bar Association. She is a former Co-Chair of the Antitrust Committee of the Boston Bar Association.

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## *Recognition*

### **Honors & Awards**

- Named the 2013 "Antitrust Law Lawyer of the Year, Boston" by *Best Lawyers*
- Recognized for her exceptional antitrust practice in each edition of *Chambers USA: America's Leading Lawyers for Business* since 2003
- Listed in the 2014 edition of *Expert Guides* as a leading economist in Washington DC in the area of Competition/Antitrust Law
- Recommended as one of the world's leading competition/antitrust attorneys in the *PLC Cross-border Competition Handbook 2006/07* and *2009/2010*
- Chosen by her peers for inclusion in the *Best Lawyers in America* for 2006-2016 in the area of antitrust law
- Named among the "Top Women Attorneys in Massachusetts" in 2016 and 2017 and selected as a "Top 50 Female Massachusetts *Super Lawyer*" in 2004; also named a "New England *Super Lawyer*" (formerly "Massachusetts *Super Lawyer*") in the 2004-2016 issues of *Boston Magazine*

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## *Credentials*

### **EDUCATION**

JD, Boston College Law School,  
1979

*magna cum laude*

*Order of the Coif*

BA, Boston University, 1974

*cum laude*

### **ADMISSIONS**

Massachusetts

### **CLERKSHIPS**

The Hon. Paul J. Liacos,  
Supreme Judicial Court of  
Massachusetts, 1979 - 1980