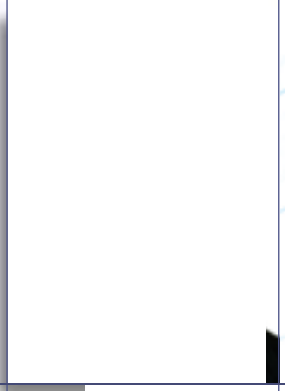
ANTIT

bobbuchanan
lisawood



markalexander
allanhillman

davidbelt
ericwiechmann

RUST

Looking For The Bright Lines

New England Roundtable Series 2006

Antitrust issues, from bread and butter merger and acquisition work to more delicate areas of collaborations, joint ventures and standards setting, continue to present challenging, meaty issues for in-house counsel. We've invited six noted practitioners to help us parse the current hot topics, and share with us some cases and issues they are watching. Joining us today are David Belt, a member with Jacobs, Grudberg, Belt, Dow & Katz P.C. in New Haven; Robert Buchanan, Jr., a partner with Choate, Hall & Stewart in Boston; Allan Hillman, a partner with Shipman & Goodwin in Hartford; Mark Alexander, a partner with Axinn, Veltrop & Harkrider LLP in Hartford; Eric Wiechmann, a partner with McCarter & English in Hartford; and Lisa Wood, a partner with Foley Hoag in Boston. This panel was moderated by freelance legal affairs writer Susan Kostal, and recorded by Kristin Lovett for Catuogno Court Reporting.

We're riding a consolidation wave that has to end. When industries are so concentrated, it is hard for even the most conservative enforcers to say that there aren't some competitive issues.

- Lisa Wood
Foley Hoag

lisawood

MODERATOR: Merger and acquisition activity continues at a fairly heated pace. Bob, set the scene for us. Several months ago, The New York Times stated that merger enforcement is dead. Is that true?

BUCHANAN: Merger antitrust work is positioning for litigation. Only a small subset of cases gets a second request, but the second request is very painful for the companies that experience it. Of that subset, fully half get blocked or abandoned. Only a small number go to trial, because most companies can't stand the strain, and time is the enemy of the deal. But we continue to have aggressive enforcement, whether it is traditional looking forward cases, like *Oracle*, where the government makes a prediction about the future of competition in a market, or retroactive scrutiny, like the *Evanston Hospitals* case, where the government looks back to what's already happened and seeks to undo the merger. So merger enforcement is not dead at all.

ALEXANDER: I can see what the Times was getting at, though. This is a uniquely favorable time for companies to attempt mergers that in the past might have been non-starters or at least very contentious. The current administration takes very seriously the positive efficiencies generated by mergers, and that has led to a lighter enforcement hand. The result is parties are pushing the limit on the kind of deals that they can do.

WOOD: We've had more transactions than in the past in which we have represented a bidding company trying to acquire a competitor, and they have lost out on the bid to a private equity player, because the private equity player presented no antitrust issues. Strategic buyers may have put more money on the table, but were not chosen because they posed Hart-Scott-Rodino risks and the potential for a second request. I agree that it is a good environment in which to pursue transactions, but you have to be ready to address the antitrust issues to present the acquisition as one that makes sense and isn't going to encounter regulatory trouble.

ALEXANDER: That's right. Parties are thinking of new ways to overcome the potential antitrust disadvantages of being a strategic buyer versus a financial buyer. We are seeing breakup fees or hell-or-high-water clauses that we didn't see in the past as companies try to balance the scales between the strategic and non-strategic bidders.

BUCHANAN: You don't know at the outset who is going to be the most attractive buyer. You need to try to position the documents so that you will be able to make your best case for either route. There is more opportunity now to make creative arguments, but this does not mean anything goes.

HILLMAN: I wonder whether that will change if there is a Democratic administration in 2009. Certainly this is not the 1960s, the era of *Philadelphia National Bank*, where JFK's antitrust division challenged the merger involving companies with something like 7 and 12 percent market share, but Democrats tend to be more enforcement-oriented.

WOOD: I don't think that will have an impact on antitrust enforcement. But I do think the business environment is going to have an impact. We're riding a consolidation wave that has to have an end. When industries are so concentrated, it will be hard for even the most conservative enforcers to say that there aren't some competitive issues. I also think the increasing power of Europe in evaluating mergers is going to create more antitrust problems than we've had in the past.

WIECHMANN: There has been a gradual change since the 1992 Merger Guidelines. We are now looking at a much more sophisticated analysis by the agencies than simple market concentration.

ALEXANDER: The people in the front office at Justice are very pro-business. They take the efficiency side of the equation very seriously. I don't know if that will be true with a new set of players.

BELT: A change in administrations could result in a change in the Federal Trade Commission composition. For example, there's at least some feeling among some of the Commissioners, particularly Commissioner Leibowitz, that the Commission should be more aggressive in using Section 5. Mergers and acquisitions could be affected, too.

MODERATOR: Is there a rush to complete deals before the numbers start working against companies and drawing more regulator attention?

WOOD: I see a rush to complete transactions because there's a lot of available capital out there. Antitrust is not a top concern. Yet I know that some investment bankers and strategic advisors want their clients to be the next consolidation, rather than the last, in an industry.

BUCHANAN: There's a rush in any transaction. When the money is about to change hands, there is intense pressure on those involved to get the deal done. One of the most important jobs for in-house counsel is simply to anticipate the timing of antitrust events so that the businesspeople aren't surprised.

HILLMAN: With higher Hart-Scott thresholds, there are fewer reportable transactions, but the price of noncompliance—more than $10,000 a day—is hardly minor. Therefore, clients and counsel have to be careful about such things as claims of exemption from reporting, and structuring a transaction in a manner solely to avoid reporting requirements, where the business reality is different and would require reporting.

WIECHMANN: You also need to think about state regulators and state attorneys general. Everybody has some leverage.

BUCHANAN: One significant development since 2000 is that we have an increased emphasis on looking back at completed mergers. Clients need to be aware that just because you have completed your Hart-Scott-Rodino process, this doesn't mean your antitrust worries are over. You still need to be cautious about how your business conduct appears.

BELT: Only a small percentage of acquisitions and mergers are reportable under Hart-Scott-Rodino. However, you are not out of the woods just because your transaction is not reportable. In the *Hologic* case, the Federal Trade Commission required a significant divestiture of assets in a non-reportable, consummated transaction.

WIECHMANN: Counsel need to be wary of gun-jumping, too. Business people begin talks, and they want to start planning how they are going to do things. You start agreeing to operating covenants and other premerger coordination, and then they start meeting with each other. What didn't seem to be discussion about price or output restrictions but just mostly intellectual property and licensing broadens and suddenly you are in serious trouble very quickly.

ALEXANDER: William Blumenthal, the general counsel of the FTC, gave a speech in November 2005 where he made the point that the government understands that the parties need to talk about a lot of issues in a merger, and that there is a value in getting the merger done quickly and being ready to hit the ground running. There is a wide range of activity parties can conduct without running afoul of gun-jumping rules, and a very important, narrower range of things that they cannot do.

WOOD: That's true any time competitors sit down to chat. They may not be anywhere close to talking about consolidation. They may be meeting to talk about a potential transaction, or to benchmark. There are all kinds of legitimate reasons in which competitors will get together, but this is an area where there are a lot of antitrust risks. These risks can be managed very effectively if counsel gets involved to set the rules, and the businesspeople understand what the forbidden topics are. It is also advisable to create a few documents to memorialize the limits that have been set, and that the parties understand that there are limits. Problems arise when there was no practical advice, and no clear ground rules set.

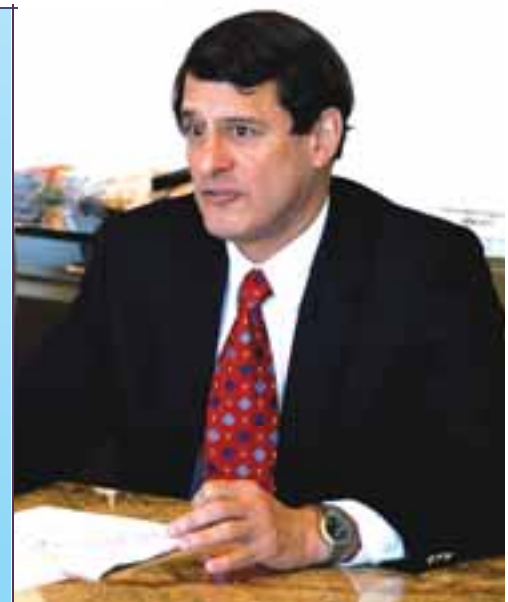
BUCHANAN: Once I had a buyer flying in from California, landing in Logan on the way to meet with the other party. So I went to the baggage claim area and talked with people for 10 minutes. After that they felt they understood what was safe to discuss, and they could go off and have their meetings.

WOOD: There are some situations that are not repairable, but those are very few. Consider the situation in which competitors got together for legitimate reasons other than consummating a transaction, and they accidentally slip into a discussion about an imper-

With higher Hart-Scott thresholds, there are fewer reportable transactions, but the price of noncompliance, more than $10,000 a day, is hardly minor. Counsel has to be careful about claims of exemption and structuring a transaction in a manner solely to avoid reporting requirements.

- Allan Hillman
Shipman & Goodwin LLP

allanhillman



There is a wide range of activity parties can conduct without running afoul of gun-jumping rules, and a very important, narrower range of things that they cannot do.

- Mark Alexander
Axinn, Veltrop & Harkrider LLP

missible topic. A company can, with the benefit of counsel, disavow by letter any intent to have invited a competitor into a discussion on price or market allocation. Here's another example: if your clients are at a trade association meeting and something unfortunate happens, they can leave. Then they can later document that they left. If there is litigation, they'll have a better record.

HILLMAN: Some clients don't want to create documents. But evidence comes in many forms, and if you don't do something to disavow and make clear that what perhaps had occurred is not the policy and practice of your company, you are making a real mistake. I once had a client attend a trade association meeting. The association had a proclivity for unfortunate discussions. Dangerous price communications ensued; he called the waiter over, purposefully knocked his tray, getting a bath in the process, and very publicly excused himself. Later, there was an investigation, and indictments. He wasn't touched.

WIECHMANN: Unfortunately, we have another level of complexity. The meeting is one worry, but instant messaging and e-mails are another. It used to be the drink after the lecture by the antitrust lawyer that got people in trouble. Now, it is the e-mails afterward.

WOOD: As a litigator, I can't stress enough to in-house counsel the importance of allowing counsel to review the files of the sales and marketing people who have proposed a particular course of action or potential transaction. Review the relevant electronic documents; review the paper files. You'll find an antitrust risk that you didn't know you had.

BUCHANAN: The best person to help the company avoid legal problems is the in-house counsel who has been able to earn the trust of the businesspeople.

ALEXANDER: And the person who is really in the best position to stop the bad conduct is the well-informed sales person, so it is important to bring outside counsel in to run compliance programs to make sure the sales force knows the rules of the game.

WOOD: And I would add, manage your documents created during the acquisition. For example, when you make a Hart-Scott-Rodino filing, you need to produce 4(c) documents, which are documents created by the company and by their bankers and other advisors about the strategic significance of the transaction. If you can advise your clients and advisors in advance that these will be produced, you can reduce problems, and perhaps avoid a second request. And lastly, you should understand what your customers are going to say in response to the transaction, and whether they are going to greet this with enthusiasm or not. If you do so, your antitrust lawyers will be in a better position to tell you how the investigation or second request is going to go. Government lawyers call up customers all the time in evaluating the competitive significance of a transaction.

markalexander

ALEXANDER: Yes, even in a deal that's not going to be challenged, the review period can be much shorter if you're ready to hit the ground running by talking to outside counsel early on in the process. The antitrust enforcement staff at the federal agencies are under pressure these days to review benign transactions during that initial 30-day period whenever they can. They are ready to listen to your information if you have it ready to go.

MODERATOR: Let's move to joint ventures.

BELT: The question, in light of the Supreme Court's recent joint venture decision in *Texaxo v. Dagher*, is whether joint ventures are going to be significantly less subject to antitrust challenge. By one view, the decision is quite narrow. There was no challenge to the legitimacy of the underlying joint venture. The only question was whether the setting of prices among the joint venture participants was a *per se* violation. The case offers significant comfort for use of a joint venture as a business vehicle.

WOOD: *Dagher* is a very narrow decision; it involved a fully integrated joint venture that was reviewed by the government in advance. The government insisted upon certain remedial measures before it approved the venture. What is remarkable is that even

after all that process, the venture was subject to litigation that took eight years to resolve. I don't see the case and its holding as controversial, but I do see it as evidence that there is antitrust risk out there that can be expensive to resolve.

BELT: The Court in *Dagher* made a distinction between actions that are core to the joint venture and actions that are outside the joint venture, without really explaining how one makes that determination. *Dagher* was a very simple joint venture. The venture had a single product that was being produced and then sold. Many joint ventures are much more complicated and involve multiple products and actions. Future cases may, to some extent, deal with whether a certain action is a core activity of a joint venture or whether it falls into an area where it can be the subject of an antitrust challenge.

BUCHANAN: Unlike a merger, a joint venture is a sitting target for private plaintiffs and government enforcement as long as it exists. And the risk may increase over time. As the parties try to live together, they may begin fighting over something, so there's often more of a litigation risk.

HILLMAN: Research and development joint ventures are treated much more favorably by the government than marketing joint ventures; the latter having greater capacity to eliminate existing competition or prevent competitive entry. The Justice Department/FTC guidelines on competitor collaboration differentiate among production, marketing, buying and R&D joint ventures. The government looks at elements including the exclusivity of the venture, asset control, financial control, decision-making power, sharing of information, and the length of the venture.

MODERATOR: Let's move to standard setting. That has generated a good deal of recent dialogue, litigation and outright good gossip. The ongoing *Rambus* case has some important lessons on the rights and obligations of parties entering into these agreements.

WOOD: The *Rambus* litigation has involved the question of when you are participating in private standard setting activity, and you have intellectual property rights that may be involved in the standard being contemplated, do you, as an IP owner or potential IP owner, have an obligation to disclose those IP rights? According to the FTC decision, Rambus did not disclose that it had patent applications pending that would be advantaged by the adoption of a standard being contemplated, and in fact they reflected the discussions of the standard setting activity in their amended patent application, to make sure their patent claims overlapped with the standard under consideration. Once the standard was adopted, they sought royalties, which resulted in a lot of litigation. Most recently, the full Federal Trade Commission found that Rambus violated Section 5, which is the unfair competition provision of the FTC Act. It is important to note that this was not the result at the administrative law judge level, and that Rambus has been successful in many related private litigations in arguing that this was appropriate, vigorous, pro-competitive behavior on part of an IP holder. But the Federal Trade Commission has made it one of its missions to litigate this type of a matter. It is plainly disturbed by the Rambus scenario. The FTC is trying to create case law that would require IP owners to voluntarily disclose their patent rights if they are participating in standard setting activity.

WIECHMANN: The FTC is looking very carefully at how the patent monopoly is being abused or misused. Some of this is just pushback. They want to send the message that patent holders should be careful with their legal monopoly.

HILLMAN: Apropos of that, the Supreme Court held this year in *Illinois Tool Works* that the mere possession of a patent no longer confers a presumption of market power. *Rambus* sounds like a very prudent use of the FTC's power under Section 5. It is troubling what Rambus did. It was very clever, and whether or not it's an antitrust violation, one might say colloquially it ought to be illegal.

ALEXANDER: Even if there's no *per se* monopoly, as the Supreme Court held in *Illinois Tool Works*, what the parties are trying to do in the standard setting situation is create a standard around which the market will operate, and if you control the standard, there's likely to be some market power. This is a real antitrust issue, as well as a fairness issue that leaves a bad taste in your month.

Unlike a merger, a joint venture is a sitting target for private plaintiffs and government enforcement as long as it exists. And the risk may increase over time.

- Robert M. Buchanan Jr.
Choate Hall & Stewart

Some of this is just pushback. The FTC wants to send the message that patent holders should be careful with their legal monopoly.

- Eric Wiechmann
McCarter & English

BELT: The Commission didn't rely solely on Section 5 of the Federal Trade Commission Act; it held that Section 2 had been violated as well. Eric is correct that the fact that this involved patents was significant. The concern the Commissioner expressed was that competitors would be locked out of the market because of the later issuance of a patent. If it had just been a question of lead time, there may have been less concern.

BUCHANAN: Counsel need to know when somebody is going to a standards meeting. Don't send your most junior person. He or she is not seasoned enough in anticipating strategic risks and is likely to want to brag about his own importance. Make sure the rules of the organization are clear. This is an area where there's increased need for proactive counseling. Some of the people who go to these meetings have a notion that "standards" is some sort of magic category. But it isn't.

BELT: In *Rambus*, the concern was not the joint activities of the members, but unilateral activity. Unilateral activity should be monitored by counsel to make sure a legitimate claim can't be made that advantage was taken of the standard-setting process to advance unfairly the activities of a particular company.

HILLMAN: Apply the legal reasoning of *Allied Tube*, where the Supreme Court imposed Sherman Act Section 1 liability for conspiracy to influence the association to adopt a biased safety code standard to harm competitors of the defendant. Then, it is apparent why the FTC would not look with favor on the more sophisticated conduct in *Rambus*, and would try to fit it into a Sherman 2 context, not just Section 5 of the FTC Act.

WIECHMANN: While this was a private standards setting case, you can also have antitrust liability in a governmental standards setting. It goes both ways.

MODERATOR: Let's talk about the two cases pending before the U.S. Supreme Court. Start with *Twombly*.

ALEXANDER: *Twombly* is a fascinating case because it highlights the tension between the costs in antitrust litigation and investigations and the general federal preference for bare-bones pleading requirements. *Twombly* is a case in which the Second Circuit said we cannot impose upon antitrust plaintiffs pleading standards that are more difficult than the run-of-the-mill litigation simply because it is an antitrust case, even though the discovery burdens in an antitrust case are monumental compared to most other cases. As a result, you really don't have to do very much as an antitrust plaintiff to get to discovery in a conspiracy case based on parallel conduct among competitors. That's something that's very troubling to antitrust defendants who believe that there are good reasons for requiring some pleading specificity before you get to discovery and impose multimillion dollar costs on defendants or require payment of settlement "ransom" to avoid those costs. In non-antitrust contexts, the Supreme Court has been very reluctant to impose any kind of heightened pleading standard, opting for simple notice pleadings in almost every context. I'd be surprised if they come out requiring a higher standard in antitrust conspiracy cases.

BELT: One of the frustrations of companies accused of price fixing is that similar prices are as reflective of perfect competition as they are of conspiracy. But generally, enforcement authorities don't take that view of parallel conduct. They view it as suspicious, not as a reflection of a highly competitive and responsive market.

BUCHANAN: Regardless of how this case comes out, the basic counseling rules are the same. Tell your people not to talk prices with their competitors.

MODERATOR: What are you looking for out of the *Weyerhaeuser* case?

BELT: The question here is whether the *Brooke Group v. Brown & Williamson* predatory pricing principle should apply to predatory purchasing, and if not, what is the standard? The Court of Appeals held that if the price paid was higher than it needed to be, that could be a violation. I doubt this view will survive. There is no consensus

among the amici concerning what the standard ought to be. From an economic and factual standpoint, it's going to be very difficult for the court to come up with a particular standard.

HILLMAN: There's another point that was somewhat interesting, that market entry was not really foreclosed, but entry was not significant. Four companies entered the market, but none particularly successfully. Still, the appellate court noted that Weyerhaeuser's market share either stayed the same or slightly increased. The Supreme Court may comment on the importance of market entry *per se* as demonstrating the success or failure of the restraints. The court may not be concerned, because consumer welfare isn't really threatened.

MODERATOR: If fewer companies have to worry about predatory buying, maybe more of them should be worried about criminal enforcement.

WIECHMANN: I am sure this is only of academic interest for our clients, but I wanted to address the international enforcement and conviction of cartels over the past six years. In 1993, there were three grand juries looking into price fixing and cartel behavior. Today, there are 50. Three people from one company went to jail in the vitamin cartel; three and five officers from two of the conspirators in the rubber chemical prosecution served time; five and seven in the Dynamic Random Access Memory case. It is not just American companies. There are 27 foreign citizens—officers of foreign corporations—sitting in jail as we speak. As a result of the double benefit, double loss provisions, we've seen several fines in excess of $300 million in the last few years. The amnesty and leniency program has spurred companies to be the first to confess to the government. They can avoid huge fines and treble damages if they are the first in the door, which gives them total amnesty. No one goes to jail; no one gets fined. You don't even have to immediately disclose all of the details of the cartel; you just have to put what they call your marker down. There have been some companies that have, literally, beaten others to the Department of Justice by 10 minutes. If you are second, somebody's going to jail, because the Department of Justice is insisting on jail time for every corporate conspirator they can prosecute.

BELT: Eric, do you see that reflected in any of the corporate compliance programs? In other words, are companies pointing out the importance of reporting anticompetitive activity to the company's attorneys so that the company can take advantage of this?

WIECHMANN: During training sessions, I now point out who is in jail. If you go in the woods, the bears will eat you; and they will eat you very quickly unless you can be first to the authorities.

BUCHANAN: It's worth noting that you don't have to outrun the bear; you just have to outrun the other guy.

WOOD: When I first started practicing in the early 80's, federal and state antitrust enforcement authorities didn't collaborate with one another. And our government didn't collaborate with international antitrust authorities. Now, they all work together and have great working relationships, so the possibility for criminal enforcement is greatly increased. And if jail isn't bad enough, understand you're going to have a collection of related private cases, with classes of consumers represented by capable class action lawyers, who are going to take the evidence the government has developed and present a case without much effort, and seek hundreds of millions of dollars in alleged overpayments by consumers.

MODERATOR: So one member of the team rushes in to tell the government we're sorry, while the other 99 prepare for this barrage.

WIECHMANN: No question. Governments cooperate, but you realize your co-conspirators are now the most effective government enforcers. Your competitors are going to nail you if you don't nail them.

HILLMAN: In the end, your clients won't have to "outrun the bear" if they follow this rule: act unilaterally. That resolves 95 percent of potential Sherman Act Section 1 problems. ■

The question is whether the *Brooke Group v. Brown & Williamson* predatory pricing principle should apply to predatory purchasing, and if not, what is the standard? This will be difficult for the court; there is no consensus among the amici concerning what the standard ought to be.

- David L. Belt
Jacob, Grudberg, Belt, Dow & Katz P.C.

Attendee Bios

Mark Alexander is a partner with Axinn, Veltrop & Harkrider LLP, where his practice focuses on antitrust, trademark and copyright litigation, and complex litigation. In antitrust, Mr. Alexander has handled antitrust aspects of dozens of mergers and acquisitions, including, most recently, the representation of BellSouth in connection with in its acquisition by AT&T. Mr. Alexander's antitrust litigation experience has included the defense of a private party challenge to a media merger, the defense of conspiracy claims stemming from industry trade group activities, and the prosecution of a monopolization claim in the chemicals industry. Mr. Alexander graduated with honors from Cornell Law School, where he served as Symposium Editor for the *Cornell Law Review*. He was an associate at Sullivan & Cromwell in New York and London before joining Axinn, Veltrop & Harkrider LLP. Mr. Alexander can be reached at *mda@avhlaw.com*

Axinn, Veltrop & Harkrider LLP offers its clients a unique range of legal counseling and litigation services in the areas of antitrust and trade regulation, intellectual property and complex litigation. AV&H is focused on providing its clients with the highest possible level of professionalism and skills and is led by a team of attorneys who have represented many leading corporate clients in a wide variety of precedent-setting cases before the Federal Trade Commission, Antitrust Division, and European competition authorities, as well as in federal courts throughout the nation. *www.avhlaw.com*

AXINN, VELTROP & HARKRIDER LLP

David L. Belt is a principal of Jacobs, Grudberg, Belt, Dow & Katz P.C. A magna cum laude graduate of Yale University, where he majored in economics, and of the Yale Law School, his practice involves the trial, appeal, and arbitration of antitrust, unfair trade practices, business torts, and other complex legal disputes. He is an Adjunct Professor of Law at the Quinnipiac University School of Law, where he teaches antitrust, and has taught antitrust and trade regulation at the University of Connecticut School of Law. He has written and lectured extensively on antitrust and unfair trade practices. *dbelt@jacobslaw.com*

Jacobs, Grudberg, Belt, Dow & Katz P.C. is a litigation firm located in New Haven, Connecticut. For more than 30 years, the firm has represented companies and individuals as both plaintiffs and defendants in complex civil litigation, including the trial and appeal of antitrust, unfair trade practices, fraud, and other business torts and contract disputes and in the defense of white collar criminal prosecutions. Its attorneys have extensive trial and appellate experience and six of its 13 lawyers are listed in The Best Lawyers in America, including one for antitrust, four for commercial litigation, and three for white collar criminal defense. *www.jacobslaw.com*

Jacobs, Grudberg, Belt, Dow & Katz P.C.

Robert M. Buchanan Jr. is the leader of the Antitrust practice at Choate, Hall & Stewart. He was listed as one of Boston's top antitrust lawyers in *Chambers USA: The Leading Lawyers for Business*, which included one client review that noted, "In terms of raw intellect alone he is worth his weight in gold." Mr. Buchanan is active in antitrust counseling, transactional work (including premerger notifications), and litigation. He also represents major clients regularly in complex commercial litigation. Noted for his practical counseling skills, Mr. Buchanan serves as in-house counsel to the firm and to all of the partners in his role as Chair of the firm's Ethics Committee. Mr. Buchanan is currently co-Chair of the Boston Bar Association Ethics Committee. *rbuchanan@choate.com*

Choate Hall & Stewart, being one of the nation's leading law firms, has helped blue chip companies and institutions across the U.S. and abroad complete their most important transactions, address their most important challenges and achieve their most important goals, for over a century. Based in Boston, our team of 200 lawyers, many recognized for excellence in their fields, partner with clients to tailor programs that fit their specific needs and objectives. Our size and focus offers clients partner-intense, prized service that has resulted in the resolution of disputes and the designation as a "Go-to-Firm" in Litigation in *Who Represents America's Biggest Companies*. Visit us at *www.choate.com*

CHOATE
CHOATE HALL & STEWART LLP

Allan P. Hillman is a partner at Shipman & Goodwin in Hartford, Connecticut. He practices in the areas of antitrust, franchise, and intellectual property, with particular emphasis on litigation, arbitration, Federal Trade Commission and Justice Department transactions, UFOC filings, and business counseling. He has taught antitrust law and is a member of the Executive Committee of the Antitrust Section of the Connecticut Bar Association. A frequent author and lecturer, Mr. Hillman is also an Associate Editor of the American Bar Association Franchise Law Journal. *ahillman@goodwin.com*

Shipman & Goodwin is a full-service law firm representing many of the leading businesses, institutions, individuals, and government entities in Connecticut and throughout the New England and the Mid-Atlantic regions. With nearly 150 lawyers practicing from offices in Hartford, Stamford, Greenwich and Lakeville, Connecticut, the firm is recognized for its depth of knowledge and experience in a number of industry sectors, including education, government, financial services, health care, nonprofit organizations, emerging and middle market companies, real estate development, energy and telecommunications, antitrust and trade regulation, franchising, retail, and software and IT. For more information, please visit *www.shipmangoodwin.com*

SHIPMAN & GOODWIN LLP
COUNSELORS AT LAW

Eric Wiechmann is a member of McCarter & English as well as the firm's executive committee. He specializes in sophisticated civil litigation, including antitrust, toxic tort and professional liability cases. Mr. Wiechmann has a nationwide practice. He has tried both jury and court cases and argued appeals in numerous state and federal courts throughout the country and represented companies and individuals before various administrative agencies, including the SEC, Justice Department, EPA and Connecticut State Attorney General. He is a member of the executive committee of The Connecticut Bar Association Antitrust Section and a member of The Connecticut Supreme Court Evidence Oversight Committee. *ewiechmann@mccarter.com*

McCarter & English offers a complete range of multidisciplinary legal services to its business clients, which include some of the nation's leading financial, industrial, pharmaceutical and commercial enterprises. In addition to litigation, the firm skillfully handles national, regional and local business transactions, and provides legal counsel to governments, institutions and individuals. The firm's 400+ attorneys reside in offices in eight cities spanning the Northeast Corridor, including Boston, Hartford, Stamford, New York, Newark, Philadelphia, Wilmington and Baltimore. The firm works with clients to determine their specific business goals, then draws on its extensive resources to design and implement legal strategies that will best accomplish them. This client-centric focus is a key reason that businesses have trusted McCarter & English to represent their needs for more than 160 years. *www.mccarter.com*

McCARTER ENGLISH
ATTORNEYS AT LAW

Lisa C. Wood, a partner at Foley Hoag LLP, has represented a broad range of clients in complex business litigation matters, principally in the areas of securities fraud, accountants liability and antitrust. Her clients include accounting firms in securities/accounting malpractice claims and in regulatory investigations by the SEC, IRS, and other federal and state authorities; Fortune 500 public companies in federal securities and antitrust matters; mutual and hedge funds and other institutional investors in evaluating and pursuing securities fraud claims; and officers, directors and audit committees of public companies in federal securities litigation, internal investigations, whistleblower complaints and SEC and DOJ/FTC investigations. Ms. Wood also counsels companies and their boards on antitrust and securities compliance matters. *lwood@foleyhoag.com*

Foley Hoag LLP provides comprehensive legal services to clients throughout the United States and around the world. We serve a wide range of industries including biopharma, energy and utilities, financial services, manufacturing, and technology. With 250 lawyers located in Boston, Washington, D.C., and the Emerging Enterprise Center in Waltham, MA, we provide creative solutions and results-oriented advice in the areas of bankruptcy, restructuring and workouts; corporate finance, mergers and acquisitions, and IPOs; labor and employment; litigation; environmental issues and land use; government strategies; intellectual property; tax, trusts and estates; and white collar and business crimes. For more information, visit *www.foleyhoag.com*

FOLEY HOAG
ATTORNEYS AT LAW