

Kay Lynn Brumbaugh



Partner

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Kay Lynn represents clients in the areas of antitrust litigation and counseling, class actions, and other complex commercial and business litigation matters. She also represents clients in connection with investigations by the Federal Trade Commission, the Department of Justice Antitrust Division and various states' attorneys general. Her antitrust representation encompasses assisting clients in obtaining antitrust clearance from federal and state authorities in connection with merger and acquisition transactions. Kay Lynn has provided representation for clients in many industries including energy, food and beverage, franchising and distribution, direct sales, consumer products, manufacturing, health care, insurance, internet and e-commerce, transportation and telecommunications.

Kay Lynn was selected to the 2009 class of the top 15 business defense lawyers in Dallas by the *Dallas Business Journal* and was profiled as a leading antitrust lawyer in Texas in *Chambers USA, America's Leading Lawyers for Business* (2007-2011). She has also been recognized as one of *The Best Lawyers in America* for Antitrust Law (2010-2012).

REPRESENTATIVE EXPERIENCE

Representative Antitrust Litigation & Government Investigations

- Currently representing a dairy processor defendant in *In re Southeastern Milk Antitrust Litigation*, a series of coordinated putative class actions alleging conspiracies to reduce prices paid to dairy farmers for raw milk and to raise prices charged to purchasers of processed milk.
- Represented individual executive in Packaged Ice industry investigation by the Antitrust Division of the Department of Justice. Investigation was closed in 2010 with no action taken.
- Defeated class certification in price-fixing conspiracy case; order denying class certification affirmed by the Fifth Circuit Court of Appeals. Briefed and argued case at Fifth Circuit. [*Piggly Wiggly Clarksville, Inc. v. Interstate Brands Corp.*, 100 Fed. Appx. 296 (5th Cir. 2004)].
- Dismissal and summary judgment affirmed by the Fifth Circuit Court of Appeals in case alleging exclusive dealing, monopolization and state law tort claims. Primary responsibility for handling case at district court level; briefed and argued case at Fifth Circuit. [*Apani Southwest, Inc. v. Coca-Cola Enterprises Inc.*, 300 F.3d 620 (5th Cir. 2002)].

INDUSTRIES

Energy
Franchise
Health Care
Hospitality and Hotels
Manufacturing and Sales
Restaurant
Technology

PRACTICES

Antitrust Counseling
Antitrust Litigation
Class Action Litigation
Commercial Litigation
Litigation

EDUCATION

JD, 1992, University of Virginia School of Law
Judicial Clerkship with the Honorable Sam B. Hall, Jr., US District Judge for the Eastern District of Texas, Marshall and Texarkana Divisions (1992-1993)
BBA, 1989, with high honors, The University of Texas

ADMISSIONS

Texas 1992
US Court of Appeals for the Fifth and Sixth Circuits
US District Court for the Northern District of Texas
US District Court for the Southern District of Texas
US District Court for the Eastern District of Texas

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US District Court for the
District of Colorado

- Defended Dallas physician organization in price-fixing investigation by the Federal Trade Commission. Case successfully resolved with consent decree and no fines or damages paid by client. [*In the Matter of System Health Providers, Inc. and Genesis Physicians Group, Inc.*, FTC File No. 011 0196, FTC Docket No. C-4064 (2002)].

Recent Antitrust Representation in M&A Transactions

Kay Lynn has recently advised clients on HSR and antitrust matters in connection with the following merger & acquisition transactions:

- Independent oil refiner in connection with its \$7 billion merger of equals with another leading refiner.
- Large Canadian midstream company in its \$3.1 billion merger with Canadian pipeline operator.
- E&P client in its \$3.5 billion sale to an integrated energy company.
- Finnish refining and marketing company in its sale of iso-octane assets to Canadian midstream company.
- Large midstream joint venture in its \$1.925 billion acquisition of the membership interests of a natural gas liquids storage, processing and transportation business.
- Metal service center company in its \$415 million acquisition by the industry leader.
- Global engineering, construction and services company in its \$280 million acquisition of an engineering, procurement and construction services firm.

Antitrust Counseling

Kay Lynn also provides ongoing antitrust counseling and compliance training for firm clients on a wide variety of issues, including pricing, joint ventures, exclusive dealing arrangements, bidding and contract issues.

Additional Representative Matters

- Member of defense team that obtained jury verdict in the trial of horizontal price fixing claims brought by a class with more than 52,000 class members [*Tucker v. Interstate Brands Corporation*, District Court, Johnson County, Texas, 1998].
- Member of team defending DFW International Airport Board in antitrust lawsuit involving the repeal of the Wright Amendment. Obtained motion to dismiss in client's favor. [*Love Terminal Partners, L.P. v. The City of Dallas*, 527 F. Supp. 2d 538 (N.D. Tex. 2008)].
- Defended soft drink distributor in antitrust trial and on appeal in which competitors alleged state antitrust claims relating to promotional and advertising agreements. Won case on appeal before the Texas Supreme Court in October 2006. [*Coca-Cola Co. v. Harmar Bottling Co.*, 111 S.W.3d 287 (Tex. 2006)].
- Arbitration hearing defense in 2006 for major automobile manufacturer in a commercial lease and property condition dispute. Plaintiff sought termination of long-term lease and millions in damages. Arbitration panel denied termination request and awarded no monetary damages.
- Represented major health insurer in investigation by the Federal Trade Commission related to alleged price fixing by a physician organization.
- Represented direct marketing company in investigation by Minnesota Attorney General. No action taken against client.

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- Represented national hotel and real estate franchisors in multiple breach of contract and trademark lawsuits against franchisees. Obtained injunctions and/or favorable settlements.
- Advised a well servicing company in its \$180 million acquisition of a group of companies providing complementary services.
- Advised a major drilling company in the \$510 million sale of its land drilling business.
- Represented a refiner in the sale of its Tulsa refinery to another refiner.
- Advised a large independent refiner in its \$1.2 billion acquisition of another refiner.
- Represented a natural gas storage company in its \$750 million sale to another natural gas storage company.
- Represented a midstream natural gas services provider in its acquisition of interests in a natural gas pipeline.

PUBLICATIONS

- Four Practical Tips for Protecting the Attorney-Client Privilege *Straightline* (May 2012)
- ABA Section of Antitrust Law, Kay Lynn co-authored the Energy Markets chapter of *Market Definition in Antitrust Theory and Case Studies* (2012)
- Higher HSR Threshold Requirements Effective February 27, 2012 (January 27, 2012)
- Warning to Executives: Reinvestment of Dividends in your 401(k) and Vesting of Stock Awards May Trigger HSR Filing Requirements (January 24, 2012)
- Revised HSR Form Adds Significant Reporting Requirements (July 26, 2011)
- 2011 Hart-Scott-Rodino Threshold Requirements (February 21, 2011)
- Public Statements about Pricing Changes May Create Antitrust Litigation Risk (October 20, 2010)
- "Retrospective Review of Petroleum Industry Mergers" (with Jerry Beane), *Competition Law* 360 (November 17, 2008).
- ABA Section of Antitrust Law, *Antitrust Law Developments 6th Ed.* (2007). Kay Lynn co-authored the Natural Gas section of the Regulated Industries chapter.
- ABA Section of Antitrust Law, *Antitrust Compliance: Perspectives and Resources for Corporate Counselors* (2005). Kay Lynn co-authored an essay.
- *Inside the Minds: The Art & Science of Antitrust Law: Leading Lawyers on Competition, Litigation and Globalization* (Aspatore, Inc. Oct. 2003). Kay Lynn authored a chapter.

PROFESSIONAL RECOGNITION

- Recognized in "Who's Who in Energy" in the field of Energy Antitrust in a joint publication of the *Dallas Business Journal*, the *Houston Business Journal* and the *Pittsburgh Business Times* (November 11, 2011)
- Recognized as a "Local Litigation Star" in Texas by *Benchmark Litigation* (2011)
- *The Best Lawyers in America*, Antitrust Law (2010-2012)
- Profiled as a leading Antitrust lawyer in Texas in *Chambers USA, America's Leading Lawyers for Business* (2007-2012)
- Texas Super Lawyer, *Texas Monthly* (2003-2011)
- Top 15 Business Defense Lawyers in Dallas, *Dallas Business Journal* (2009)
- Best Lawyers Under 40 in Dallas, *D Magazine* (2002-2004)

BRIEFINGS, SEMINARS & SPEECHES

- "Recent Developments in Resale Price Maintenance," co-presented at the Dallas Bar Association Antitrust and Trade Regulation Section (May 2009)
- "What You Need to Know About Antitrust to Keep Your Company Out of Trouble," presented at Andrews Kurth's Executive Women's Retreat (October 2008)

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- "Controlling Franchisee Pricing after *Leegin*," co-presented at the ABA Forum on Franchising and presented at the Dallas Bar Association Franchise & Distribution Section (October 2008)
- "Re-Thinking Litigation-Related Boilerplate Provisions: Do They Avoid or Encourage Litigation?" presented to the Andrews Kurth Business Transactions Section (September 2007)
- "Antitrust Issues in Franchising," Fundamentals of Franchising, American Bar Association Forum on Franchising in conjunction with the Dallas Bar Association (March 2007)
- "A Texas Antitrust Case from Trial through Appeal to the Texas Supreme Court" (co-presenter), Speech to the Texas State Bar Antitrust & Business Litigation Section at the State Bar of Texas Annual Meeting (June 2005)

AFFILIATIONS

- Dallas Bar Association, Antitrust Section (Chair, 2010; Vice-Chair, 2009; Council Member, 2007-2010)
- State Bar of Texas, Antitrust and Business Litigation Section (Council Member, 2002-2005)
- American Bar Association, Antitrust and Litigation Sections
- The Partnership of Community Partners of Dallas
 - Board of Directors member (2012)
- Genesis Women's Alliance
 - Board of Directors member (2011)
- Friends of WRR, the City of Dallas-owned classical music radio station
 - Board of Directors member (2007-present) and Board Secretary (2009)
- Junior Associates of the Dallas Museum of Art and Associates Forum of the Dallas Museum of Art
 - An Affair of the Art, Underwriting Co-Chair (2006-2007) and Underwriting Committee (2005-2006)
- MENTTIUM mentee (2005-2006)
- United Way of Dallas, Tocqueville Society, Young Leaders' Society and Women's Leadership Council

PRESS RELEASES

- Andrews Kurth Receives High Accolades in Litigation and Appellate Practices (December 16, 2011)
- 54 Andrews Kurth Lawyers Named Best Lawyers in America 2012 (September 22, 2011)
- 35 Andrews Kurth Lawyers Named in Texas Super Lawyers 2011 (September 12, 2011)
- 33 Andrews Kurth Lawyers Named in Texas Super Lawyers 2010 (September 10, 2010)
- 49 Andrews Kurth Lawyers Named Best Lawyers in America 2011 (August 16, 2010)
- 35 Andrews Kurth Lawyers Named in Texas Super Lawyers 2009 (September 16, 2009)
- 46 Andrews Kurth Lawyers Named Best Lawyers in America 2010 (August 10, 2009)
- Andrews Kurth Partner Kay Lynn Brumbaugh Recognized Among Dallas' Top Business Defense Attorneys (May 22, 2009)
- Thirty-Five Andrews Kurth Partners Named in Texas Super Lawyers 2008 (October 3, 2008)
- Andrews Kurth Transaction is Awarded Deal of the Year (August 6, 2008)
- Andrews Kurth Receives High Rankings in Chambers USA Guide (June 25, 2007)
- Jerry Beane and Kay Lynn Brumbaugh Join Andrews Kurth (November 4, 2003)