




NEAL ■ GERBER ■ EISENBERG

GENERAL & COMMERCIAL LITIGATION



Neal Gerber Eisenberg is a Chicago-based law firm whose lawyers share a culture of teamwork and devotion to personalized client service to advance clients' business interests throughout the U.S. and beyond.

Our lawyers provide legal business solutions to public and private entities of all types in connection with domestic and global business transactions and litigation. Our client base reflects a number of Fortune 100 companies, financial institutions, nonprofits and high net worth individuals. The firm has one office in Chicago. Operating from a single office ensures that clients are never lost in the shuffle of a thousand-plus attorneys and multiple global offices. With nearly 175 attorneys, the firm is large enough to handle nearly any legal matter anywhere in the world, yet small enough so clients personally know the attorneys accountable to their matters.

NEAL ■ GERBER ■ EISENBERG

GENERAL & COMMERCIAL LITIGATION

Neal Gerber Eisenberg's litigation practice advocates for individuals and businesses in trial and appellate courts nationwide. Our litigators are also skilled in managing all forms of alternative dispute resolution, including arbitration, and represent clients before administrative agencies and tribunals. We also actively counsel clients before controversies occur, providing the foresight and planning that may obviate disputes or strengthen clients' positions if legal recourse becomes necessary.

Just as there is no "one kind" of business, there is no "one way" to advocate effectively on behalf of all businesses. Each client and each controversy is unique. Our attorneys approach each case with a focused understanding of not only of the area of the law pertinent to the client's matter, but also the business or market sector in which the matter has arisen.

The firm's litigation practice was recognized as a leader by Chambers USA in 2011 in which our clients described our practice as possessing "the best legal minds who give the best legal representation." The firm was also highly ranked in 2011 by U.S.News-Best Lawyers' "Best Law Firms" survey for litigation.

“ Our attorneys approach each case with a focused understanding not only of the area of the law pertinent to the client's matter, but also the business or market sector in which the matter has arisen. ”

Litigation Practice Areas:

Antitrust & Unfair Trade Practices

Commercial Disputes

Insurance Policyholder

Class Actions

ERISA Litigation

Health Care Litigation

Product Liability

Consumer & Commercial Fraud

Trusts & Estates Litigation

First Amendment & Defamation

White-Collar Crime & Investigations

Environmental

ANTITRUST & UNFAIR TRADE PRACTICES

Neal Gerber Eisenberg's antitrust practice provides pragmatic solutions to mitigate risks posed by antitrust laws in a changing marketplace and regulatory environment. Our attorneys help clients successfully compete and advance their businesses while avoiding regulatory action or litigation that can adversely affect the bottom line. If our clients find themselves facing a lawsuit by regulators or competitors, they can rest assured that our prominent litigation team will mount an aggressive defense.

Representative Experience

- Defeated a multiclaim lawsuit brought by Fair Isaac (FICO) against the three national credit reporting agencies, Trans Union, Experian and Equifax, asserting that the credit reporting agencies violated antitrust laws by forming a joint venture, VantageScore LLC, to develop a credit score to compete with FICO's dominant score. FICO also made claims of misappropriation of trade secrets, breach of contract, false advertising and trademark infringement. The only claims that survived our motions for summary judgment were the trademark infringement and unfair competition claims. At trial, the jury rejected all of FICO's claims and also found that it had committed fraud on the U.S. Patent and Trademark Office in obtaining the trademark, which was the subject of the litigation. The jury verdict and the summary judgment decision was affirmed by the Eighth Circuit.
- Successfully defended the third-largest producer in North America of oriented strand board (an engineered wood product) against a nationwide antitrust class action seeking \$4.5 billion in damages. The plaintiffs alleged that our client, along with the other eight largest North American producers of oriented strand board, conspired to fix prices and reduce output of oriented strand board. On the eve of trial, on the "courthouse steps," the plaintiffs settled for a fraction of what was sought from our client. Indeed, while the plaintiffs obtained more than \$120 million in settlements from the eight other defendants, our client paid well less than 1 percent of the plaintiff's collective settlement.
- Following a highly publicized dispute between Ticketmaster and the rock band Pearl Jam, a number of consumer class actions were filed around the country alleging violations of the antitrust laws relating to the manner in which Ticketmaster established its fees. We represented Ticketmaster in each of these actions, which were ultimately consolidated by the Judicial Panel on Multidistrict Litigation. The district court dismissed the cases on standing grounds holding that consumers were indirect purchasers, not parties to the contracts for the sale of tickets entered into between Ticketmaster and the hosting venues or the performing artists. The Eighth Circuit affirmed and the U.S. Supreme Court declined to hear the plaintiffs' appeal.

COMMERCIAL DISPUTES

We represent public and private companies, as well as individuals, in nearly every facet of commercial disputes in state and federal courts throughout the nation and in arbitrations throughout the world. Our attorneys focus on formulating a strategy to accomplish our client's objective, and we recognize that each client may have a different need.

Representative Experience

- Successfully defended a major medical products firm in a multimillion-dollar manufacturing and distribution contract dispute. The claim was dismissed on our client's motion to dismiss and opposing counsel were sanctioned.
- A class action alleged that our client, a major airline, had wrongfully collected a federal tax from ticket purchasers for several days after the statute imposing the tax expired. The purported class plaintiffs sought the refunds from the airline, which had paid the funds to the government. The trial court (and subsequently the Seventh Circuit) agreed with our position that actions for tax refunds must be pursued against the government, not private collectors.
- Trial counsel in a five-week jury trial in federal district court on claims of fraud, breach of contract and breach of fiduciary duty arising out of an alleged 25-year conspiracy and kickback scheme. Our client sought damages in excess of \$566 million. The case spanned seven years and required overcoming four motions to dismiss, a motion for judgment on the pleadings and two motions for summary judgment. Discovery included more than 60 depositions, both domestically and internationally, and the production and management of many hundreds of thousands of documents. The court granted our Rule 50 motions on seven counterclaims prior to sending the case to the jury.



INSURANCE POLICYHOLDER

The firm's Insurance Policyholder Practice Group pairs its expansive knowledge of insurance law with exceptional litigation capabilities to procure coverage and obtain recovery for corporate policyholders, professionals and other claimants. Collectively, our insurance litigators have recovered billions of dollars for our clients through victories involving the defense, negotiation and settlement of first- and third-party claims in litigation, arbitration and mediation around the country and world. In addition to litigation, another major component of our practice involves partnering with clients to offer tactical advice on insurance risk management.

Representative Experience

- Securing one of the largest settlements in the world for a catastrophic property loss suffered by an electric utility company.
- Securing millions of dollars of coverage for asbestos bodily injury claims on behalf of numerous policyholders.
- Handling several large construction insurance coverage claims to secure recovery of insurance proceeds to fund major settlements.
- Negotiating numerous first-party property and business interruption claims, recovering hundreds of millions of dollars in policy proceeds.
- Negotiating numerous "in place" agreements pursuant to which insurers are providing and have provided defense cost protection for our clients in hundreds of thousands of claims.

CLASS ACTIONS

We defend public and private companies in class actions and multi-district litigation across the United States. Our attorneys have defended class actions in virtually every industry and area of law.

Representative Experience

- Won dismissal of consolidated class actions alleging pricing violations against an Internet ticketing provider and successfully defended the dismissal on appeal.
- Defended a car rental company in a consumer fraud class action by successfully moving to dismiss the complaint in the trial court and subsequently prevailing on appeal.
- In a novel class action brought against our client, a ticketing provider, we defeated claims that a concert was effectively "canceled" because the lead singer was intoxicated.
- Defended a health maintenance organization in a putative class action by health care providers alleging inadequate reimbursement.
- Defeated requests for certification of a nationwide class of more than 13,000 putative class members in a product liability matter.
- Resolved a putative class action, with dispositive motions pending, for a regional health system against allegations of consumer fraud.

“Advocating for individuals and businesses across industries, the firm's litigators bring depth of experience ... Litigation members are broadly interdisciplinary, working closely with attorneys in all other substantive practice areas.”

- Chambers USA

ERISA LITIGATION

We represent plans, administrators, insurers and managed care organizations in virtually any type of ERISA-related dispute at the administrative level and in state and federal courts across the nation. Our wide-reaching experience includes defending claims of state attorneys general in connection with administrative challenges, claims of plan beneficiaries and claims of health care providers.

Representative Experience

- Successfully obtained summary judgment for a national payor in a class action lawsuit in Missouri involving coordination of benefits. The final judgment was affirmed by the United States Court of Appeals for the Eighth Circuit.
- Obtained dismissal with prejudice of claims against a public company for breach of fiduciary duty related to health insurance benefits.

HEALTH CARE LITIGATION

The trial lawyers in our health law practice advocate for our clients in trials, appeals, arbitrations, mediations and other forms of dispute resolution nationwide to serve their immediate and long-term strategic interests. Our knowledge and experience in complex health law litigation is expansive. We have handled cases involving antitrust, class actions, RICO, ERISA and managed care liability.

Representative Experience

- Obtained dismissal with prejudice for a health maintenance organization in a putative class action alleging antitrust and RICO claims.
- Defended a health maintenance organization in a putative class action in which health care providers alleged inadequate reimbursement.
- Served as counsel to a Fortune 100 company in the health care field in connection with a regulatory investigation.
- Resolved a putative class action, with dispositive motions pending, for a regional health system against allegations of consumer fraud.

PRODUCT LIABILITY

The firm defends manufacturers against product liability claims involving serious injury or death, as well as significant property damage, in courts around the country. We enjoy a strong record of securing the dismissal of multimillion-dollar product liability lawsuits at trial or achieving highly favorable settlements on our clients' behalf. We begin building a defense from the moment a claim is received, and our attorneys possess the technical knowhow and also work in conjunction with engineers and other experts to assess claims.

Representative Experience

- Defended a large, multinational pharmaceutical company in numerous product liability cases, including one in which the jury returned a verdict for our client on all claims. The plaintiff had sought to recover \$15 million.
- The firm represents a leading manufacturer of propane equipment and fluid controls as lead counsel in all of its product liability matters throughout the world. Juries have returned verdicts for our client in multimillion-dollar cases, including in Texas, in a case involving grave personal injuries, and in Connecticut, where a Fortune 500 company sued to recover for property damage allegedly caused by the release of anhydrous ammonia.
- In a bench trial, defeated claims against our client, a manufacturer of dry cleaning equipment, for fire damage to a dry cleaning establishment.

CONSUMER & COMMERCIAL FRAUD

We handle claims of fraud—be it consumer fraud, RICO or related claims—on behalf of individuals and private and public entities across the United States.

Representative Experience

- Represented a group of investors and limited partners in an action against their general partner, brought in the United States District Court in Dallas, Texas, asserting claims against the general partner and related entities for fraud, mismanagement and breach of fiduciary duty. The prosecution of the limited partners' action resulted in the recovery from the general partner of all misappropriated funds.
- Defended a car rental company in a consumer fraud class action by successfully moving to dismiss the complaint in the trial court and subsequently prevailing on appeal.
- Obtained dismissal with prejudice for a health maintenance organization in a putative class action alleging antitrust and RICO claims.
- Resolved a putative class action, with dispositive motions pending, for a regional health system against allegations of consumer fraud.

TRUSTS & ESTATES LITIGATION

In helping clients achieve their tax, estate and business planning goals through the use of trusts and related structures, we have developed litigation proficiency in these areas. Our attorneys' knowledge, skill and creativity in planning and drafting have equipped them to successfully litigate cases involving estate plans and documents. We have successfully represented both fiduciaries and beneficiaries in many types of disputes. In addition to our courtroom successes, we are known for structuring effective settlements and achieving tax savings in connection with those settlements.

Representative Experience

- Represented the successor executor of the estate of a well-known member of the Chicago sports community. The administration of the estate was prolonged and contested, and our attorneys were successful in actions against the prior executor and his attorneys, as well as in contested proceedings seeking authorization to sell the estate's minority interest in a sports franchise.
- On the eve of trial, negotiated a favorable settlement with the Internal Revenue Service in a case involving an estate tax deficiency. In the settlement, the IRS stipulated to certain facts that not only greatly limited the deficiency to be paid by the decedent's estate, but also effectively precluded the IRS from pursuing far more substantial income tax deficiency claims against members of the decedent's family.
- Defended an action against a professional trustee that had been accused by beneficiaries of allowing trust investment portfolios to remain undiversified. After narrowing the scope of the action through motions that asserted novel applications of statutes of limitation, and by demonstrating that the plaintiffs' damages calculation had ignored crucial tax considerations, the case was settled for a small fraction of the plaintiffs' demand.

2011
RANKINGS

RANKED IN
CHAMBERS
USA
2011

Insurance: Dispute Resolution:
Policyholder ■ Litigation: General
Commercial

2011-2012
BEST
LAW FIRMS
BY USNEWS
Best Lawyers

Ranked Litigation Categories:

Antitrust ■ Bankruptcy ■
Commercial Litigation ■
Construction ■ Criminal Defense:
White-Collar ■ Eminent Domain
& Condemnation ■ Environmental
■ Regulatory Enforcement (SEC,
Telcom, Energy) ■ Securities ■
Trusts & Estates

WHITE-COLLAR & INVESTIGATIONS

Our firm has built a sought-after white-collar crime and investigations practice led by respected former government attorneys from the U.S. Attorney's Office, the Manhattan District Attorney's Office, the Federal Defender's Office, the Securities and Exchange Commission and state securities agencies, as well as authorities in the defense of the financial services industry. This collection of talent gives our clients access to leading lawyers with valuable inside-out knowledge and experience in white-collar and investigatory matters.

The group's broad investigative, trial and appellate experience provides early resolution of potential criminal problems; the ability to deal directly with regulatory and government agencies to avoid the harmful consequences of government action, where possible; and, if necessary, the ability to successfully defend companies or their management at trial.

Internal Investigations

Our attorneys represent a number of Fortune 100 companies, including major financial institutions, members of audit committees, controllers, treasurers and other financial officers in public and private corporations, in connection with criminal and regulatory investigations, including investigations involving:

- Violations of the Foreign Corrupt Practices Act
- Accounting irregularities
- Hedge funds
- Mutual fund practices
- Improper trading and market manipulations
- Money laundering
- Insider trading
- Employee fraud

Regulatory Defense

Our white-collar practice teams with our other practices to defend clients in a broad range of investigations and enforcement actions brought by regulatory bodies across the country, including the Securities and Exchange Commission, Financial Industry Regulatory Authority (formerly the National Association of Securities Dealers), the Department of Labor, the New York Stock Exchange, the American Stock Exchange, the National Futures Association, the Commodity Futures Trading Commission, the Chicago Board of Options Exchange, the Chicago Board of Trade and the Chicago Mercantile Exchange. We advise clients at every step of the process, including in preliminary investigations, responding to subpoenas for testimony and documentation, and formal proceedings, grand jury investigations and trial.

Criminal Proceedings

White-Collar group members also have significant criminal and civil trial experience, ensuring that the services provided by the group are designed to reduce or eliminate trial exposure. We are also adept in responding to grand jury proceedings and defending clients in regulatory proceedings or criminal trials.

FIRST AMENDMENT & DEFAMATION

Our litigators defend and advise print and electronic media and other entities in connection with First Amendment and defamation matters. We regularly consult with our clients on potential reporter's privilege, defamation and invasion of privacy issues and fight such claims in court. The practice regularly entails reviewing and editing articles concerning potentially sensitive subjects of great public interest.

ENVIRONMENTAL LITIGATION

Our environmental practice represents clients on a national basis in private litigation and government enforcement actions. Our litigation experience touches the entire spectrum of environmental claims, including common law disputes over contaminated property and statutory claims under state and federal environmental laws.

We combine our courtroom experience with our keen understanding of the intricate regulatory framework in which environmental laws are enforced. Our professionals understand clients' desire for sophisticated—yet cost-effective—legal services in an area of law that depends heavily on scientific experts. We also have experience in alternative dispute resolution, including mediations and arbitrations.

Our Clients & Services

We represent large commercial and industrial companies, real estate development and property management companies, individual property owners and industry trade associations, among others. Our wide-ranging practice includes:

- Counseling in connection with the acquisition and sale of manufacturing companies.
- Assisting during the purchase, sale and development of all types of real estate, including potentially contaminated "brownfield" properties.
- Working with transactional attorneys and environmental consultants to assess environmental risks and liabilities arising in the course of corporate, real estate and lending transactions.
- Representing owners, operators, transporters and generators as potentially responsible parties at National Priorities List sites.
- Prosecuting and defending cost recovery/contribution actions and liability disputes under the federal Superfund law and the handling of similar actions under state environmental statutes or common law.
- Litigating toxic tort, underground storage tank cases and other actions involving contaminated property.
- Defending state and federal government enforcement actions, both in court and before administrative agencies.
- Appearing before federal and state legislative bodies with respect to air quality issues.
- Client counseling on compliance with federal, state and local environmental requirements.
- Assisting in environmental audits to ensure that operations and projects are in full compliance with environmental regulations.

“ *Dynamic and built around
highly qualified lawyers who
provide sophisticated,
solutions-oriented advice.* ”

- Chambers USA



NEAL ■ GERBER ■ EISENBERG