

Dickstein Shapiro LLP

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Dickstein Shapiro LLP

**Capabilities and Experience**

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## Firm Profile

Dickstein Shapiro LLP, founded in 1953, is a multiservice law firm with more than 400 attorneys in Washington, DC, New York, and Los Angeles, representing clients in diverse industries with a wide variety of requirements. While Dickstein Shapiro's work generally originates from a client's need for legal representation, the Firm is mindful that legal service is but one ingredient in achieving a client's strategic business goals. The Firm prides itself on learning and understanding client objectives and partnering with clients to generate genuine business value.

Dickstein Shapiro is proud that the diversity of its clients coincides with the diversity of its practice. The Firm's clients include more than 100 of the *Fortune* 500 companies, as well as start-up ventures and entrepreneurs, multinational corporations, leading financial institutions, major motion picture studios, charitable organizations, and government officials. Dickstein Shapiro's core practice groups—Antitrust & Dispute Resolution, Business & Securities Law, Corporate & Finance, Energy, Government Law & Strategy, Insurance Coverage, and Intellectual Property—involve the Firm in virtually every major form of counseling, litigation, and advocacy. Detailed descriptions of each practice, and biographies of individual attorneys, are available at [dicksteinshapiro.com](http://dicksteinshapiro.com) or upon request.

## Antitrust & Financial Services Practice

### Overview

Dickstein Shapiro's Antitrust & Financial Services Practice specializes in the representation of plaintiffs and defendants in civil litigation. Indeed, the Antitrust & Financial Services Practice is the leading representative of large companies as plaintiffs in treble damages actions in the United States. The Firm has generated recoveries for clients that underscore how a corporate legal department can be a vital source of revenue. The Firm also employs its litigation and settlement expertise on behalf of defendants seeking to avoid liability in class action and related litigation.

### Plaintiff Representation – Beyond the Class Model

In the mid-1990s, Dickstein Shapiro realized that many of its corporate clients were dissatisfied with their experience as class members in antitrust class actions. The clients did not believe that the traditional class action counsel was looking out for their best interests. It became apparent that large purchasers were not recovering as much as they should through the class action process. As a result, the Firm began representing groups of clients that were among the primary purchasers of products from suppliers that participated in unlawful cartels. These clients opted out of the class actions and filed their own cases directly against the defendants. For example, the Firm brought opt-out cases on behalf of a group of poultry and animal feed companies arising from overcharges in the lysine market in *In re Amino Acid Lysine Antitrust Litigation*; on behalf of food and household products companies against the manufacturers of citric acid in *In re Citric Acid Antitrust Litigation*; on behalf of a diverse and expansive group of purchasers against the manufacturers of corrugated containers in *In re Linerboard Antitrust Litigation*; on behalf of animal feed producers in *In re Methionine Antitrust Litigation*; on behalf of tire manufacturers against chemical companies in *In re Rubber Chemicals Antitrust Litigation*; and on behalf of a group of vitamin supplement, food, and animal feed producers against manufacturers of bulk vitamins in *In re Vitamins Antitrust Litigation*. The client groups in these cases

have varied in size from a handful of large purchasers of citric acid to well over one hundred purchasers in the vitamins case. These cases have established the Firm's preeminence in the representation of corporate antitrust plaintiffs.

### **Defendant Representation**

Dickstein Shapiro maintains a vigorous defense practice. In its representation of Pfizer, the Firm obtained the dismissal of an antitrust action relating to the importation of pharmaceuticals from Canada. In a similar price-fixing case in California, it achieved a favorable summary judgment for Pfizer. Both were affirmed on appeal. *In Soundview Technologies, Inc. v. Sony Corp., et al.*, the Firm was counsel to a major industry group in a case alleging a conspiracy to deny market use of V-chip technology I, and summary judgment was obtained for the defendants. In *In re Stock Exchange Options Trading Antitrust Litigation*, the Firm acted as liaison counsel for specialists and market makers accused of conspiring to prevent the listing of stock options on multiple exchanges, and in *In Re California Wholesale Electricity Antitrust Litigation*, the Firm is leading the defense of a nationwide energy company in response to allegations that it manipulated prices in the California market. In *Rothery Storage Van Co. v. Atlas Van Lines, Inc.*, the U.S. Court of Appeals for the District of Columbia, in granting summary judgment for the defendant, established enduring guidelines for applying the "Rule of Reason."

Complementing its representation of defendants, the Firm also acts as national settlement counsel for defendants in antitrust cases such as *In Re Polyester Staple Fiber Antitrust Litigation*, *In Re EPDM Antitrust Litigation*, and *In Re Polychloroprene Antitrust Litigation*. Dickstein Shapiro's clients have learned that the Firm's expertise in plaintiff cases can be extremely valuable when representing defendants. The Firm currently represents several major corporations that were formerly adverse to its clients in prior cases.

### **Government Investigations**

The Federal Trade Commission, the U.S. Department of Justice, and the Attorneys General of the various states are empowered to undertake formal investigations and prosecutions of individuals or companies whose activities are

suspected of violating the laws protecting fair competition. The Firm has represented numerous corporations and individuals in such government actions and often has been successful in avoiding litigation. Dickstein Shapiro's knowledge of the political process and workings of government agencies also has been instrumental in obtaining the government's help on behalf of clients who have been damaged by unfair competition or who have concerns about competitors' conduct or merger plans.

### **Compliance Programs and Counseling**

Dickstein Shapiro helps clients avoid the risks inherent in aggressive competition by sensitizing them to the boundaries of permissible conduct and helping company management understand the pitfalls prevalent in antitrust laws. The Firm's attorneys have designed and conducted hundreds of antitrust compliance seminars for executives and employees in a wide range of businesses and industries. The Firm also advises numerous trade associations with respect to the scope of permissible activities in their industries.

### **Mergers, Acquisitions, and Corporate Restructuring**

The Firm's attorneys assist clients in assessing the antitrust implications of mergers in their industries; making the proper governmental filings necessary to achieve transaction approval, including Hart-Scott-Rodino pre-merger notifications; and responding to enforcement agency challenges to client transactions. Just as the business issues involved in mergers, acquisitions, and joint ventures are complicated, so too can the legal issues regulating company restructuring be difficult to comprehend. Dickstein Shapiro's antitrust attorneys counsel clients in advance of such structural decisions to enable clients to make good business decisions.

## Illustrative Antitrust Representation

Dickstein Shapiro has been active in antitrust litigation for over four decades. The Firm continues to add to its antitrust litigation record in a wide variety of cases on behalf of both defendants and plaintiffs. The following are examples of antitrust cases Dickstein Shapiro has handled in recent years.

### Representation of Antitrust Defendants

***Beach, et al. v. Atlas World Group, Inc., et al.*, U.S. District Court for the District of South Carolina**

Representation of Atlas World Group, Inc., a household goods moving services carrier, in a class action alleging price-fixing and violations of the Interstate Commerce Commission Termination Act.

***In re Hydrogen Peroxide Antitrust Litigation*, U.S. District Court for the Eastern District of Pennsylvania**

Representation of DuPont, a chemicals manufacturer, in a multidistrict litigation proceeding alleging Sherman Act violations. Plaintiffs tolled the litigation as to the client and declined to name the client as a defendant in the amended consolidated complaint.

***In re Canadian Import Antitrust Litigation*, U.S. District Court for the District of Minnesota and U.S. Court of Appeals for the Eighth Circuit, and *Clayworth, et al. v. Pfizer Inc, et al.*, Superior Court of the State of California and Court of Appeal of the State of California**

Representation of Pfizer Inc in related cases involving efforts to prevent the illegal importation of prescription drugs from Canada and concerning the pricing of prescription drugs in the United States. Pfizer successfully secured a complete dismissal in the Minnesota litigation, which was brought as a putative class action on behalf of a nationwide class of prescription drug purchasers. The dismissal was affirmed by the Eighth Circuit. The California litigation was filed by a group of California pharmacies that claimed U.S. drug companies conspired to keep U.S. prescription drugs prices higher than prices charged in Canada. Summary judgment was granted for the defendants, and in a decision on an issue of first

impression, the California Court of Appeal affirmed the summary judgment for Pfizer and the other defendants.

***In re Polyester Staple Antitrust Litigation*, U.S. District Court for the Western District of North Carolina**

Representation of DuPont in the settlement of class and direct action claims by plaintiffs alleging that the manufacturer fixed prices.

***In re EPDM Antitrust Litigation, and In re Polychloroprene Rubber (CR) Antitrust Litigation*, U.S. District Court for the District of Connecticut**

Representation of DuPont in defense of multiple antitrust class actions and direct litigation by customers to recover treble damages on purchases of synthetic rubber.

***In re Natural Gas Anti-Trust Cases I, II, III, IV and V*, Superior Court of the State of California (2003) and *In re Western States Natural Gas Antitrust Litigation*, U.S. District Court for the District of Nevada**

Representation of Duke Energy Corporation in consolidated and multidistrict antitrust cases concerning trading activities in the California and nationwide energy markets.

***Soundview Technologies, Inc. v. Sony Corp., et al.*, U.S. District Court for the Eastern District of Virginia**

Representation of the Electric Industries Alliance in a case in which the plaintiff alleged a conspiracy to not use its V-Chip technology. Summary judgment was granted for defendants and affirmed by the Federal Circuit.

***DeLoach, et al. v. Phillip Morris Cos., et al.*, U.S. District Court for the District of Columbia**

Representation of Lorillard Tobacco Co. in a putative class action on behalf of tobacco farmers claiming that aspects of the tobacco industry's master settlement with numerous states violated the antitrust laws.

***In re Stock Exchanges Options Trading Antitrust Litigation*, U.S. District Court for the Southern District of New York**

Representation of Spear, Leeds & Kellogg, L.P., one of the nation's leading securities firms, in civil litigation alleging that the Exchanges and certain of their

members agreed to restrict the listing of certain options to a single Exchange. The Firm also served as liaison counsel for all market-maker defendants and negotiated a favorable settlement for the client.

***In re Public Offering Fee Antitrust Litigation, U.S. District Court for the District of Massachusetts***

Representation of Cantor Fitzgerald & Co., a prominent securities firm, in defense of a class action alleging a conspiracy among underwriters to fix the fees paid by issuers in connection with initial public offerings. The client was dismissed as a defendant.

***In re NASDAQ Market-Makers Antitrust Litigation, U.S. District Court for the Southern District of New York***

Representation of 37 of the largest NASDAQ market-maker defendants, including Spear, Leeds & Kellogg, L.P., against allegations of collusion and price-fixing in the over-the-counter market. The case involved more than 20 class action lawsuits, as well as various investigations that were conducted by the Securities and Exchange Commission and the U.S. Department of Justice (DOJ). Dickstein Shapiro negotiated the industry's consent decree with the DOJ and brokered the settlement with the plaintiffs' class.

***Zygon International, Inc. (proceeding before the Federal Trade Commission)***

Representation of Zygon International, Inc., a manufacturer and nationwide distributor of consumer products, in an investigation of the client's advertising practices conducted by the Federal Trade Commission and five states. All of the investigations successfully were settled.

***AP Parts International, Inc. v. Arvin Industries, Inc., et al., U.S. District Court for the District of Maryland***

Representation of Arvin Industries, Inc., an automobile replacement parts manufacturer, in a Sherman Antitrust Act and Robinson-Patman Act case, which ended in a favorable resolution for the client.

***Rothery Storage & Van Co. v. Atlas World Group, Inc., U.S. District Court for the District of Columbia***

Representation of Atlas World Group, Inc. in groundbreaking antitrust litigation

following deregulation in the moving and storage industry. The case concerned the van line's ability to restrict its local agents from engaging in direct competition with the van line. The district court granted summary judgment for the client. The decision by the U.S. Court of Appeals for the District of Columbia Circuit affirming the summary judgment ruling is a leading precedent on the lawfulness of marketing restrictions on agents and distributors.

### **Representation of Antitrust Plaintiffs**

#### ***ZF Meritor v. Eaton Corporation*, U.S. District Court for the District of Delaware**

Representation of ZF Meritor, Inc., a manufacturer of heavy duty truck transmissions, in litigation alleging monopolization of Class 8 transmission markets.

#### ***Novell v. Microsoft*, U.S. District Court for the District of Utah**

Representation of Novell, Inc., a prominent computer software provider, in litigation alleging monopolization of the market for word processing and related software used on personal computers.

#### ***In re Rubber Chemicals Antitrust Litigation*, U.S. District Court for the Northern District of California**

Representation of three of the largest tire companies, including Michelin North America, Inc.; Continental Tire, Inc.; and Cooper Tire and Rubber Co., as class action opt-outs in connection with antitrust claims for global price-fixing against the producers of rubber chemicals.

#### ***In re Urethane Antitrust Litigation*, U.S. District Court for the District of Kansas**

Representation of ten major purchasers of polyurethanes, including Legget & Platt, Inc. and The Carpenter Group, in connection with antitrust claims for global price-fixing against polyurethanes producers.

***In re Linerboard Antitrust Litigation*, U.S. District Court for the Eastern District of Pennsylvania**

Liaison counsel on behalf of all direct action plaintiffs and specific representation of more than 60 major purchasers of corrugated boxes, including companies such as Proctor & Gamble Co., PepsiCo, Inc., and The Clorox Co., in an action to recover damages for overcharges resulting from price-fixing by major manufacturers of containerboard and corrugated boxes.

***In re Methionine Antitrust Litigation*, U.S. District Court for the Northern District of California**

Representation of large plaintiffs, including Tyson Foods, Inc., to recover damages for overcharges resulting from the price-fixing of methionine, an ingredient in animal feed.

***In re Vitamins Antitrust Litigation*, U.S. District Court for the District of Columbia**

Liaison counsel on behalf of all direct action plaintiffs and specific representation of a group of more than 100 class action opt-out plaintiffs, including companies such as General Nutrition Companies, Inc.; Continental Grain Co.; and Kraft Foods Inc., in an action to recover treble damages and attorneys fees for overcharges resulting from price-fixing by manufacturers of bulk vitamins, a significant ingredient in the food, beverage, and animal feed industries. The Firm's clients comprised more than 20% of the U.S. market for bulk vitamins. The settlement that Dickstein Shapiro ultimately obtained for these clients was one of the largest private antitrust settlements in U.S. history at that time.

***Ferromin International Trade Corporation, et al. v. UCAR International, Inc., et al.*, U.S. District Court for the Eastern District of Pennsylvania**

Representation of 28 plaintiffs, including Ferromin International Trade Corp., in an action to recover treble damages and attorneys fees for overcharges resulting from price-fixing by manufacturers of graphite electrodes, a significant ingredient in the production of steel.

***In re Citric Acid Antitrust Litigation, U.S. District Court for the Northern District of California***

Representation of clients, including The Quaker Oats Co. and Schreiber Foods Inc., in an action to recover treble damages and attorneys fees for overcharges resulting from price-fixing by manufacturers of citric acid, a significant ingredient in the production of food, beverage, and laundry detergent products.

***In re Amino Acid Lysine Antitrust Litigation, U.S. District Court for the Northern District of Illinois***

Representation of a group of poultry and animal feed companies, including Continental Grain Co., in an action to recover treble damages and attorneys fees for overcharges resulting from price-fixing by manufacturers of lysine, an amino acid which is a significant ingredient in poultry feed. The case was settled for multiples of what Firm clients would have received if they remained in class.

## **Representative Antitrust and Financial Services Practice Clients**

Below is a list of current and former clients which exemplifies the kinds of organizations that rely on Dickstein Shapiro for superior representation and counsel:

Anheuser Busch Companies	Eveready Battery Company
ArvinMeritor	General Mills
Baxter Healthcare	GlaxoSmithKline
Bridgestone Europe	Goldman Sachs
Cardinal Health Care	Hallmark Cards
Carpenter Corp.	H.J. Heinz Company
Chiquita Brands International	H.M. Huber
The Clorox Company	Kraft Foods North America
The Coca-Cola Company	Land O'Lakes
Colgate-Palmolive Company	Leggett & Platt
ContiGroup	Mattel
Continental Tire North America	Michelin
Coors Brewing Company	Miller Brewing Company
Cooper Tire & Rubber Company	Nestle USA
Dole Food Company	Novell, Inc.
Domino's Pizza	Ocean Spray Cranberries
Duke Energy Corporation	Papa John's International
Dunlop	PepsiCo
E.I. du Pont de Nemours & Company	Pfizer, Inc
	Pirelli

# DICKSTEINSHAPIRO<sub>LLP</sub>

Pizza Hut

The Procter & Gamble Company

The Sherwin-Williams Company

Time Inc.

Tyson Foods

Xerox Corporation

## Peter J. Kadzik

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A partner at Dickstein Shapiro, Peter Kadzik has practiced antitrust law and represented clients in complex civil litigation for more than 26 years after serving as an Assistant U.S. Attorney and judicial law clerk. Mr. Kadzik has represented clients in complex civil litigation, criminal investigations, and before the Federal Trade Commission (FTC), the Antitrust Division of the Department of Justice (DOJ), and various state enforcement agencies. He also has counseled clients on matters of antitrust and regulatory compliance, as well as in connection with mergers and acquisitions.

### AREAS OF CONCENTRATION

#### Antitrust and Complex Civil Litigation

Mr. Kadzik has represented numerous clients in civil litigation and criminal investigations. He presently represents a major pharmaceutical manufacturer in litigation concerning the importation and pricing of prescription drugs. He also is assisting a *Fortune* 100 energy company in connection with various investigations and litigation concerning recent events in the California

### RELATED PRACTICES

- n White Collar Criminal Defense & Investigations
- n Complex Dispute Resolution
- n Political Law
- n State Attorneys General
- n Business & Securities Law
- n Antitrust & Dispute Resolution

### EDUCATION

State University of New York at Buffalo,  
B.A., 1974, *summa cum laude*

Georgetown University Law Center, J.D.,  
1977

### BAR ADMISSIONS

District of Columbia

New York

energy markets, as well as with respect to natural gas trading practices. He successfully defended a trade association against antitrust charges in litigation involving patent claims covering “V-chips.” He was the antitrust lawyer on the trial team in a civil action against a major shopping center developer concerning restrictive covenants in a shopping center’s leases. He assisted the defense of the former Bell System in three antitrust actions brought by 90 plaintiffs.

Mr. Kadzik also has represented an automobile replacement parts manufacturer in several Sherman Act and Robinson-Patman Act cases, and in a grand jury investigation, all of which ended in favorable resolutions for his client. He has defended a pharmaceutical manufacturer against antitrust counterclaims arising out of a patent infringement action. He represented thousands of community pharmacies with respect to the division of more than \$700 million in settlement proceeds from the *Brand Name Prescription Drug* antitrust litigation.

Mr. Kadzik represented a financial institution in litigation to recover funds stolen from the institution through a check-kiting scheme, and he assisted government prosecutors in obtaining indictments against individuals involved in the scheme. He also represented a consortium of insurers in domestic litigation, and assisted with international litigation, concerning claims for reinsurance coverage. Successful resolution was reached on behalf of the client.

#### **Enforcement Agencies**

Recently, Mr. Kadzik represented a major energy company in connection with federal and state criminal and regulatory investigations, concerning production, distribution, and trading practices. He has represented trade associations and corporate clients in connection with the enforcement activities of state attorneys general. He has made presentations to staff with respect to such matters, negotiated compliance with subpoenas and civil investigative demands, and represented witnesses with respect to grand jury testimony, as well as in depositions and hearings. Before the FTC, he represented a New York City advertising agency in an investigation concerning allegedly deceptive television commercials. After presentations to all of the commissioners, a favorable settlement was reached. He represented a nationwide manufacturer and distributor of consumer products in an investigation of its advertising practices conducted by the FTC and five states. All of the investigations were successfully settled. Mr. Kadzik has advised clients that have sought advisory opinions from,

or brought complaints to, the staff seeking enforcement actions. He also has assisted clients in obtaining the support of enforcement agencies on issues presented in private litigation. He recently aided a client in securing an *amicus curiae* brief filed by more than 40 state attorneys general in a case before the U.S. Supreme Court.

In the merger and acquisition area, Mr. Kadzik has made presentations to the FTC commissioners and agency staff in defense of proposed acquisitions in a wide variety of industries. He has represented companies subject to second requests for information, negotiated compliance with such requests, and represented witnesses deposed by the staff. He also has advised clients seeking to instigate FTC or DOJ activity with respect to mergers contemplated by their competitors or suppliers.

#### **Antitrust and Regulatory Counseling**

Mr. Kadzik has designed and implemented antitrust compliance programs for many companies and trade associations. He has presented more than one hundred antitrust compliance seminars and conducted more than a dozen antitrust audits for a *Fortune* 100 company, a major manufacturer of automotive replacement parts, the national trade association for mutual fund companies, a diversified supplier of energy services, a natural gas distributor, and a number of manufacturing enterprises. He has advised a major defense contractor with respect to antitrust issues arising from the formation of two joint ventures. He has represented a group of healthcare providers in establishing a joint venture to provide nationwide services, and has counseled numerous entities on joint ventures, teaming agreements, networks, and other arrangements presenting antitrust issues.

#### **PROFESSIONAL ACHIEVEMENTS & ACTIVITIES**

Mr. Kadzik was appointed to the President's Advisory Committee on the Arts of the John F. Kennedy Center for the Performing Arts by former President Clinton, and served from 1999 to 2001. He also served as a member of the National Law Alumni Board of the Georgetown University Law Center from 1999 to 2005. Previously, Mr. Kadzik represented the Democratic National Committee and the former Chief of Staff to President Clinton in various investigations. In 1992, he served as a member of the Justice Department Cluster of the Presidential Transition Team, and assisted with the confirmation and transition of the then-U.S. Representative to the United Nations, (later Secretary of State) Madeleine K. Albright.

He was appointed by Treasury Secretary Bentsen to the Region 2 Advisory Board of the Thrift Depositor Protection Oversight Board and served from 1993 to 1995. Mr. Kadzik also has served as the chairman of a hearing committee of the DC Bar's Board on Professional Responsibility. He has been a member of the Board of Trustees of the Washington Lawyers' Committee for Civil Rights and Urban Affairs and the Advisory Board of AARP's Legal Counsel for the Elderly.

**PUBLICATIONS**

- “Antitrust Concerns in Labor Union Organization of Independent Contractors,” 13 *The Labor Law Exchange* 31 (1994).
- “Compliance Guide to the Anti-Trust Laws of the United States,” 2 *Int’l Co. & Comm. L. Rev.* 47 (1991) (with G. Hoffman and K. Davis).

**EDUCATION**

Mr. Kadzik received his B.A., *summa cum laude*, in political science from the State University of New York at Buffalo (1974) and his J.D. from Georgetown University (1977), where he was Articles Editor of the *Georgetown Law Journal* (1976-1977).

## R. Bruce Holcomb

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Bruce Holcomb joined Dickstein Shapiro in 1983, and has been a partner in the Firm since 1990. He serves as the head of the Firm's Antitrust & Financial Services Practice. Mr. Holcomb's practice focuses on litigation strategy and settlement in major antitrust cases, in which he has represented more than twenty-five *Fortune* 500 companies. He is ranked in the 2007 and 2008 editions of *Chambers USA: America's Leading Lawyers for Business* as a leading individual in the area of Antitrust for the District of Columbia. In 2006, Mr. Holcomb was named one of *The Best Lawyers in America* in antitrust law and was listed in *Lawdragon's* Leading Lawyers.

### REPRESENTATIVE MATTERS

#### Antitrust

Representation of a prominent computer software provider in litigation alleging monopolization of the market for word processing and related software used on personal computers. *Novell v. Microsoft*.

Representation of a world-wide credit and charge card network in defense of allegations that exclusivity

### RELATED PRACTICES

- Antitrust & Dispute Resolution
- Antitrust & Financial Services
- Complex Dispute Resolution

### EDUCATION

Ithaca College, B.A., 1978, *magna cum laude*

The George Washington University Law School, J.D., 1981, with honors

### BAR ADMISSIONS

District of Columbia

U.S. District Court for the District of Columbia

U.S. Court of Appeals for the District of Columbia

agreements with issuers violated the antitrust laws. *American Express v. Visa International*; *Discover Financial Services v. Visa International*.

Representation of tire and rubber companies seeking damages caused by a conspiracy to fix the prices of chemicals used in the manufacturing of rubber products. *In re Rubber Chemicals Antitrust Litigation*.

Representation of a client group that purchased almost \$7 billion worth of corrugated boxes, in litigation alleging price-fixing by a cartel of integrated paper products companies. *In re Linerboard Antitrust Litigation*.

Representation of a leading manufacturer of polyester staple fiber in the settlement of class and direct action claims by plaintiffs alleging that the manufacturer fixed prices. *In re Polyester Staple Antitrust Litigation*.

Representation of a major chemicals manufacturer as settlement counsel in defense of antitrust class actions and direct litigation by customers to recover treble damages on purchases of synthetic rubber. *In re EPDM Antitrust Litigation*; *Alco v. DuPont Dow Elastomers*.

Representation of a group of food, beverage, and nutritional supplement companies that purchased more than \$3 billion worth of bulk vitamins products in actions to recover overcharges from an international price-fixing cartel. The cases were settled for the largest recoveries in antitrust history. *In re Vitamins Antitrust Litigation*.

Representation of a group of major food manufacturers that purchased citric acid from members of a worldwide price-fixing cartel. *In re Citric Acid Antitrust Litigation*.

Representation of one of the nation's leading securities firms in an investigation by the Department of Justice into alleged agreements among options exchanges to restrict the listing of certain options to a single exchange. Acting as Liaison Counsel for the market-maker defendants in the litigation and settlement of related class action cases. *In re Stock Exchange Options Trading Antitrust Litigation*.

Representation of a prominent securities firm in defense of a class action alleging a conspiracy among underwriters to fix the fees paid by issuers in connection with initial public offerings. The client was dismissed as a defendant. *In re Public Offering Fee Antitrust Litigation*.

Representation of one of the largest Nasdaq market makers and service as co-liaison counsel for the defendants in the litigation and settlement of class actions charging market makers with fixing bid/ask spreads. The case also involved responding to an investigation by the Department of Justice and the negotiation of a consent decree to resolve the government's antitrust allegations. *In re Nasdaq Market Makers Antitrust Litigation*.

Representation of one of the nation's largest household goods van lines in ground-breaking antitrust litigation following deregulation in the moving and storage industry. The case concerned the van line's ability to restrict its local agents from engaging in direct competition with the van line. The district court granted summary judgment for the client. The decision by the U.S. Court of Appeals for the District of Columbia Circuit affirming the summary judgment ruling is a leading precedent on the lawfulness of marketing restrictions on agents and distributors. *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*

#### **Complex Dispute Resolution**

Representation of the nation's leading manufacturer of artificial stucco as settlement counsel in class action litigation with purchasers of homes clad with an allegedly defective product. A class settlement was reached that substantially quantified and reduced the client's potential exposure. *Posey v. Dryvit Systems, Inc.*

Representation of flight attendants in a class action settlement alleging employment discrimination. The matter was settled with a substantial recovery for the flight attendants. *Kehe v. Delta Air Lines*.

Representation of the court-appointed Examiner in the Eastern Air Lines bankruptcy. The effort included negotiations with labor unions, the debtor, and affiliated companies. The representation also included a settlement of more than \$1 billion in fraudulent conveyance claims. *In re Eastern Airlines Bankruptcy*.

Representation of a foreign industrialist in the resolution of a high profile, bitter, and protracted child custody dispute. *Habie v. Habie*.

#### **PROFESSIONAL BACKGROUND**

From 1981 to 1983, Mr. Holcomb was an associate at Howrey & Simon. He joined Dickstein Shapiro in 1983.

**PROFESSIONAL ACTIVITIES**

Mr. Holcomb is admitted to practice before the courts of the District of Columbia, the U.S. District Court for the District of Columbia, and the U.S. Court of Appeals for the District of Columbia Circuit. He is a member of the Antitrust and Litigation Sections of the American Bar Association and the Bar Association of the District of Columbia. In addition, he has been admitted pro hac vice in many courts throughout the country.

In 2006, Mr. Holcomb was honored by *Lawdragon* magazine as a “Leading Lawyer,” in a list that represents less than one percent of the legal profession and is determined based on a combination of independent research and peer reviews

**PUBLICATIONS**

- “Standards for an Integrated Monopolist’s Liability Under Section 2 of the Sherman Act,” 48 *Geo. Wash. L. Rev.* 620 (May 1980).

**EDUCATION**

Mr. Holcomb is a graduate of Ithaca College (B.A., political science, *magna cum laude*, (1978) and received his legal education at The George Washington University Law School (J.D., with honors, 1981), where he was Notes Editor for *The George Washington University Law Review* (1980-1981).

## Jay N. Fastow

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Jay Fastow is co-head of Dickstein Shapiro LLP's national Antitrust & Financial Services Practice, and a member of its Strategic Advisory Team. Mr. Fastow focuses his practice on antitrust and financial services matters, including complex consumer class action litigation, at both the trial and appellate court levels. He has tried cases relating to payment card currency conversion practices and private equity fund-related relationships, served as a liaison counsel for defendants in multiparty antitrust and RICO actions, and argued appeals in numerous antitrust and financial services cases.

### AREAS OF CONCENTRATION

Mr. Fastow has successfully litigated antitrust suits concerning a wide array of products and services, ranging from payment cards to duty free goods to automotive parts to Nasdaq securities and equity options. He also has been involved in cases regarding other payment card issues, consumer privacy, residential mortgages, automobile finance, personal loans, payday lending, and various other financial services matters, such as "failed acquisition" and investment-related disputes.

### RELATED PRACTICES

- Antitrust & Financial Services
- Antitrust & Dispute Resolution

### EDUCATION

Brandeis University, B.A., 1974

Yale University, J.D., 1977

### BAR ADMISSIONS

New York

Representative Cases

Payment Cards

*Interchange:*

- ***Kendall et al. v. Visa U.S.A. Inc. et al.*, No. 05-16549 (9th Cir. March 7, 2008)**  
Obtained Rule 12(b)(6) dismissal of antitrust claims by merchants relating to payment card interchange; district court dismissal affirmed by Ninth Circuit.
- ***Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741 (9th Cir. 2006)**  
Obtained dismissal of antitrust claims relating to payment card interchange, in light of prior class settlement; district court dismissal affirmed by Ninth Circuit.

*Currency Conversion:*

- ***In Re Currency Conversion Fee Antitrust Litigation*, 265 F. Supp. 2d 385 (S.D.N.Y. 2003); *In re Currency Conversion Fee Antitrust Litigation*, 361 F. Supp. 2d 237 (S.D.N.Y. 2005)**  
Successfully argued motion to dismiss Truth-in-Lending Act claim against payment card network; also obtained district court decision enforcing arbitration provisions in cardholder agreements as to payment card network on grounds of equitable estoppel.
- ***Schwartz v. Visa Int'l Service Assoc.*, 2005 WL 237015 (Cal. App. 1 Dist.) (Sept. 28, 2005)**  
Lead counsel in five month trial of claims under California's Unfair Competition Law concerning payment card currency conversion practices. Argued appeal, and obtained reversal of adverse portion of trial court decision.
- Counsel in numerous other currency conversion cases involving state UDAP and common law claims.

*Unsolicited Issuance:*

- ***Garner v. Capitol One Bank and MasterCard International, Inc.*, No. CV-01-BU-0712-S (N.D. Ala. 2001)**  
Obtained Rule 12(b)(6) dismissal of Truth-in-Lending Act and civil conspiracy claims against payment card network relating to alleged unsolicited issuance of cards.

*Chargebacks:*

- ***Paycom Billing Services, Inc v. MasterCard International Incorporated, 2006 U.S. App. LEXIS 26820 (2d Cir. October 27, 2006)***  
Successfully moved to dismiss antitrust claims relating to payment card “chargebacks”; argued appeal in Second Circuit, which affirmed the district court decision dismissing the case.
- ***PSW, Inc. v. Visa USA, Inc., No. C.A. 04-347T, 2006 WL 519670 (D.R.I. Feb. 28, 2006)***  
Obtained Rule 12(b)(6) dismissal of antitrust claims relating to, inter alia, chargeback rules and policies.

*Internet Gambling:*

- ***In re MasterCard Int’l Inc. Internet Gambling Litig., 313 F.3d 257 (5th Cir. 2002)***  
Liaison counsel for defendants in federal multidistrict litigation asserting RICO and state law claims relating to payment cards and alleged Internet gambling. Argued in district court and on appeal; obtained Fifth Circuit decision affirming district court dismissal of RICO claims under Rule 12(b)(6).
- ***Reuter v. MasterCard International Incorporated, No. 2000-L-8 (Ill. Cir. Ct.)***  
Argued successful motion to dismiss in trial court in case brought under Illinois state law against payment card networks and issuers relating to Internet gambling. (Appeal pending.)
- ***Bouressa v. Associates Credit Card Services, Inc., No. 00-5456, slip op. (162nd Judicial District Court, Dallas County, Mar. 9, 2001)***  
Obtained dismissal of case asserting claims under Texas law related to Internet gambling and payment cards, on grounds of plaintiffs’ failure to join Internet casinos as indispensable parties.

*FACTA:*

- ***King v. Movietickets.com, No. 07-2219-CIV-Gold/Turnoff (S.D. Fla. 2008)***  
Argued successful Rule 12(b)(6) motion to dismiss claim under Section 113 of the Fair and Accurate Credit Transactions Act relating to alleged inclusion of card expiration dates on email order confirmations. (Leave to amend granted.)

**Automobile and Home Mortgage Finance**

*ECOA:*

- Currently involved in ECOA putative class actions involving allegations of discrimination in home mortgage lending.
- ***Coleman v. General Motors Acceptance Corp.*, 296 F.3d 443 (6th Cir. 2002)**  
Argued in Sixth Circuit and obtained reversal of class certification under Rule 23(b)(2) in Equal Credit Opportunity Act case concerning automobile financing practices.

**Personal Loans**

*FCRA:*

- ***Klutho v. GE Money Bank*, 2007 WL 162291 (E.D. Mo. 2007)**  
Successfully moved to dismiss claim that a prescreened offer for an open-end line of credit violated the Fair Credit Reporting Act.

**Securities/Investment Funds**

- ***Van Deventer, et al. v. CS SCF Management, Ltd., et al.*, (New York County, NY) (filed Oct. 2003)**  
Litigation relating to, inter alia, alleged breach of investment fund consulting agreement.
- ***MFS Securities Corp. v. NYSE*, 142 Fed.Appx. 541 (2nd Cir. Sep 07, 2005)**  
Obtained dismissal of antitrust claims alleging that NYSE had improperly terminated MFS as a member organization; district court dismissal affirmed by Second Circuit.
- ***MFS Securities Corp. v. SEC*, 380 F.3d 611 (2d Cir. 2004)**  
Obtained dismissal of application to SEC claiming that NYSE had improperly terminated MFS as a member organization of NYSE; SEC dismissal affirmed by Second Circuit.
- ***Frydman & Co. v. Credit Suisse First Boston Corp.*, 1 A.D.3d 274, 768 N.Y.S.2d 440 (N.Y. A.D. 1 Dept, Nov. 25, 2003)**  
Obtained summary judgment for defendants in “failed acquisition” case, on grounds of lack of causal injury; trial court judgment affirmed by Appellate Division.

- ***In Re Stock Exchanges Options Trading Antitrust Litigation*, 317 F.3d 134 (2d Cir. 2003)**  
Obtained summary judgment in favor of NYSE on grounds of implied repeal of the antitrust laws after other defendants had agreed to settle the case; district court judgment affirmed by Second Circuit.
- ***In Re Nasdaq Market-Makers Antitrust Litigation, 1998-2 Trade Cases 72,337 (RWS), M.D.L. No. 1023 (S.D.N.Y. 1998)***  
Defended against (including acting as a co-liaison counsel for defendants) claims of fixing of spreads on certain Nasdaq securities.

#### AWARDS AND HONORS

Mr. Fastow has been named in *Chambers USA: America's Leading Lawyers for Business* in the areas of both Financial Services Regulation (National) and Antitrust (New York). He also has been recognized in *Chambers Global: The World's Leading Lawyers for Business*, and *Benchmark: America's Leading Litigation Firms and Attorneys*.

#### PROFESSIONAL BACKGROUND

Prior to joining Dickstein Shapiro, Mr. Fastow was a partner at Weil, Gotshal & Manges LLP and head of its Litigation/Regulatory Financial Services Practice Group.

#### PROFESSIONAL ACTIVITIES

Mr. Fastow is admitted to practice in New York. He is a member of the American Bar Association and the New York State Bar Association.

#### SPEAKING ENGAGEMENTS

Mr. Fastow speaks regularly on topics in the fields of antitrust and financial services law.

#### EDUCATION

Mr. Fastow received his B.A. from Brandeis University (1974), and his J.D. from Yale University (1977).

## **Banking and Related Financing Transactions**

In addition to the Firm's project and structured finance capabilities, Dickstein Shapiro's Corporate & Finance Practice regularly represents borrowers, lenders, investment bankers, financial institutions, equity sponsors, hedge funds, secondary market purchasers and others in structuring and consummating direct and syndicated credit facilities, as well as debt and equity transactions, including investments in private and public debt and other securities, both foreign and domestic. The Firm also has significant experience with par loan and distressed debt sales, and in structuring and completing secondary market transactions. Firm clients include Allied Capital Corporation; TD Bank, N.A.; Citizens Bank of Pennsylvania; Wachovia Bank, N.A.; Chevy Chase Bank, F.S.B.; Provident Bank, N.A.; The CIT Group; PNC Bank, N.A.; Wells Fargo Foothill; United Bank; Eagle Bank; Fidelity & Trust Bank; National Cooperative Bank; General Electric Capital Corporation; and Branch Banking and Trust Company, to name a few. Representative engagements include:

- Representation of Wachovia Bank, N.A. as a lender and syndicate agent, in connection with a \$104 million credit facility used to finance the development and construction of an office building complex;
- Representation of Allied Capital Corporation as mezzanine lender in numerous middle market acquisition and other financing transactions;
- Representation of Harbour Group and its affiliated entities in connection with the closing of numerous acquisition loans and working capital lines of credit made available from syndicates of senior and mezzanine lenders;
- Representation of Kerzner International Limited (f/k/a Sun International) (NYSE: KZL) in connection with an internationally syndicated \$650 million project development and working capital loan facility for the development of Atlantis and other Paradise Island properties in the Bahamas;
- Representation of Kerzner International Limited in connection with an internationally syndicated \$85 million senior construction loan facility for the development of the Palmilla resort in Los Cabos, Baja California, Mexico;

- Representation of the national coordinator for loan guaranty programs of an agency of the U.S. Department of Health and Human Services;
- Representation of Morgan Schiff & Co., Flagship Partners, Inc., Perry Strategic Capital, and other private equity sponsors in connection with acquisition-related mezzanine and senior loan facilities;
- Representation of General Electric Capital Corporation as agent and lender under a syndicated construction and term loan facility for certain coal mining operations of Oxbow Carbon & Minerals, Inc.;
- Representation of Citizens Bank of Pennsylvania as the agent and lead bank in connection with a \$275 million syndicated working capital and acquisition credit facility for a technology and defense contractor; and
- Representation of Wachovia Bank, N.A. in connection with certain credit facilities extended to a national developer of assisted living and congregate care facilities.

## **Representative Corporate & Finance Clients**

Below is a list of current and former clients which exemplifies the kinds of organizations that rely on Dickstein Shapiro for superior representation and counsel:

Allied Capital Corporation	Helmsley-Spear, Inc.
Branch Banking and Trust Company	J.P. Morgan Chase & Co.
The Charmer-Sunbelt Group	KeySpan Corporation
Chevy Chase Bank	Loews Corporation
Citizens Bank, N.A.	National Consumer Cooperative Bank
Commerce Bank	NCB Development Corporation
Duke Energy	NCB, FSB
Fannie Mae	PNC Bank
Federated Funds	Poseidon Water LLC
Ford Motor Credit Company	Silver Point Capital
GED, Inc.	Trans-Elect, Inc.
Gladstone Commercial Corporation	Tyson Foods, Inc.
Goldman, Sachs & Co.	Utility.Net
Greenfield Industries, Inc.	Wachovia Bank, N.A.
Harbour Group Industries, Inc.	Wells Fargo Bank Minnesota, N.A.

## Howard S. Jatlow

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Howard Jatlow joined Dickstein Shapiro in 1983 and is a partner in the Corporate & Finance Practice. Mr. Jatlow focuses on business, banking, finance, and real estate. He has a broad-based, diverse practice serving the financial, corporate, and real estate communities, representing a wide array of clients, including banks, investment funds, venture capital firms, labor unions, and middle market, national, and international companies. He has had a significant role in the development and implementation of national lending programs, and substantial experience with government contract, aircraft, communications, energy, real estate, and capital markets transactions. He lectures from time to time to various professional and institutional groups, is a business advisor, and has served on boards and advisory boards of non-profit institutions and business corporations. Mr. Jatlow was recognized as one of the leading banking attorneys in the 2007 edition of *The Best Lawyers in America*.

### RELATED PRACTICES

- Corporate & Finance
- Investment Companies
- Real Estate

### EDUCATION

The George Washington University, B.A., 1971

American University Washington College of Law, J.D., 1974

**PROFESSIONAL ACTIVITIES**

Mr. Jatlow is admitted to practice in the District of Columbia. He is a member of the American and District of Columbia Bar Associations and various real estate- and finance-related sections of such associations.

**AWARDS AND HONORS**

Mr. Jatlow is recognized in the 2008 edition of *The Best Lawyers in America* in the areas of Banking Law and Real Estate Law. He received *The Wall Street Journal* Award for the Outstanding Finance Major (The George Washington University – Class of 1971) and the American University Washington Law School’s Faculty Award for Outstanding Graduating Law Student (Class of 1974).

**EDUCATION**

Mr. Jatlow received his B.A. in finance from The George Washington University (1971), and his J.D. from American University Washington College of Law (1974), where he served as an associate editor of *The American University Law Review*.

## Matthew S. Bergman

Partner

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Matthew Bergman joined Dickstein Shapiro in 1995, and is a partner in the Firm's Corporate & Finance Practice. Mr. Bergman's primary area of concentration is structured finance, including asset-based lending transactions involving the government contracting, information technology, and communications industries. His structured finance dealings also have led to his being one of the Firm's leading Uniform Commercial Code practitioners, counseling both attorneys and clients alike on the latest developments in UCC law, practice, and procedure. His real estate and secured lending background has proven instrumental in his representation of banks, other financial institutions, property owners, and companies in real estate acquisition, development, and finance, as well as in mergers and acquisitions on commercial, industrial, and multifamily residential levels.

### AREAS OF CONCENTRATION

#### Finance

Mr. Bergman primarily represents banks and other financial institutions in the documentation, negotiation,

### RELATED PRACTICES

- Investment Companies
- Corporate & Finance
- Real Estate
- Entertainment

### EDUCATION

Brandeis University, B.A., 1988

The George Washington University Law School, J.D., 1991

### BAR ADMISSIONS

District of Columbia

Maryland

U.S. District Court for the District of Maryland

closing, and ongoing administration of multimillion-dollar asset-based credit facilities for both publicly traded and privately held companies, many of which specialize in government contracting and information technology. He often serves as counsel for the lead bank or lead agent in multilender (syndicated or club) transactions. In that capacity, he frequently advises clients and develops strategies for them with respect to complex inter-creditor arrangements as well.

Mr. Bergman's experience also includes service in the early 1990s as counselor and advisor to the Resolution Trust Corporation for the purpose of reconstructing and analyzing the origination and underwriting procedures utilized by insolvent financial institutions in their past lending transactions.

**Real Estate**

Mr. Bergman has extensive experience in drafting and negotiating commercial leases, and closing real estate-secured transactions, representing local, regional, and national commercial landlords, tenants, banks, and brokers with respect to office, residential, and retail space.

**General Litigation**

Early in his legal career, Mr. Bergman handled all aspects of litigation, from drafting pleadings to acting as lead counsel in trials, frequently litigating disputes involving real estate, finance, and general business matters. He has litigated in the Circuit Courts of Maryland, the Court of Special Appeals of Maryland, the Superior Court of the District of Columbia, the Court of Appeals of the District of Columbia, and the U.S. Court of Federal Claims.

**PROFESSIONAL BACKGROUND**

Mr. Bergman began his legal career as a law clerk for the Town Attorney's Office, in Greenburgh, New York, handling matters ranging from zoning and land use to litigation and constitutional rights. He then joined the General Counsel's Office for PEPCO in Washington, DC, further concentrating on real estate law. Later, he worked as a real estate, transactional, general business, and litigation attorney in the Washington, DC office of Porter, Wright, Morris & Arthur, before joining Dickstein Shapiro.

**PROFESSIONAL ASSOCIATIONS**

Mr. Bergman is admitted to practice in Maryland (1991) and the District of Columbia (1993), and is a member of the American Bar Association (1991) and its subcommittee on commercial finance (1997). He serves on a government contracting advisory board based in the DC-metro area, and also is a member of the Washington Real Estate Group.

**PUBLICATIONS / SPEAKING ENGAGEMENTS**

- Author, “Be Careful Defining Subordinated Debt ” *The Lender’s Advisor* (January 2006)
- Co-author, “Will You Be Able to Identify the Proceeds of Your Collateral?: The Value of Deposit Account Control Agreements.” *The Lender’s Advisor* (March 2006)
- Author, “A Faltering Economy: Friend or Foe for the Government Contractor?” *The Advisor* (Spring, 2001)
- Speaker/Panelist, for various seminars on government contract finance

**EDUCATION**

Mr. Bergman received his B.A. from Brandeis University (1988), and his J.D. from The George Washington University Law School (1991).