

Nasir Hussain Speaks on Chicago Bar Association's Seventh Circuit Antitrust Roundup

FEBRUARY 1, 2023

On February 1, Winston & Strawn Associate Nasir Hussain participated in a panel discussion at the Chicago Bar Association that focused on recent and pending antitrust cases in the Seventh Circuit. The program, "Seventh Circuit Antitrust Roundup," was geared toward both lawyers active in the practice of antitrust and those whose practices have a more tangential connection to antitrust law.

KEY TAKEAWAYS

- There have been three noteworthy antitrust cases decided by the Seventh Circuit in 2022: *Marion Diagnostic Center, LLC v. Becton Dickinson & Co.*, 29 F. 4th 337 (7th Cir. 2022); *Vasquez v. Indiana University Health, Inc.*, 40 F. 4th 582 (7th Cir. 2022); and *Mayor & City Council of Baltimore v. AbbVie, Inc.*, 42 F. 4th 709 (7th Cir. 2022). Another case that is currently pending before the Seventh Circuit, *Deslandes v. McDonald's USA, LLC*, 17-cv-4857 (N.D. Ill.), will likely determine what side of a circuit split the Seventh Circuit will land on.
- In *Marion*, the Seventh Circuit held that the plaintiffs alleging antitrust conspiracy between a supplier and two wholesalers (but not a hub-and-spoke conspiracy) did not have Article III standing to sue one of the two wholesalers because they did not purchase any products from it. In doing so, the court rejected the proposition that a plaintiff has standing simply if it buys products at market prices affected by the defendants' conduct, even if that conduct occurred in a separate market, holding that such a "broad interpretation would eviscerate *Illinois Brick's* direct-purchaser rule because plaintiffs could always argue that an upstream conspirator's conduct resulted in higher prices downstream." As to the other supplier, the court held that the plaintiffs failed to sufficiently allege a vertical conspiracy. The court affirmed the district court's dismissal of the complaint.
- In *Vasquez*, the Seventh Circuit reversed a district court's dismissal of the plaintiff's complaint alleging, inter alia, monopolization, attempted monopolization, and anticompetitive merger. The court held that geographic markets should be considered for plausibility, not probability, and that motions to dismiss could be denied even if alternative, seemingly contradictory theories of alleged geographic market are pled with plausibility.
- In *Mayor & City Council of Baltimore v. AbbVie, Inc.*, the Seventh Circuit held that the defendant, which held 132 patents relating to a drug, was not in violation of the Sherman Act simply by virtue of owning that many patents.

around a single drug. Instead, the court held that in order to demonstrate an antitrust violation, plaintiffs must prove actual harm to competition or demonstrate the invalidity of each patent.

- Currently pending before the Seventh Circuit is *Deslandes*, which deals with the legality of a no-hire provision within franchise agreements under antitrust principles. The court is set to weigh whether the defendants adequately demonstrated that the no-hire provisions were ancillary restraints, triggering a rule of reason analysis, or a naked restraint on competition that should be per se illegal.

2 Min Read

Related Locations

Chicago

Related Capabilities

Antitrust/Competition

Related Regions

North America

Related Professionals



Nasir Hussain