



Nicholas E.O. Gaglio

Partner

New York

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SPOTLIGHT

"He's responsive, he makes himself available day or night."

– Chambers USA 2022

"Nick is amazing [and] goes above and beyond to make himself available."

– Chambers USA 2020

"Incredibly practical lawyer" who is able to "navigate difficult spaces with a real grace"

– Who's Who Legal Future Leaders 2020

"Very strong merger lawyer"...

"extremely technical"

– Who's Who Legal Future Leaders 2019

PRACTICE AREAS

Antitrust

Intellectual Property

Litigation

EDUCATION

JD, with Honors – The George Washington University Law School (2001)

BA – Duke University (1994)

PROFILE

Drawing on 20 years of experience at Axinn, Nick counsels clients on a full range of antitrust issues, including civil non-merger and criminal cartel investigations, internal investigations, litigation, mergers and counseling. A skilled listener, Nick has assisted clients in resolving antitrust problems in diverse industries ranging from recycled paper to beverage packaging, sports equipment to sports entertainment.

Nick has represented clients in federal and state attorneys general investigations, including recently assisting a Japanese auto-parts company to negotiate a significant fine reduction. He has twice guided a major sports entertainment company through federal investigation, in both instances securing the closure of the investigation without a remedy or penalty being imposed. He has also assisted clients in conducting internal investigations.

Nick's broad antitrust litigation experience spans from conception through decision, and has included strategic assessment and crafting of claims and defenses, effective e-discovery management, tactical briefing and advocacy at various critical pre-trial stages, settlement evaluation and execution at trial. Nick is also a veteran of follow-on class action multidistrict litigation.

Nick has assisted clients obtain antitrust clearance for large and complex strategic mergers, and does so frequently as global coordinating counsel. Recently, he served as global coordinating counsel to Ball Corporation in its \$6.85 billion acquisition of Rexam PLC, which required filings in several international jurisdictions. Nick oversaw, in particular, securing of antitrust approval from Brazil's CADE. Nick represented H.I.G. Capital and its holding company, recycled paperboard manufacturer Caraustar Industries,

ADMISSIONS

New York

US Court of Appeals for the Second Circuit

US District Court Eastern District of Michigan

US District Court Southern District of New York

US Court of Appeals for the District of Columbia Circuit

Inc., before the DOJ in 6+-month investigation of their \$362.5 million acquisition of The Newark Group, which was closed without remedy or enforcement action. Nick also represented Caraustar in its acquisition of industrial product manufacturer Summer Industries.

Nick has counseled corporations on antitrust compliance and in a variety of commercial contexts, including vertical distribution and e-commerce arrangements. Recently Nick advised a major sporting goods brand regarding its national roll-out of a minimum advertised price policy.

Nick is currently Chair of the Antitrust Section of the New York State Bar Association. A member of the Section's selective Executive Committee since 2009, he has served as Vice Chair, Secretary, Diversity Chair, Finance Officer, Membership Chair and a member of the Nominations Committee. He is also a member of the American Bar Association, Antitrust Section.

Nick's pro bono matters have included successfully representing indigent women seeking divorce and child support. He has also assisted with a successful petition for permanent status under the Violence Against Women Act. He counsels the Orange Giraffe Project ("OGP"), a tax-exempt organization dedicated to providing support to women cancer survivors, and assisted the OGP with obtaining its 501(c)(3) status. He has also been for many years an active supporter of the Practicing Attorneys for Law Students ("PALS") Program, which enhances the skills and careers of minority law students and junior attorneys.

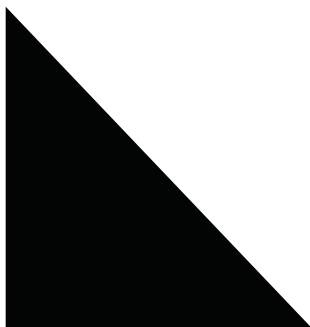
PROFESSIONAL ACTIVITIES

- American Bar Association, Section of Antitrust Law
- New York State Bar Association, Antitrust Section – Executive Committee, 2009-present; Chair, 2019; Vice Chair, 2018; Secretary, 2017; Nominations Committee, 2011-present; Finance Officer, 2014-16; Diversity Chair 2011-15; Membership Chair 2009-15
- Board of Advisors of the Caribbean Education Foundation

EXPERIENCE

Nick is currently representing multiple defendants in the Auto Parts class-action MDL in Detroit, Michigan. Additional litigation experience includes:

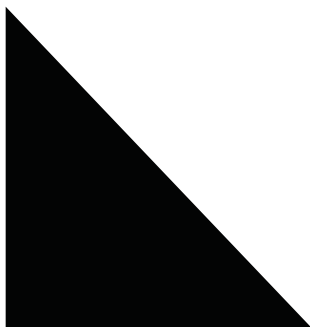
- Current representation of a foot care device manufacturer in Sherman Act Section 2 litigation in the District of New Jersey.



- Defeated a motion for preliminary injunction in a pharmaceutical industry dispute in the District Court for the District of Columbia. Within less than a week, the Axinn team successfully moved to intervene and submitted opposition papers, and Nick argued before U.S. District Judge Ellen Huvelle at the preliminary injunction hearing. The Court denied the motion three days later, allowing Axinn client Alvogen's valuable generic version of the antibiotic Vancocin® to remain on the market.
- Completed a bench trial in a federal breach of contract action in the Southern District of New York, in which the Axinn team secured a judgment that defendant breached the contract at issue.
- Obtained dismissal of Sherman Act claims on behalf of a major building products manufacturer in the Eastern District of Pennsylvania.
- Represented a film exhibition industry client seeking damages and injunctive relief in a Sherman Act and Clayton Act matter in the Southern District of New York, ultimately securing several beneficial settlements.
- Nick has also worked on teams representing a pharmaceutical industry client in obtaining a temporary restraining order and seeking preliminary injunction in a Hatch-Waxman matter; defending a major retailer from patent and trademark infringement claims; seeking preliminary injunction on behalf of a specialty chemicals client in a Sherman Act and Clayton Act matter; and appealing a trade secrets matter in the United States Court of Appeals for the Federal Circuit.

Nick represented a Japanese auto-parts company in connection with cartel investigations by the DOJ, the European Commission, and the Canadian Competition Bureau. Axinn negotiated significant reductions in the scope of the U.S. investigation and prevented any adverse action by foreign governmental authorities. Other investigation experience includes:

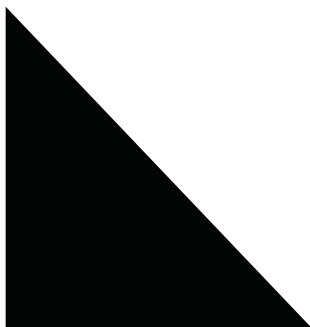
- Successfully represented the owner of the Ultimate Fighting Championship in connection with multiple investigations by the Federal Trade Commission, all of which were terminated without enforcement action taken.
- Guiding a major manufacturer through an internal investigation of a potential Sherman Act violation.



- Successfully represented an e-commerce provider in a state attorney general investigation, securing termination of the investigation with only an assurance of discontinuance that caused minimal business disruption.

Nick's merger practice has included responding to government investigations, such as the premerger review process of the Hart-Scott-Rodino Act, analyzing the competitive effects of proposed mergers and acquisitions, and litigating merger challenges by government enforcers. Representative experience includes:

- Counseled and represented Centerbridge Partners and KIK Custom Products in the DOJ review and clearance of the sale of KIK Personal Care to its competitor, Voyant Beauty, a portfolio company of Wind Point Partners.
- Counseled and represented Sagard Holdings, Fairfax Financial Holdings, and Peak Achievement Athletics in the DOJ review and clearance of the acquisition of Easton Diamond Sports by Rawlings Sporting Goods.
- Counseled and represented Stone Point Capital and Mitchell | Genex in DOJ review and clearance of the acquisition of Coventry's Workers' Comp Services.
- Served as global coordinating counsel to Ball Corporation in its \$6.85 billion acquisition of Rexam PLC, which required filings in several international jurisdictions, including in particular, overseeing securing of antitrust approval by Brazil's CADE. Also represented Ball in its \$577 million acquisition of MCC assets from InBev.
- Represented H.I.G. Capital and its holding company, recycled paperboard manufacturer Carastar Industries, Inc., before the DOJ in 6+-month investigation of their \$362.5 million acquisition of The Newark Group, which was closed without remedy or enforcement action. Also represented Carastar in its acquisition of industrial product manufacturer Summer Industries.
- Represented SunGard in DOJ's litigated challenge to its acquisition of Comdisco in the District Court for the District of Columbia, in which the Court ruled for the merging parties, denying the DOJ's preliminary injunction request.
- Represented Bauer Performance Sports, Ltd. as U.S. antitrust counsel in its \$330 million asset acquisition of the Easton baseball, softball and lacrosse businesses from Easton-Bell Sports.



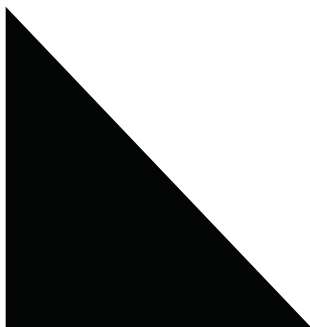
- Represented Bemis Company in its \$1.2 billion acquisition of the Food Packaging America assets of Rio Tinto.
- Represented A&P in its acquisition of Pathmark Stores.
- Represented GameStop in its acquisition of Electronics Boutique.
- Represented Ecolab in its proposed acquisition of Permian Mud LLC and Optical Distributor Group in its acquisition by ABB Concise.
- Represented Matlin Paterson in private litigation in the Southern District of New York to prevent hostile acquisition of a holding company by a rival fund.
- Represented BellSouth in its \$67 billion acquisition by AT&T.
- Represented Cingular in its \$41 billion acquisition of AT&T wireless.

Nick's antitrust counseling practice has included corporate compliance program design and training and analyzing commercial arrangements, such as vertical distribution, pricing practices and internet retail.

- Recently Nick advised a major sporting goods brand regarding the design, roll-out and enforcement of its national minimum advertised price policy.

HONORS

- *Chambers USA* – New York: Antitrust (2020 – 2022)
- Axinn won *Global Competition Review* "Law Firm of the Year" (Americas) (2021 and 2016)
- *Who's Who Legal: Competition* (2022)
- *Who's Who Legal: Competition Future Leaders* (2017 – 2021)
- In February of 2018, Axinn was nominated for *Global Competition Review* "Litigation of the Year – Cartel Defence" for its work on behalf of Nishikawa Rubber Company in the Auto Parts litigation. This award recognizes "creative, strategic and innovative litigation on behalf of a defendant in a private action for cartel damages."
- Axinn's New York Antitrust Group was featured as "Elite" in *Global Competition Review's* "New York's Competition Bar" rankings
- Winner, 2021 Concurrences Antitrust Writing Award (Business Article, Cross-border Issues subcategory), "Do You Have to Put Up With That? Legal Protections in the Context of Antitrust Law"



Investigations in the U.S. and E.U." (English publication pending)

- InMotion (now called HerJustice) "Commitment to Justice Award" for "outstanding commitment to the ideal of access to justice for all individuals" (2013)
- First George Washington University Law School Student Team Member to Win Two Separate Moot Court Competitions
- Recipient, The Jacob Burns Award; Best Overall Competitor, Van Vleck Constitutional Law Moot Court Competition
- Winning Team, Van Vleck Constitutional Law Moot Court Competition
- Winning Team, McKenna and Cuneo Government Contracts Moot Court Competition
- Member, Moot Court Board. The George Washington Law Review, (1999 – 2000)

