



## JAMES J. LONG

Counsel

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### OVERVIEW

Jim Long has 35 years' experience trying cases and counselling businesses in the areas of antitrust law, franchise law, and dealer/distribution law. He has successfully represented clients in multiple state and federal courts across the country; responded to state AG, DOJ, and FTC investigations; worked on numerous arbitrations; and argued appeals in the Seventh and Eighth Circuit Appellate Courts in addition to several state appellate courts.

Jim has represented clients in a number of large antitrust cases—from price fixing class-actions to group boycotts to predatory pricing claims—and has extensive experience in Section 2 attempts to monopolize claims based upon predatory hiring of sales force. He regularly counsels clients on a variety of antitrust issues, including bundled rebate plans, price discrimination, and other pricing practices. Jim has defended and managed DOJ antitrust investigations, FTC competition investigations, state attorney general investigations, and FTC Hart-Scott-Rodino reviews. Throughout the years, he has also represented both plaintiffs and defendants in non-compete cases.

Jim's practice also centers on representing franchisors in disputes with franchisees and manufacturers in disputes with dealers, distributors, or sales representatives. He has handled cases, and counsels clients, on matters involving the Minnesota Franchise Act; Minnesota Sales Representative Act; Minnesota Heavy and Utility Equipment Manufacturers and Dealers Act; Minnesota Agricultural Equipment Dealership Act; Wisconsin Fair Dealership law; a number of state motor vehicle and power sport dealer's acts; and other industry specific dealer and distribution laws. Jim has enforced arbitration clauses in franchise, dealer, and distribution agreements.

### ADDITIONAL QUALIFICATIONS

Qualified neutral under Rule 114 of the Minnesota General Rules of Practice, Minnesota Supreme Court

Trained Arbitrator, American Arbitration Association

### AREAS OF PRACTICE

Litigation

- Business Litigation
- Competitive Practices & Antitrust

### BAR ADMISSIONS

Minnesota, 1988

Illinois, 1984

U.S. District Court

- Minnesota, 1989
- N.D. Illinois, 1984

U.S. Court of Appeals

- Fifth Circuit
- Seventh Circuit
- Eighth Circuit

### EDUCATION

University of Minnesota Law School

J.D., *magna cum laude*, 1984

Honors: Order of the Coif

University of Chicago

B.A., *with honors*, 1981

Economics

## SELECTED EXPERIENCE

### **Antitrust**

- Extensive experience counseling on a wide variety of antitrust issues, including: joint ventures; exclusive dealing contracts; potential anticompetitive impact of proposed mergers and Hart Scott Rodino compliance; agreements between competitors affecting price; group boycotts; vertical price restraints after Leegin; a wide variety of Section 2 Sherman Act issues, including bundled rebate plans, loyalty rebates, potential predatory pricing issues, other potential predatory conduct and risk of finding of dangerous probability of success of monopolization; antitrust compliance by trade associations; antitrust compliance policies and antitrust compliance training; and Noerr Pennington protected actions by competitors.
- Extensive experience providing antitrust counseling on Robinson Patman Act compliance issues.
- Obtained summary judgment dismissing Section 2 antitrust claims based upon an alleged sales force raiding in case venued in Federal Court, Southern District of Texas.
- Defended Section 2 Sherman Act sales force raiding case and other alleged predatory acts in case venued in Federal Court, Southern District of Florida.
- Co-tried two-week jury trial of Section 2 Sherman Act sales force raiding case, prevailing on Rule 50(b) Motion affirmed by Fifth Circuit. *Taylor v. Jostens*, 216 F.3d 465 (5th Cir. 2000).
- Represented defendant in a series of horizontal group boycott cases, including national class actions, state AG investigations, and a ten week FTC Administrative Part 3 hearing.
- Represented foreign manufacturer in connection with a three year Department of Justice Antitrust Division investigation that resulted in no action by the Division.
- Represented acquired entity soft drink bottling company in FTC merger investigation that was not challenged by the FTC.

### **Franchise**

- Obtained full summary judgment on claims under the Minnesota and Wisconsin Franchise Act of selling an unregistered/undisclosed franchise based upon estoppel and summary judgment on earning claims for lack of reliance. *U-Bake Rochester, LLC et al v. Utecht Bakeries*, Civ. No. 12-1738 (ADM/SER), 2014 WL 223439.
- Obtained summary judgment on claims under the Minnesota and Wisconsin Franchise Acts on statute of limitations grounds on action in Scott County.
- Obtained summary judgment on vast majority of claims brought by former franchisee, including earnings claims, fraud claims, RICO claims arising out of franchise relationship. *Physicians Weight Loss Centers of America v. Creighton*, 1992 WL 176992. Bus. Franchise Guide (CCH) 9980.
- Defeated claims by three largest regional franchisors that franchisor material breached franchise agreement by losing trademark protection of franchise name. *Convenient Foods Mart Inc. v. C.F. Mrts of California, Inc.*, 1990 WL 115797, Bus Franchise Guide (CCH) 9599.
- Numerous arbitrations on a variety of claims of violations of the Minnesota Franchise Act.
- Enforced a post term franchise non-compete against former franchisee who left for a competing system. *Economou v. Physicians Weight Loss Centers of America*, 756 F. Supp. 1026.

### **Dealer/Distribution**

- Regularly counseled worldwide manufacturer of recreational vehicles regarding compliance with motor and recreational vehicle dealer laws throughout the United States.
- Successfully brought action under Minn. Stat. § 80E.14 that prevented addition of automobile dealership within client's relevant market area.
- Extensive experience counseling and handling claims as lead counsel for manufacturer under the Minnesota Heavy Utility Equipment Dealers Act. Lead counsel for manufacturer in *Midwest Great Dane Trailers Inc. v. Great Dane Ltd. Partnership*, 977 F. Supp 1386.
- Extensive experience under the Minnesota Sales Representative Act and the Wisconsin Fair Dealership Law (WFDL).

- Successfully represented manufacturer against dealer in India who alleged wrongful termination of dealer agreement. Successfully enforced United State arbitration clause, and obtained arbitration judgment against dealer on dealer's claims and on affirmative claims for past due amounts under dealer agreement.
- Co-tried one-week arbitration defending wrongful termination claims for largest dealer of luxury yacht manufacturer, resulting in complete defense judgment.
- Successfully defended claims of wrongful termination by Mexican Distributor.
- Successfully enforced binding arbitration clause as to dealer termination claims brought in Puerto Rico under the Puerto Rico Dealer Act.
- Won arbitration judgment dismissing wrongful termination and business tort claims by a German dealer of client boat manufacturer.

### **Litigation**

- Defended breach of contract action arising out of a \$42 million contract for national identity project.
- Prosecuted tortious interference counterclaim against competitor based upon alleged bribery involving Nigerian Identity Card Project and obtained sanctions for discovery violations of a jury instruction requiring jury to take as true client's factual claim.
- Obtained summary judgment, which was affirmed by the 7th Circuit, dismissing all trade secret claims against defendant. *Confold Pacific v. Polaris Inc.*, 433 F.3d 952.
- Represented major food company in damages phase of insurance coverage dispute with insurer related to underlying event of grain supply tainted with pesticide. Two-month jury trial, resulting in \$29 million verdict in favor of client.
- Defended non-compete action in which plaintiff sought injunction preventing continued employment by competitor through enforcement of non-compete clause contained in employment agreement. *Ecolab, Inc. v. Gartland*, 537 N.W.3d 291.
- Won \$300,000 jury verdict on wrongful termination claim following two-week jury trial in the Northern District of Illinois.
- Extensive experience enforcing arbitration clauses and successfully arguing FAA preemption of state statutes restricting arbitration.
- Obtained writ of habeas corpus vacating capital murder conviction after 12 years of representation. *Draughon v. Dretke*, 427 F.3d 286.
- Obtained summary judgment on all claims involving allegations of wrongly publishing picture in yearbook, including claims alleged under the New Jersey Anti Pornography statute.

### **LEADERSHIP & COMMUNITY**

- Mitchell Hamline School of Law: Adjunct Professor, Antitrust Law, 2021
- American Bar Association: Section of Antitrust; Forum on Franchising
- Minnesota State Bar Association: Antitrust Law Section, Council Chair 2019-2020, Council Vice Chair 2018-2019, Secretary 2017-2018; Legal Assistance to the Disadvantaged Committee, 2010-2018
- Hennepin County Bar Association: Pro Bono Group 2012-present
- Volunteer Lawyers Network: Benefactors Board 2013-2019
- Strafford Publications: Board Member; Antitrust Law Seminars Advisory Board 2010-present
- Hamline University School of Law: Adjunct Professor (developed and taught Franchise Course) 1999, 2005
- St. Paul Festival and Heritage Foundation: Board Member, Legal Counsel, and Secretary 1999-2002
- St. Paul Jaycees Charitable Foundation: Trustee
- St. Paul Area Jaycees: former President 1993-1994

### **SELECTED HONORS**

- **Pro Bono All Star**, Minnesota State Bar Association, 2020 (*Pro Bono All Star is a designation that recognizes MSBA members who have been recognized as North Star Lawyers for seven or more years.*)

- **Recognized on Minnesota Super Lawyers® list**, 2005-2008; 2014-2020 (*Minnesota Super Lawyers® is a designation given to only 5 percent of Minnesota attorneys each year, based on a selection process that includes the recommendation of peers in the legal profession.*)
- **North Star Lawyer**, Minnesota State Bar Association 2012-2018 (*North Star Lawyer is a designation that recognizes members who provide 50 hours or more of pro bono legal services in a calendar year.*)
- **Selected for inclusion in *The Best Lawyers in America*®** in Franchise Law and Litigation - Antitrust categories, 2013-2021
- **2016 Pro Bono Publico Distinguished Service Award**, Hennepin County Bar Association