



Brent R. Austin
PARTNER

Chicago
T 312-660-7684
baustin@eimerstahl.com

Mr. Austin's trial and appellate practice concentrates on complex litigation in state and federal courts nationwide, with an emphasis on antitrust/competition law, RICO, state consumer protection act class actions, False Claims Act and qui tam litigation, and government and internal investigations. Mr. Austin's clients come from the financial services and insurance, manufacturing, health care, and retail sectors. For example, he has represented various property and casualty insurers for years in significant commercial and contractual disputes, as well as consumer class actions challenging rates and premiums, marketing and sales practices, claims-handling practices, and brokering activities. His work often centers on industry-wide challenges to products or business practices.

Mr. Austin also writes and speaks frequently on issues of antitrust, RICO, consumer fraud and whistleblower issues, as well as developments in federal evidence and civil procedure. Prior to joining Eimer Stahl, he was a partner and co-chair of the commercial litigation practice group of a large national law firm.

CASE EXPERIENCE

- Lead trial counsel in \$18+ million dispute over deductible reimbursements and other charges arising under workers' compensation insurance programs spanning three years. Judgment was entered in client's favor following eight-day trial. *Continental Casualty Co., et al. v. Staffing Concepts, Inc., et al.*
- Lead counsel in successful argument before the Louisiana Supreme Court to reverse certification of community-wide pollution and

PRACTICE FOCUS

Antitrust
Class Action & Multidistrict Litigation
Complex Commercial Litigation
Contract and Commercial Disputes
Environmental, Products Liability and Toxic Torts
Insurance Industry Business Practices
Securities and Banking Litigation
Trademark, False Advertising and Franchisor Litigation

EDUCATION

J.D., University of California at Berkeley, Boalt Hall, 1989

B.A., University of California, Los Angeles, 1986

- *summa cum laude*

ADMISSIONS

U.S. District Court for the Northern District of California

- diminished value class action. *Price, et. al. v. Roy O. Martin Lumber, et al.*, 79 So. 2d 960 (La. 2011).
- Represented Fortune 500 corporations in alleged nationwide class action brought under federal antitrust and RICO statutes, as well as various state antitrust statutes and state common law. The matter also included numerous "tag along" actions consolidated for pretrial proceedings by the Judicial Panel for Multidistrict Litigation. The case alleged conspiracies among insurance brokers and property and casualty insurers to allocate markets and customers for commercial insurance in addition to various state law violations. *In re Insurance Brokerage Antitrust Litigation*, 618 F.3d 300 (3d Cir. 2010).
 - Represented manufacturers of blood glucose meters in class action and federal False Claims Act cases alleging product defects, human health risks, and false sales and marketing. Obtained summary judgment in favor of client in the Circuit Court of Madison County, Illinois. Obtained dismissal with prejudice of False Claims Act complaint based on similar allegations, which was affirmed by the Eighth Circuit on appeal. *United States ex. Rel. Roop v. Hypoguard USA, Inc.*, 559 F.3d 818 (8th Cir. 2009).
 - Lead defense counsel in series of nationwide and statewide putative class actions against a long-term care insurer arising from challenges to pricing, rate increases and claims-handling practices. *Thompson v. Continental*, U.S. District Court (D. Arizona 2013); *Shaffer v. Continental Casualty Company*, 2010 U.S. App. LEXIS 726 (9th Cir. 2010); *Landau v. CNA Financial Corp.*, 381 Ill.App.3d 61 (1st Dist. 2008).
 - Represented chemical manufacturers in negligence, nuisance, and trespass class actions and mass actions involving creosote and pentachlorophenol wood treatment processing. *Bullard v. Burlington Northern Santa Fe Ry. Co.*, 535 F. 3d 759 (7th Cir. 2008); *Brinston v. Koppers Industries, Inc.*, 538 F. Supp. 2d 969 (W.D. Tex. 2008).
 - Represented an insurer in a proposed nationwide class action challenging the purported failure to Medicare set asides with respect to workers' compensation claims under the Medicare Secondary Payor statute.) *Frazer v. Transcontinental Insurance Co.*, 374 F. Supp. 2d 1067 (N.D. Ala. 2004).
 - Represented various insurers in an industry-wide RICO class action alleging unlawful and excessive rates for loss sensitive workers' compensation insurance programs. *Sandwich Chef of Texas, Inc. v. Reliance National Indemnity Insurance Co.*, 319 F.3d 205 (5th Cir. 2003).
- U.S. District Court for Central District of California
- U.S. District Court for the Northern District of Illinois
- U.S. District Court for the Central District of Illinois
- U.S. District Court for the Southern District of Illinois
- U.S. District Court for the Northern District of Florida
- U.S. District Court for the Eastern District of Wisconsin
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Fifth Circuit
- U.S. Court of Appeals for the Seventh Circuit
- U.S. Court of Appeals for the Eighth Circuit
- U.S. Court of Appeals for the Ninth Circuit

- Lead defense counsel in defeating certification of nationwide false marketing, consumer fraud, nuisance and product liability class action involving industry-wide challenge to CCA pressure treated wood. *Miller v. Home Depot U.S.A., Inc.*, 199 F. Supp. 2d 502 (W.D. La. 2001); *Jacobs v. Osmose*, 213 F.R.D. 607 (S.D. Fla. 2003); *Ardoin v. Stine Lumber Co.*, 220 F.R.D. 459 (W.D. La. 2004); *Kitzes v. Home Depot U.S.A., Inc.*, 872 N.E.2d 53 (Ill. App. 2007).
- Represented major property and casualty insurers in a series of class actions filed in federal and state courts in which the plaintiffs claimed that workers' compensation insurers had improperly passed through residual market assessments and violated premium rate filings. Plaintiffs sought certification of nationwide or statewide classes under federal and state antitrust laws, the RICO statute, conspiracy theories, deceptive trade practices acts, fraud theories and contract theories. *AARP v. National Surety Corp.*, 2001 WL 1530348 (Mich. Cir. Ct. Oct. 23, 2001); *AARP v. National Surety Corp.*, 2001 WL 1530353 (Mich. Cir. Ct. Feb. 23, 2001); *Foodarama Supermarkets, Inc. v. American Insurance Co.*, 43 Pa. D. & C.4th 467, 2000 WL 356697 (Pa. Comm. Pl. Jan. 10, 2000).
- Represent manufacturer in constitutional and qui tam action against a municipality's use of "red light cameras" to enforce traffic regulations.
- Represented a major insurer in a Madison County, Illinois class action alleging that defendant workers' compensation carriers committed consumer fraud and were unjustly enriched by charging premiums based on total payroll when workers' compensation benefits for high wage earners were capped. The plaintiffs sought to represent a class of employers affected by the "total payroll" rule.
- Represented a major property and casualty carrier in a class action arising from disputes over coverage for losses suffered during the August 14, 2003 Northeast Blackout. Succeeded in obtaining summary judgment for our client.
- Represented Fortune 500 corporation in a putative nationwide class action challenging the practice of reviewing and reducing charges in medical bills submitted pursuant to workers' compensation insurance policies.
- Represented an insurer in successful defense of putative nationwide class action challenging the use of computer software to value properties in paying claims on homeowners' insurance policies.
- Represented automobile insurers in a series of putative nationwide class actions in Miller County, Arkansas, challenging the use of "Colossus" software to adjust claims on automobile policies.
- Represented workers' compensation carrier in putative nationwide class action alleging "silent PPO" theories, i.e., that carriers who took discounts on medical bill charges under PPO agreements had affirmative obligation to steer or refer patients to PPO providers; obtained dismissal in favor of defendant.
- Represented Fortune 500 corporation in a putative collective and class action brought by former employees under the Age Discrimination in Employment Act, the Employee Retirement Income Security Act and various state laws.
- Lead defense counsel in defeating consolidation of putative nationwide class actions as multidistrict litigation, *In re Chromated Copper Arsenate (CCA) Treated Wood Prod. Liab. Litig.*

NEWS

Eimer Stahl Partners Recognized in Lawdragon's 500 Leading Litigators Guide for 2024
September 11, 2023

The Legal 500 Spotlights Eimer Stahl's Antitrust and Complex Commercial Litigation Practices in 2023 Rankings

June 7, 2023

Eimer Stahl Lawyers Named Among Lawdragon's 500 Leading Litigators
October 12, 2022

Brent Austin to Represent British Airways in Negligence Lawsuit Against the City of Chicago
December 10, 2021

Indiana Federal Court Denies State's Motion to Stay in Voting Rights Case
October 9, 2020

Eimer Stahl Challenges Indiana Law that Prohibits Voters from Asking State Courts to Extend Polling-Place Hours
July 8, 2020

Eimer Stahl Wins Historic Victory against Chicago Public Schools
December 5, 2018

Brent Austin quoted in *Law360* article, "Top Product Liability Cases of 2017"
12.15.2017

SPEAKING ENGAGEMENTS

The McCarran Act: An Antitrust Update, ABA Exemptions and Immunities Committee Presentation
06.2017

The Use of Representative or Statistical Evidence to Substantiate Class Claims Post-Tyson Foods v. Bouaphakeo, ACI
New York City seminar
04.2017

Antitrust Exemptions and Immunities 101, ABA Exemptions and Immunities Committee Presentation
01.21.2017

Key Recent Developments in Class Action Law, Ohio State Bar Association Fourth Annual Great Lakes Antitrust Institute
11.02.2012

Whistleblowing In 2012: What Every Business And Business Lawyer Should Know, New England Legal Foundation
10.24.2012

Recent Developments in Class Action Litigation Against Insurers Including: Consumer Fraud Challenges to Sales and
Marketing Practices and Antitrust/McCarran Ferguson Act, Half-Day Insurance and Reinsurance Seminar
10.10.2012

Recent Developments in Class Action Litigation
06.13.2012

Recent Trends in FLSA Class Action Litigation: The Rise of Wage and Hour Claims and the Impact of Dukes on Class
Action Litigation

webinar, 02.01.2012

Massive Recalls Put Dent in Toyota's Reputation, Business Insurance
03.07.2011

Pleading and Defending Class Actions: Leveraging the Latest Developments in CAFA Removal Jurisdiction, Strafford
Webinar and Interactive Q&A
12.08.2010

Bellwether Trials: Evolving Trends in Class Action and Complex Litigation, Strafford Publications Webinar
03.25.2010

Defending RICO and Conspiracy Class Actions, 5th Annual Class Action Litigation Summit, Northstar Conferences LLC
06.2006

Antitrust, RICO, and Conspiracy, ACI, National In-House Counsel Conference
03.2006

Discovery In Class Actions, Strafford Publications Conference
08.2005

Trends in Consumer Class Actions, Class Action Litigation Summit
06.2005

In-House Counsel Forum on Defending & Managing Class Actions and Other Complex Litigation
03.2005

Products Liability Class Actions: What You Need to Know, Class Action Litigation Summit, Northstar Conferences LLC
06.2004

Class Action, CLE Symposium for In-House Counsel, Delaware Chapter and DuPont Legal
04.2004

The Present and Future State of Class Action Litigation
01.2004

PUBLICATIONS

Illinois Supreme Court Rejects Workers' Compensation Argument for Limiting Data Privacy Damages
February 15, 2022

Illinois' Broad Biometric Data Privacy Law
EimerStahl Insights, February 2021

Pandemic Coverage Litigation
EimerStahl Insights, April 2020

Insurance Antitrust Handbook 2015, Second Edition, American Bar Association, Brent R. Austin (editor)

January 2015

Under ERISA: Is Surcharge an Appropriate Remedy? Law360, Class Action News, Brent R. Austin (co-author)
01.24.2013

Does McReynolds Provide a Path to Class Certification in ERISA Cases?, Law.com, Brent R. Austin and David M. Simon
07.25.2012

The Ever-Broadening Reach of Dukes, Class Action News, Law360, Brent R. Austin (co-author)
Winter 2012

Citing Dukes, Louisiana High Court Halts Another Mass Tort Class Action, Client Advisory, Brent R. Austin (co-author)
03.2012

Louisiana High Court Follows Dukes, Denies Class in Contamination Suit, Westlaw Journal Toxic Torts, Vol. 29, No. 24
01.11.2012

Ethics in E-Discovery, Leading Lawyers on Navigating Rules and Regulations and Effectively Handling Privacy Issues in the E-Discovery Process, Aspatore, Brent R. Austin, Chapter Author (Thomson Reuters)
Winter 2012

Defending Behavioral Ad Class Actions, Law360, Brent R. Austin (co-author)
10.20.2011

Litigating Products Liability Class Actions: Leading Lawyers on Interpreting Recent Decisions, Assessing a Case's Validity, and Preparing for Trial, Aspatore, Brent R. Austin, Chapter Author (Thomson Reuters)
Winter 2011

Q&A With Brent Austin, Law360
11.30.2010

Increasing Scrutiny of Gov't Contingency Fee Deals, Law360, David M. Simon and Brent R. Austin
11.02.2010

Combatting Class Certification After CAFA Removal, Law360, Brent R. Austin (co-author)
06.10.2010

Chapter of Antitrust Class Actions Handbook, American Bar Association, First Edition, Brent R. Austin (co-author)
2010

BPA Update: Beyond Baby Bottles, BNA Class Action Litigation Report, Brent R. Austin (co-author)
04.10.2009

Deceptive Advertising Cases: Do They Survive McLaughlin?, Andrews Publications E-Seminar, Brent R. Austin (co-presenter)
10.16.2008

An Old Whine in New Bottles? What's New – and What Isn't – About the Current Wave of BPA Litigation, BNA Class Action Litigation, Vol. 9, No. 15, Brent R. Austin (co-author)

08.08.2008

Contacting Class Members—Before and After Class Certification: The ABA's View, Product Liability Law & Strategy, David M. Simon, Brent R. Austin, and Nancy F. Afrasiabi

04.2008

Strategies for Defeating Class Certification in Mass Tort Cases, Exploring Toxic Tort and Environmental Liability Claims, Brent Austin (co-author)

Winter 2007

Enough is Enough: Alleged Forum Manipulation and Class Certification Denial, BNA Class Action Litigation Report, Brent R. Austin

09.10.2004

The Economic Loss Only Product Liability Class Action: Claim-Splitting as a Strategy for Obtaining Class Certification, ABA Class Actions and Derivative Suits, Brent R. Austin

Spring 2004

Recent Pharmaceutical and Medical Devices: What St. Jude and Several State Court Cases Do and Don't Tell Us, Findlaw.com, Brent R. Austin (co-author)

04.2004

Mass Torts Disguised as Commercial Class Actions, Andrews Toxic Chemicals Litigation Reporter, Brent R. Austin

09.04.2003