



Contact

**David A. Munkittrick**

**Partner**

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David Munkittrick is a litigator and trial attorney. His practice focuses on complex and large-scale antitrust, copyright and entertainment matters in all forms of dispute resolution and litigation, from complaint through appeal.

David has been involved in some of the most significant antitrust matters over the past few years, obtaining favorable results for Fortune 500 companies and other clients in bench and jury trials involving price discrimination and group boycott claims. His practice includes the full range of antitrust matters and disputes: from class actions to competitor suits and merger review. David advises antitrust clients in a range of industries, including entertainment, automotive, pharmaceutical, healthcare, agriculture, hospitality, financial services, and sports.

David also advises music, publishing, medical device, sports, and technology clients in navigating complex copyright issues and compliance. He has represented some of the most recognized names in entertainment, including Sony Music Entertainment, Lady Gaga, U2, Madonna, Daft Punk, RCA Records, BMG Music Publishing, Live Nation, the National Academy of Recording Arts and Sciences, Universal Music Group and Warner/Chappell.

David maintains an active pro bono practice, supporting clients in the arts and in immigration proceedings. He has been repeatedly recognized as Empire State

Counsel by the New York State Bar Association for his pro bono service, and is a recipient of Proskauer's Golden Gavel Award for excellence in pro bono work.

When not practicing law, David spends time practicing piano. He recently made his Carnegie Hall debut at Weill Recital Hall with a piano trio and accompanying a Schubert lieder.

David frequently speaks on antitrust and copyright issues, and has authored or co-authored numerous articles and treatise chapters, including:

- *Causation and Remoteness, the U.S. Perspective*, in GCR Private Litigation Guide.
- *Data Breach Litigation Involving Consumer Class Actions*, in Proskauer on Privacy: A Guide to Privacy and Data Security Law in the Information Age.
- *Location Privacy: Technology and the Law*, in Proskauer on Privacy: A Guide to Privacy and Data Security Law in the Information Age.
- *FTC Enforcement of Privacy*, in Proskauer on Privacy: A Guide to Privacy and Data Security Law in the Information Age.
- *The Role of Experts in Music Copyright Cases*, Intellectual Property Magazine.
- *Nonprofit Education: A Historical Basis for Tax Exemption in the Arts*, 21 NYSBA Ent., Arts, & Sports L.J. 67
- *A Founding Father of Modern Music Education: The Thought and Philosophy of Karl W. Gehrkens*, Journal of Historical Research in Music Education

## Matters

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### Antitrust

- *In the Matter of Benco/Schein/Patterson*. Defended Henry Schein, Inc. in a months-long group boycott trial brought by the FTC, obtaining complete dismissal of the complaint against Schein, the only defendant to be dismissed.

- *The Broadway League v. Telsey et al.* Counsel for the Broadway League in a suit regarding application of the antitrust labor exemption to purported union of independent casting director businesses.
- *Learfield Communications/IMG College.* Counsel for Learfield in the DOJ's investigation of Learfield's merger with IMG College, which combined the two largest providers of collegiate multimedia rights services.
- *In re Generic Pharmaceuticals Pricing Antitrust Litigation.* Defense of pharmaceutical executive in multiple complaints by state attorneys general and purported classes regarding alleged pricing fixing in generic pharmaceuticals.
- *TrueEx LLC v. MarkitServ Ltd.* Defense of antitrust claim seeking to impose a duty to deal with a competitor in the alleged market for post-trade processing of Interest Rate Swaps
- *Mathew Enterprise Inc. v. Chrysler Group LLC.* Trial counsel for Chrysler in the successful defense of a \$5.1 million price discrimination action brought by a dealer. After a two-week trial, the jury issued a verdict in Chrysler's favor, which was affirmed by the Ninth Circuit on appeal.
- *Castro v. Sanofi Pasteur Inc.* Counsel for Sanofi Pasteur, defending a nationwide class action alleging monopolization of the alleged market for meningitis vaccines in the United States through bundling and other exclusionary conduct

## Copyright/Entertainment

- *Archie MD, Inc. v. Elsevier, Inc.* Defense of Elsevier against allegations of mass copyright infringement, obtaining dismissal of the vast majority of the claims on summary judgment.
- *Rose v. Hewson.* Defense of U2 against claims the band's song "The Fly" infringed plaintiff's song "Nae Slappin," achieving complete dismissal on a motion to dismiss.

- *Universal Attractions, Inc. v. Live Nation Entertainment, Inc.* Represented Live Nation and Ticketmaster in defense of false advertising claims, and obtained complete dismissal on a motion to dismiss.
- *Cole v. Blackwell Fuller Music Publishing.* Defense of music publishers in copyright infringement suit regarding rights to Bob Marley songs, and obtained dismissal on a motion to dismiss.
- *Francescatti v. Germanotta.* Defense of Lady Gaga in a copyright infringement suit regarding the song “Judas”, obtaining complete dismissal of the claims on summary judgment.
- *AREC v. Jerri Jones.* Twice obtained dismissal of breach of contract claims over royalties relating to Dixie Cup songs.
- *Buday v. New York Yankees Partnership.* Won dismissal of a copyright infringement suit against the Yankees

## Other Commercial Litigation

- Defense of the Financial Oversight and Management Board for Puerto Rico, in its own right and as debtors’ representative, in litigation related to the restructuring of the Commonwealth’s \$74 billion of bond debt and \$50 billion of unfunded pension obligations.
- Defense of Mattel, Fisher-Price, Target, Walmart, Amazon, and Buy Buy Baby in product liability litigations regarding the Rock ‘n Play Sleeper.
- *Katz v. The Donna Karan Company LLC.* Successful defense of purported class action under FACTA, including on two appeals to the Second Circuit.
- *PBGC v. The Renco Group, Inc.* Represented Renco at trial in an ERISA litigation
- *VICI Racing v. T-Mobile USA, Inc.* Defense of T-Mobile in contract dispute
- *Jackson Family Wines, Inc. v. Diageo North America, Inc.* Represented Diageo in trademark infringement litigation
- Represented former partner in mutual fund investment firm in arbitration asserting breach of partnership agreement

- *Cappicille v. Suburban Propane, L.P.* Represented Suburban Propane defending a purported

#### Practices

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Privacy & Cybersecurity, False Advertising & Trademark, Antitrust Technology Task Force, Antitrust, Copyright, Litigation

#### Industries

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Health Care, Private Capital, Entertainment

#### Market Solutions

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Proskauer+Tech

#### Education

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Indiana University Maurer School of Law, J.D.

*cum laude*

Oberlin College, B.A.

with highest honors

Oberlin College, B.Mus

#### Admissions & Qualifications

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New York

#### Court Admissions

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U.S. District Court, New York, Eastern District

U.S. District Court, New York, Southern District

U.S. Court of Appeals, First Circuit

U.S. Court of Appeals, Ninth Circuit

U.S. Court of Appeals, Second Circuit

#### Memberships

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New York City Bar Association: Science and Law Committee

New York State Bar Association: Entertainment, Arts and Sports Law Section

American Bar Association: Antitrust Section

#### Awards & Recognition

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The Legal 500 United States Antitrust: Civil Litigation/Class Actions: Defense, 2023

The Legal 500 United States: Intellectual Property: Copyright 2022

The Legal 500 United States: Media, Technology and Telecommunication: Media  
and Entertainment: Litigation 2022-2023

Managing Intellectual Property Rising Stars 2022