

## David Burns

### Special Counsel

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Antitrust and Competition

Antitrust Litigation and Enforcement

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David's practice focuses on antitrust and competition law, representing businesses in merger reviews and government investigations before the US Department of Justice (DOJ) and the Federal Trade Commission (FTC), and in antitrust litigation in federal court. David has particular experience working on pharmaceutical and tech matters, and complex issues at the intersection of antitrust and intellectual property law.

David has helped numerous clients obtain clearance following complex merger reviews and challenges. He's also defeated conspiracy and monopolization claims, and he regularly provides pragmatic guidance for achieving business goals consistent with antitrust laws. He has been recognized as a top antitrust practitioner by Super Lawyers, Best Lawyers and The Legal 500.

At the George Washington University Law School, David was the managing editor of the George Washington International Law Review. He was also a member of the Public Justice Advocacy Clinic and interned in the chambers of Judge Reggie B. Walton of the US District Court for the District of Columbia.

#### David's representative matters include representing:

##### *Mergers and acquisitions*

- **Horizon Therapeutics** in multiple matters, including its approximately \$3 billion acquisition of Viela Bio and its roughly \$28 billion acquisition by Amgen
  - Horizon's acquisition by Amgen was the first litigated challenge to a pharmaceutical merger in 10+ years, based on the novel theory that Amgen would bundle its portfolio to "entrench the monopoly positions" of two Horizon rare disease medicines; shortly before the preliminary injunction hearing, the FTC and six state attorneys general agreed to permit the transaction to close with a rare behavioral remedy.
  - David won a Litigator of the Week accolade from The American Lawyer for this matter, which also was shortlisted as a GCR Merger Control Matter of the year
- **Amolyt Pharma**, a global clinical-stage biopharmaceutical company developing therapeutic peptides for rare endocrine and related diseases, in its more than \$1 billion acquisition by AstraZeneca
- **One Medical** in its \$3.9 billion sale to Amazon, which closed without remedies after an extensive investigation
- **Travere Therapeutics** in its agreement to sell its bile acid portfolio to Mirum Pharmaceuticals for up to \$445 million
- **VectivBio**, a clinical-stage biotech company, on its acquisition by Ironwood, for an estimated aggregate

consideration of approximately \$1 billion

- **Amryt**, a commercial-stage biopharmaceutical company focused on novel treatments for rare diseases, in its nearly \$1.5 billion cross-border acquisition by Chiesi
- **ChannelAdvisor**, a top provider of cloud-based ecommerce solutions, in its sale to CommerceHub, an industry-leading commerce network connecting supply, demand and delivery for the world's top retailers and brands, for approximately \$664 million
- **ViaCyte**, a clinical-stage biotechnology company focused on delivering novel stem cell-derived cell replacement therapies as a functional cure for Type 1 diabetes, on its definitive agreement to be acquired by Vertex Pharmaceuticals for \$320 million
- **Arena Pharmaceuticals**, a clinical-stage company developing innovative potential therapies for the treatment of several immunoinflammatory diseases, in its up to \$1.2 billion exclusive license with United Therapeutics and in its approximately \$6.7 billion sale to Pfizer
- **NeoPhotonics**, a developer and manufacturer of optoelectronic solutions, on its agreement to sell to Lumentum for approximately \$918 million
- **Intersect ENT**, a supplier of drug-eluting stents, in its \$1.1 billion sale to Medtronic, which obtained unanimous clearance from the FTC after nine-month investigation and divestiture of its ear, nose and throat (ENT) navigation and balloon sinuplasty businesses
- **Five Prime Therapeutics**, a clinical-stage biotechnology company focused on developing immune modulators and precision therapies for solid tumor cancers, in its approximately \$1.9 billion sale to Amgen
- **VelosBio**, clinical-stage biopharmaceutical company developing first-in-class therapies targeting receptor tyrosine kinase-like orphan receptor 1 (ROR1), in its sale to Merck for \$2.75 billion
- **Zipwhip**, a top business-texting platform, in its sale to Twilio for approximately \$850 million
- **Omnio**, a biotechnology company developing a DNA sequencing platform capable of delivering high sequencing accuracy, in its sale to Pacific Biosciences for approximately \$800 million
- **Finicity Corporation**, a top provider of real-time access to financial data and insights, in its up to \$985 million sale to MasterCard, achieving unconditional clearance from the DOJ
- **Alarm.com** in its acquisition of the Connect and Piper business units from Icontrol Networks, obtaining clearance after an eight-month FTC investigation and private antitrust litigation in the US District Court for the District of New Jersey
- **NetScout** in obtaining DOJ clearance for the \$2.6 billion acquisition of the communications business of Danaher
- **Auspex Pharma**, a late-clinical-stage biopharmaceutical company developing innovative medicines for hyperkinetic movement disorders, in its sale to Teva Pharmaceutical Industries for roughly \$3.5 billion
- **BroadSoft Corporation**, a top unified communications as a service (UCaaS) provider, in its approximately \$1.9 billion acquisition by Cisco
- **Tesoro** in a nine-month investigation of its \$1.075 billion acquisition of BP's Southern California refining and marketing business and other assets, receiving clearance from both the FTC and the California attorney general
- **Bertelsmann** subsidiary Random House's book publishing venture with Penguin, combining the two largest book publishers in the country

#### *Antitrust litigation*

- **Vertos Medical** against antitrust counterclaims based on alleged fraud on the patent office and sham litigation – *Vertos v. Folsom Metal Products* (N.D. Ala.)

- **Prolacta Bioscience** against antitrust counterclaims based on alleged fraud on the patent office and sham litigation; prevailed at summary judgment, leading to dismissal with prejudice of antitrust claims – *Ni-Q v. Prolacta Bioscience* (D. Or.)
- **Airline Tariff Publishing Company** against alleged conspiracy to fix airfares on multicity flights; defeated preliminary injunction and obtained dismissal as affirmed by the Ninth Circuit – *Prosterman v. ATPCO* (N.D. Cal.)
- **Patheon** against Sherman Act Section 1 and state law claims, obtaining summary judgment on all claims as affirmed by the Eleventh Circuit – *Procaps v. Patheon* (S.D. Fla.)
- **Kodak** against allegations of illegal tying and monopolization, including helping to develop a new standard for implicit tying in the Sixth Circuit – *Collins Inkjet v. Kodak* (S.D. Ohio)

#### *Life sciences licensing*

- **SystImmune** in its global strategic collaboration with Bristol Myers Squibb to develop and commercialize BL-B01D1, for \$800 million upfront and total potential consideration of up to \$8.4 billion
- **MediLink** in its global strategic collaboration with BioNTech for \$70 million upfront and additional payments potentially totaling more than \$1 billion
- **SCYNEXIS** in its exclusive license with GSK for Brexafemme for up to \$503 million
- **Zion Pharma**, a Chinese biotechnology company focused on the development of brain-penetrable compounds, on the acquisition of its lead program, ZN-A-1041, by Roche
- **Otsuka**, a global healthcare company, on its worldwide collaboration and license agreement with Sunovion and Sumitomo Dainippon Pharma
- **Vir Biotechnology**, on antitrust aspects of multiple collaboration agreements, including its collaboration with GSK directed at developing antibody candidates for COVID-19

#### **David's recent publications and speaking engagements**

- Speaker, "[Life Sciences Litigation: Implications and Perspectives on the FTC's Recent Orange Book Statements and Disputes](#)," Cooley Rx Webinar on Demand, February 15, 2024
- Co-author, "[FTC Challenges More Than 100 Patents as Improperly Listed in the FDA's Orange Book](#)," Concurrences, November 2023
- Co-author, "[FTC Issues Antitrust Warning Against 'Improper' Orange Book Patent Listings](#)," Concurrences, September 2023 – Awarded the reader's choice recognition for a business article on intellectual property in Concurrences' 2024 Antitrust Writing Awards
- Co-author, "[Antitrust Lawsuit by FTC and 10 States Focuses on 'Loyalty Programs'](#)," Lexology, October 2022
- Speaker, "[Life Sciences in the Antitrust Hot Seat – Trends and Guidance](#)," Cooley Life Sciences and Healthcare Innovation Program, January 2022
- Speaker, "[Life Sciences in the Antitrust Hot Seat – Key Trends and Guidance for Navigating Increasingly Hostile Waters](#)," Mondaq, September 16, 2021
- Co-author, "[US Monopolisation Cases](#)," Global Competition Review, January 28, 2021
- Co-author, "[10 Ways Antitrust Scrutiny Is Heating Up in 2021](#)," Law360, January 7, 2021
- Speaker, "[ABA Antitrust Section Corporate Counseling Committee Update](#)," ABA webinar, June 15, 2020
- Moderator, "ABA Nuts & Bolts: Sherman Act Section 2," ABA, June 5, 2020

- Co-author, "[The No Kill Zone: The Other Side of Pharma Acquisitions](#)," CPI Antitrust Chronicle, May 2020

## Education

The George Washington University Law School  
JD, 2011

Middlebury College  
BA , 2007

## Admissions & Credentials

District of Columbia

Virginia

## Rankings & Accolades

Super Lawyers Rising Stars: Antitrust (2018-2022)

Best Lawyers: Antitrust Law, Ones to Watch

Legal 500: Merger Control (2021)

## Memberships & Affiliations

American Bar Association (ABA)