

# David Burns

## Special Counsel



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Antitrust and Competition

Antitrust Litigation and Enforcement

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Washington, DC

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. He 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. David has been recognized as a top antitrust practitioner by Super Lawyers, Best Lawyers and The Legal 500. He also won a Litigator of the Week accolade from The American Lawyer for his representation of Horizon in connection with the FTC's challenge to its acquisition by Amgen.

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*

- **Longboard Pharmaceuticals**, a clinical-stage biopharmaceutical company focused on developing novel, transformative medicines for neurological diseases, on its \$2.6 billion sale to Lundbeck
- **Radionetics Oncology**, a biotechnology company discovering and developing novel small molecule G protein-coupled receptor (GPCR)-targeted radiopharmaceuticals, on its strategic agreement with Eli Lilly for \$140 million up-front and an exclusive right to acquire Radionetics for \$1 billion
- **Lacework**, a cloud security company, in its acquisition by Fortinet
- **Hootsuite**, a global leader in social media engagement, in its acquisition of Talkwalker
- **Jackpocket**, the first licensed third-party lottery courier app in the US, on its \$750 million acquisition by DraftKings
- **Horizon Therapeutics** in multiple matters, including its \$3 billion acquisition of Viela Bio and its \$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
- **Landos Biopharma**, a clinical-stage biopharmaceutical company focused on the development of first-in-class, oral therapeutics for patients with autoimmune diseases, on its acquisition by AbbVie for \$137.5 million plus a contingent value right of \$75 million
- **Amolyt Pharma**, a global clinical-stage biopharmaceutical company developing therapeutic peptides for rare endocrine and related diseases, in its \$1 billion+ acquisition by AstraZeneca
- **One Medical** in its \$3.9 billion sale to Amazon, which closed without remedies after an extensive investigation
- **Traverse 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 \$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, for \$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 acquisition 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 \$6.7 billion sale to Pfizer
- **NeoPhotonics**, a developer and manufacturer of optoelectronic solutions, on its sale to Lumentum for \$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 a 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 \$1.9 billion sale to Amgen
- **VelosBio**, a 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 \$850 million
- **Omniome**, a biotechnology company developing a DNA sequencing platform capable of delivering high sequencing accuracy, in its sale to Pacific Biosciences for \$800 million
- **Fincity 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
- **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 for \$3.5 billion

- **BroadSoft Corporation**, a top unified communications as a service (UCaaS) provider, in its \$1.9 billion acquisition by Cisco
- **Tesoro** in a nine-month investigation of its more than \$1.07 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 partnering*

- **Keros** in its exclusive license with Takeda for elritercept for \$200 million up-front and potential milestone and royalty payments
- **Laekna** in its clinical collaboration with Lilly to accelerate the development of LAE102
- **Kura Oncology** on its global strategic collaboration with Kyowa Kirin to develop and commercialize ziftomenib for \$330 million up-front, up to \$420 million in near-term milestones, and additional milestones up to \$741 million
- **Chimagen Biosciences** in its sale of CMG1A46 to GSK for \$300 million up-front and development and commercial milestone payments totaling up to \$550 million
- **Foreseen Biotechnology** in its exclusive license with Ipsen for FS001 for up to \$1.03 billion
- **FutureGen Biopharmaceutical** in its exclusive license with AbbVie to develop FG-M701 for \$150 million in up-front and near-term milestone payments and up to an additional \$1.56 billion in milestones
- **SystImmune** in its global strategic collaboration with Bristol Myers Squibb to develop and commercialize BL-B01D1, for \$800 million up-front and total potential consideration of up to \$8.4 billion
- **MediLink** in its global strategic collaboration with BioNTech for \$70 million up-front 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 with honors, 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)