

David Vogel

Special Counsel



dvogel@cooley.com

+1 703 456 8576

Reston

Commercial Litigation
Class Action Litigation
Communications
Technology
Spacetechnology and Satellite

David's experience covers a broad range of commercial disputes in federal and state courts, as well as appeals, bankruptcy adversary proceedings and contested matters, administrative proceedings, and arbitration and mediation.

For 30+ years, David has represented and counseled clients on all phases of complex commercial disputes, including developing plaintiffs' and defendants' strategies, overseeing factual investigations and complex discovery, preparing for trials, and briefing and arguing motions and appeals. He regularly manages teams of lawyers and paralegals during every phase of each lawsuit, and has represented clients in mediation and arbitration proceedings throughout the US.

While representing numerous clients, David has developed extensive experience in multiple industries, specifically telecommunications, aerospace, financial services, and government contracts.

Telecommunications

David has represented all types and sizes of telecommunications companies in federal and state court matters, involving commercial disputes and regulatory matters. His clients have included a regional Bell operating company, independent local exchange carriers and interexchange carriers. His disputes have involved tariffed claims, including access service and public access lines, intercarrier agreements, fiber leases and indefeasible rights of use, post-closing indemnification disputes in the sale of telecommunication companies, and dial-around compensation.

Aerospace David has provided contractual and litigation advice to clients in the aerospace industry, including weapons developers and system integrators, satellite launchers, and satellite manufacturers. His representative matters include litigation and counseling about launch services agreements, bid protests under federal contracts and intellectual property disputes. David is comfortable addressing highly technical subjects, and he has helped clients develop strategies for disputes that rely on complicated technical issues.

Financial services David has represented a variety of clients in the financial services industry involved in commercial disputes with other financial services companies, in addition to advising on consumer disputes including class action lawsuits. Some of the matters he's handled involved mortgage lending claims brought by consumers and purchasers of mortgage portfolios; disputes about online brokerage services; various consumer claims

under the Truth in Lending Act, the Fair Debt Collection Practices Act, the Foreign Corrupt Practices Act and the Electronic Fund Transfer Act; and ATM services.

Government contracts David has counseled and represented clients in federal contracting disputes involving all types of industries, from major defense and aerospace contractors to small disadvantaged businesses. His litigation matters have included prime-subcontractor disputes, post-closing indemnification disputes, bid protests and contract claims. He also has lectured and published numerous works on intellectual property issues such as copyright, trade secrets, and data rights in federal contracts, including the seminal treatise, "Licensing Software and Technology to the US Government: The Complete Guide to Rights to Intellectual Property in Prime Contracts and Subcontracts," with Matthew S. Simchak.

Some of David's notable representative matters since entering private practice in 1991 include:

- Representing a prime contractor in parallel federal and state court proceedings concerning contract, fraud, and tort claims between it and two of its subcontractors in relation to hospital support services during the pandemic (2022)
- Representing, as one of the core team members, a global contract development and manufacturing organization in the biopharmaceutical industry in several commercial disputes, including a federal lawsuit (2022)
- Defending a financial services company in a federal class action lawsuit involving alleged consumer confusion in hundreds of millions of transactions (2019 – 2021)
- Playing a primary role in developing and managing the defense of consumer fraud claims against a major telecommunications company in multiple federal lawsuits and in a state attorney general suit (2017 – 2020)
- Acting as lead counsel, upon appointment by a federal court, for about 600 phone companies in an industry-wide dispute with three large interexchange carriers involving access charges for certain calls between wireline and wireless phones, with David serving as lead author of successful briefs at the district court and the US Court of Appeals for the Fifth Circuit (2014 – 2020)
- Representing a financial services client in a relationship with a public interest organization that resulted in best-in-class accessibility for the client's consumer-facing devices (2012 – 2020)
- Pursuing a federal lawsuit in New York that successfully recovered \$13 million in unpaid monthly fees owed to a telecommunications client by a satellite TV business partner, with David serving as primary author of the appellate brief defending the lower court's final judgment (2012 – 2014)
- Representing a financial services company in a federal bankruptcy court proceeding arising from a \$70 million criminal loan scheme involving multiple mid-Atlantic banks (2011 – 2013)
- Representing a local exchange carrier in a putative class action federal suit involving consumer claims for alleged "cramming" of unauthorized third-party charges, with David authoring the motion that successfully dismissed the claims as improper attempts to plead around the filed tariff doctrine and relevant state regulations (2010)
- Representing a local exchange carrier in disputes by numerous plaintiffs in two separate federal lawsuits alleging the client's tariffed rates for public access lines failed to comply with Federal Communications Commission requirements, with David successfully obtaining dismissals of the plaintiffs' claims and arguing and defeating appeals to the US Courts of Appeals for the Ninth and Tenth Circuits (2008 – 2009)
- Defending aggregated claims of more than 1,200 payphone owners against a telecommunications company concerning payments for toll-free calls, which involved multiple lawsuits, a multidistrict proceeding, a class action lawsuit and David authoring an amicus brief to the US Supreme Court (2001 – 2011)
- Obtaining an unprecedented temporary restraining order in Virginia federal court that required the teaming partner of his client to continue subcontracting with the client on a significant military procurement (2008)
- Representing a regional Bell operating company in a wide-ranging lawsuit with a competitive local

exchange carrier involving multiple types of billing disputes, including, for example, abuse of certain dial-around codes and payments owed on fiber-optic leases (2006)

- Representing a plaintiff in a dispute with a provider of Primary Rate Interfaces under filed tariffs (2006)
- Representing a local exchange carrier that sued one of the largest interexchange carriers for underpayment of tariffed access charges, resulting from the IXC's failure to update its customer database and leading to erroneous jurisdictionalization of terminated toll-free calls, with David authoring a successful motion (after extensive discovery) dismissing the IXC's primary defense, and the case being settled quickly and favorably just before jury selection (2003 – 2005)

Education

Stanford Law School JD, with distinction, 1991

University of Michigan, Ann Arbor BS, summa cum laude, 1987

Admissions & Credentials

District of Columbia

Virginia

Court Admissions

US Supreme Court

US Court of Appeals for the Second Circuit

US Court of Appeals for the Ninth Circuit

US Court of Appeals for the Tenth Circuit

US District Court for the District of Colorado

US District Court for the District of Columbia

US District Court for the Eastern District of Virginia

US Court of Federal Claims

US Bankruptcy Court for the Eastern District of Virginia

Rankings & Accolades

Chambers USA: Litigation: General Commercial – Virginia (2021 – 2023)