

ANDREW C. MURPHY
DITOMMASO LUBIN AUSTERMUEHLE
17W220 22nd Street, Suite 410
Oakbrook Terrace, IL 60181
331.225.2129
acm@ditommasolaw.com

BAR ADMISSIONS

- ◆ Illinois (2011)
- ◆ U.S. District Court for the Northern District of Illinois (2011)
- ◆ U.S. District Court for the Northern District of Illinois, Trial Bar (2014)

EDUCATION

- ◆ Juris Doctor (*cum laude*), Chicago-Kent College of Law, May 2011
- ◆ Bachelor of Arts (*summa cum laude*), Oral Roberts University, May 2008

PROFESSIONAL AFFILIATIONS

- ◆ Illinois Bar Association
- ◆ DuPage County Bar Association
- ◆ Chicago Bar Association

PUBLICATIONS

- ◆ “Winner! Winner! Sheen Dinner!” *Commentator*, April 2011
- ◆ “It’s My Body, and I’ll Die How I Want to!” [C-K Student Blog](#), March 2010
(reprinted in the *Commentator*)

HONORS AND AWARDS

- ◆ Illinois Rising Star (Business and Class Action Litigation), [2015](#), [2016](#), and 2017
- ◆ Chicago-Kent Merit Scholar, 2008-2011

COMMUNITY INVOLVEMENT

- ◆ By The Hand Club, *volunteer*
- ◆ Lloyd Rader Juvenile Detention Center, *youth mentor*
- ◆ Mazatlán Naval Academy, *English language tutor*

PROFESSIONAL EXPERIENCE

Commercial & Intellectual Property Litigation

Berthold Group, Inc. Copyright and Breach of License Agreement Cases. Represent font software company in copyright infringement and breach of license agreement lawsuits in state and federal court. Have obtained hundreds of thousands of dollars in settlements and corrective license fees for client.

Berg v. Nexus Risk Management, United States District Court for the Northern District of Illinois, Judge Charles P. Kocoras. 2015-2017. Defended one of Canada's largest investment fund companies in lawsuit alleging copyright infringement and misappropriation of trade secrets in connection with the development of a risk management overlay strategy for a mutual fund. Case implicates questions concerning the idea-expression dichotomy, the work-for-hire doctrine, and the extent to which copyright protection extends to mathematical formulae.

Chicago Motor Car Corp., et al. v. David Bates, United States District Court for the Northern District of Illinois, Judge John Z. Lee. 2012-2013. Successfully defended Defendant against claims of trademark infringement, false advertising, cybersquatting, defamation, false light, and tortious interference. Opposing Counsel: Serena Pollack (Gonzalez Saggio & Harlan LLP).

Conix, Inc. v. Commercial Group, LLC, Superior Court of Arizona Maricopa County, Judge Colleen L. French. 2014-2017. Represented limited liability company and its members against claims of fraud, breach of contract, and securities fraud in partnership dispute among members of a private equity investment group in connection with multiple acquisitions. Successfully defeated motion for summary judgment brought by Plaintiffs/Cross-Defendants and ultimately obtained summary judgment in favor of clients. Opposing Counsel: Dennis Wilenchik (Wilenchik & Bartness).

Eastco International Corporation v. Addax Technologies, LLC, United States District Court for the Northern District of Illinois, Magistrate Judge Jeffrey Cole. 2013. Represented Defendant/Counter-Plaintiff electronic component manufacturer in breach of contract action alleging that production units manufactured in China differed from sample units inspected and accepted by Plaintiff. Countersued Plaintiff for allegedly unilaterally cancelling outstanding contracts with client. Negotiated settlement in which Plaintiff agreed to drop claims and pay client a confidential sum. Opposing Counsel: Peter Carey (Carey & Hartman LLC).

Kohn v. Rogers, Circuit Court of Cook County, Judge Tristano. 2013. Successfully represented Plaintiff in partnership dispute alleging breach of contract. Obtained judgment in favor of client on all claims. Opposing Counsel: David C. Thollander (The Thollander Law Firm).

Nelson v. Schmidt, Circuit Court of Cook County, Judge Stephen J. Connolly. 2012. Represented Defendant business owner against employment claim brought by former employee. Obtained judgment in favor of client and against Plaintiff on all claims.

Rubocki v. Equity Risk Partners, Inc., United States District Court for the Northern District of Illinois, Judge Virginia M. Kendall. 2013-2014. Represented Plaintiffs/Counter-Defendants in

suit alleging that company breached its employment contracts with clients and defended against claims that clients misappropriated trade secrets and violated restrictive covenants in employment contracts. After extensive e-discovery and motion practice regarding evidence spoliation issues, case settled on confidential terms. Opposing Counsel: Steven L. Gillman and Malcolm H. Brooks (Holland & Knight LLP).

DiMucci v. DiMucci, Circuit Court of Cook County, Chancery Division, Judges Forman, Flynn and Billik. 1998-2016. Partnership and corporate control dispute involving real-estate development assets in excess of \$100 million. Represented 50% owner allegedly frozen out of companies. Obtained multi-million dollar award in favor of client. Co-Counsel: Brian Garelli (Garelli & Associates). Opposing Counsel: George Collins and Adrian Vuckovich (Collins & Bargione).

Khan v. Thakkar, Circuit Court of Cook County, Law Division, Judge John C. Griffin. 2014-2015. Defended doctor and professional corporations in action by former business partner and shareholder alleging corporate oppression, fraud, and breach of fiduciary duty. Obtained dismissal of Plaintiffs' claims by arguing they were barred by the Medical Practice Act and Medical Corporation Act's prohibition of sharing ownership or profits of a medical corporation with non-physicians. Opposing counsel: Anthony S. Villalobos (Villalobos & Ybarra).

Williams v. Marder, United States District Court for the Northern District of Illinois, Judge Ronald A. Guzman. 2011-2012. Successfully represented Defendant against claims of tortious interference and employment and malicious prosecution and seeking more than \$3 million in damages. Obtained summary judgment in favor of client on all claims against him and an award of costs.

Anderson, et al. v. Moy-Gregg, Circuit Court of DuPage County, Chancery Division, Judge Popejoy and Judge Sheen. 2010-2011. Represented corporation and alleged majority owners in a corporate control dispute regarding the intent and meaning of stock gift. Case settled. Opposing Counsel: Louis Bernstein (Bernstein Law Firm, LLC).

Class Action Litigation

Boundas v. Abercrombie & Fitch, United States District Court for the Northern District of Illinois, Judge Gary S. Feinerman. 2010-2017. Represented plaintiff class who received \$25 purchase reward card that did not contain an expiration date but which defendant claimed should have contained an expiration date and will no longer honor. Successfully defended appeal of class certification to Seventh Circuit. Opposing Counsel: Brian J. Murray (Jones Day).

Daniels v. Hollister Co., Superior Court of New Jersey. Judge Craig L. Wellerson. 2012-2017. Represented plaintiff who received a promotional gift card that contained words "No Expiration Date" on the card but which defendant voided claiming the expiration date for the gift card was stated on promotional materials and in-store signs. Superior Court certified a nationwide class. Defendant appealed class certification arguing that the class was not ascertainable. Plaintiff argued that New Jersey law does not require level of ascertainability argued by defendant and that class was sufficiently ascertainable. Appellate court agreed with plaintiff's arguments and

rejected defendant's arguments. 113 A.3d 796 (N.J. App. 2015). Opposing Counsel: Brian J. Murray (Jones Day) and Richard A. Grossman (Grossman, Heavey & Halpin).

Wilkins v. Twin Towers Trading, United States District Court for the Northern District of Illinois, Judge Harry D. Leinenweber. 2015-2016. Represented Plaintiff in putative class action alleging violation of Fair Labor and Standards Act and Illinois wage laws. Case settled on confidential terms.

Schneider v. Ecolab, United States District Court for the Northern District of Illinois, Judge Edmond E. Chang. 2014-2017. Represented Plaintiff in putative class action alleging violation of Illinois wage laws. Successfully defeated motion for summary judgment on Illinois Minimum Wage Law claim. Case settled on confidential terms. Opposing Counsel: John A. Ybarra and Amy S. Ramsey (Littler Mendelson, P.C.).

Fetrow v. City of Chicago, Circuit Court of Cook County, Judge Neil H. Cohen. Pending. Represent Plaintiff in putative class action seeking recovery of all transfer taxes collected by the City of Chicago in connection with transfers of properties owned by Fannie Mae or Freddie Mac on theory that federal and state law prohibit the City of Chicago from imposing transfer taxes on such transfers.

Morrin v. General Motors, LLC, United States District Court for the Northern District of Illinois, Judge Charles R. Norgle, Sr. Represented Plaintiff in putative class action alleging breach of warranty in violation of Magnuson-Moss Warranty Act. Case settled on confidential terms on individual basis. Opposing Counsel: Bryan J. Anderson (Dykema Gossett PLLC).

Korsmo v. American Honda, United States District Court for the Northern District of Illinois, Judge Der-Yeghiayan. 2013. Represented plaintiff who purchased a "Honda Certified Used Car" which allegedly suffered from frame and body damage which should have prevented the car from being certified. Opposing Counsel: Kevin Russell and Kathleen Lally (Latham & Watkins, LLP); Jason Hunter (Litchfield Cavo, LLP).

Does v. Modeling School, Circuit Court of Cook County, Chancery Division. Represented plaintiff class who allege that hourly employees were not paid for overtime worked and, at times, were paid less than minimum wage. Plaintiffs brought suit under the Illinois Minimum Wage Law and the Illinois Wage Payment and Collection Act. Case settled on a class wide basis with class members being able to claim all unpaid wages.

Jane Doe v. Modeling School, Circuit Court of Cook County, Chancery Division. Represented plaintiff putative class representative/student who took a modeling and acting course. Plaintiff alleged violations of the Illinois Private Business and Vocational Schools Act and Consumer Fraud Act involving alleged misrepresentations concealing that the course would not lead to work in the field. Case settled on a class wide basis with class members being able to claim a partial refund on their tuition.

Jane Doe v. Electronics Retailer, Circuit Court of Cook County, Chancery Division. Represented Plaintiffs who received a \$500 gas and grocery card that retailer allegedly would not

honor. Class certified. Case settled on a class-wide basis with approximately 7,000 class members being able to claim up to \$1,000 depending on the number of claimants who participate in the settlement.

Class Action Defense

Music v. Beta Electric, Circuit Court of Cook County. 2014-2016. Judge Patrick Sherlock. Represented defendant company and its owner against putative class action. Defeated class action by successfully picking off putative representative. Case settled on an individual basis. Opposing Counsel: Ernest T. Rossiello (Ernest T. Rossiello & Associates).

Takova v. S37, Circuit Court of Cook County, Chancery Division, Judge Riley and Judge Mikva. Represented defendant landlords in putative class action claiming violations of Illinois security deposit statutes. Case settled on an individual non-class basis following motion to dismiss for mootness. Opposing Counsel: Aaron Krolik and Mark Silverman.

Klimo v. S37, Circuit Court of Cook County, Chancery Division, Judge Hall. Represented defendant landlords in putative class action claiming violations of Illinois and Mt. Prospect security deposit statutes. Case settled on an individual non-class basis following granting of S37's partial summary judgment motion. Opposing Counsel: Mark Silverman.

Auto Fraud Litigation

Polovyy v. Midway Autohaus, American Arbitration Association, Arbitrator Christine McTigue. 2014-2015. Obtained arbitration award for clients in excess of \$51,000.00. Represented buyers against dealership that sold buyers a Mercedes-Benz SUV without disclosing that vehicle had significant amount of water damage as a result of being in a flood previously in violation the Illinois Consumer Fraud Act. Arbitrator ruled in favor of buyers.

Calderon v. RightWay Automotive Credit, Inc., American Arbitration Association, Arbitrator Mary Pat-Benz. 2015-2016. Successfully represented buyer in arbitration against dealership in connection with sale of vehicle. Arbitrator found in favor of buyer and ruled that dealership violated the Illinois Consumer Fraud Act. Arbitrator awarded buyer damages and attorney's fees. Opposing counsel: Ira M. Levin and Alex D. Marks (Burke, Warren, MacKay & Serritella, P.C.).

Serajeddini v. A.V. Automotive, LLC, American Arbitration Association, Arbitrator Gregory Beckwith. 2015. Represented buyers in suit against dealership in connection with purchase of Porsche Cayenne vehicle. Negotiated settlement wherein clients were able to return the vehicle to the dealership in exchange for a settlement payment by the dealership of more than \$75,000.

Little v. Ford, United States District Court for the Northern District of Illinois, Judge Zagel. 2015-2016. Represented purchaser of certified used vehicle in suit against manufacturer alleging that manufacturer had certified vehicle that had previously been in an accident and did not meet the criteria for certification. Obtained settlement of a confidential amount prior to trial. Opposing counsel: Edward Fu (Donohue Brown Mathewson & Smyth).

Schjoedt v. Luxury Automax, American Arbitration Association. 2015. Represented buyer in arbitration alleging that dealer violated the Illinois Consumer Fraud Act in connection with the sale of a Mercedes-Benz vehicle with significant accident damage. Parties settled the dispute with buyer returning the vehicle and receiving the full purchase price back along with his attorney's fees and costs.

Corbly v. Bill Jacobs Joliet, LLC, American Arbitration Association, Arbitrator Katherine Kaennicke. 2014-2015. Represented buyers in arbitration against dealership alleging that dealer improperly certified vehicle as a GM Certified Used Vehicle despite the fact that the vehicle had been involved in a major accident and been branded a Total Loss vehicle and consequently did not meet the criteria for certification. Parties amicably resolved the dispute prior to the arbitration hearing. Opposing counsel: Ira M. Levin and Alex D. Marks (Burke, Warren, MacKay & Serritella, P.C.).

McCallister v. Rightway Automotive Credit, Inc., American Arbitration Association, Arbitrator Daniel P. Albers. 2015-2016. Represented buyer in arbitration alleging that dealership violated the Illinois Consumer Fraud Act in connection with the sale of a vehicle. Case settled on confidential terms. Opposing counsel: Ira M. Levin and Alex D. Marks (Burke, Warren, MacKay & Serritella, P.C.).

Werth v. Lux Cars Chicago, American Arbitration Association. 2013. Client purchased a Cadillac which, unbeknownst to her, had suffered hail damage and been declared a total loss vehicle. Case settled on confidential terms. Opposing Counsel: Edward Rothschild.

Casciani v. Peter's Highline Automotive II, Inc., Circuit Court of Cook County, Judge Diane J. Larsen. 2013-2014. Represented purchaser in action alleging violation of the Illinois Consumer Fraud Act in connection with purchase of a truck. Case settled on confidential terms.

Schultz v. International Car Center, Circuit Court of DuPage, Judge Michael A. Wolfe. 2014-2015. Successfully defended car dealership in lawsuit alleging violation of the Illinois Consumer Fraud Act, breach of warranty, and fraudulent misrepresentation in connection with the sale of a used vehicle. Obtained dismissal with prejudice of two of plaintiff's three claims and ultimately settled case before trial for a fraction of plaintiff's alleged damages. Opposing counsel: William S. Ryan.

Defamation, First Amendment, and Cyberbullying

Chicago Motor Car Corp. v. David Bates, United States District Court for the Northern District of Illinois, Judge John Z. Lee. 2012-2013. Successfully represented Defendant against claims of defamation, trademark infringement, false light, tortious interference with contract, false advertising, and violation of the Anti-Cybersquatting Consumer Protection Act. Defendant was sued as a result of several internet postings and YouTube videos criticizing the Plaintiffs in connection with a vehicle purchase. Negotiated settlement wherein Plaintiffs dismissed all claims against Defendant with prejudice in exchange for agreement to withdraw Defendant's motion for Rule 11 sanctions and arbitrate whether 20+ YouTube videos were defamatory. Arbitrator ruled in favor of client on all claims finding that client's videos were protected speech under the First Amendment. Opposing Counsel: Serena Pollack (Gonzalez Saggio & Harlan LLP).

Felker v. Leong, Circuit Court of DuPage County, Judge Ronald D. Sutter. 2014. Represented Defendant against claim of intentional infliction of emotional distress. Successfully obtained dismissal of claim and case ultimately dismissed with prejudice.

Mercado v. Levy, American Arbitration Association. Arbitrator James S. Montana Jr. Represented Defendants, a school and their owners in a lawsuit alleging defamation arising from a partnership and employment suit. After obtaining substantial video-taped evidence from multiple witnesses supporting that our clients did not defame the Plaintiff and that all of their statements were supported by various eye witnesses, case settled.

John Doe v. Jane Doe, Pending. Jane Doe allegedly made numerous posts about John Doe on the internet containing false and misleading information. Representing John Doe in action alleging that Jane Doe's statements in the internet posts constituted defamation per se, cyberbullying, and invasion of privacy. Seeking money damages for harm to reputation and permanent injunction to remove Jane Doe's demonstrably false statements from the internet.