



Mark Musico

Partner

New York

(212) 336-8330

mmusico@susmangodfrey.com

Overview

Mark Musico is a trial and appellate lawyer in Susman Godfrey's New York Office. His clients include the country's leading lights in finance, technology, and industry, including: international sports betting and gaming giant, Flutter Entertainment; Fortune 500 conglomerate, General Electric; pioneering satellite communications company, Loral Space & Communications; and prominent hedge fund, Saba Capital.

Musico's trial wins have generated billions in value for his clients. Most recently, Musico won a favorable award for Flutter Entertainment in a high-profile, multi-billion dollar dispute with FOX Corporation, convincing an arbitrator in New York to nearly double the exercise price FOX sought for its option to acquire a portion of Flutter's portfolio company, FanDuel. Musico has also secured several victories for hedge fund Saba Capital in disputes with entrenched and underperforming management of funds in which Saba invested, including winning an injunction that allowed Saba to win the vote for board control of a \$701 million closed-end fund, as reported by the *Wall Street Journal*.

After graduating first in his class from Columbia Law, Musico started his legal career clerking at every level of the federal judiciary—for Justice Ruth Bader Ginsburg on the United States Supreme Court, Judge Michael Boudin on the U.S. Court of Appeals for the First Circuit, and Judge Douglas P. Woodlock on the U.S. District Court for the District of Massachusetts. These experiences equipped Musico with a unique understanding of the workings of the bench.

Clients, both plaintiffs and defendants, look to Musico for winning insights in high-stakes disputes involving intellectual property, defamation and the First Amendment, the False Claims Act, the Investment Company Act, antitrust, securities, insurance, breach of contract, breach of fiduciary duty, and fraud.

Notable Representations

Representative Cases

- ***Fox Sports Group v. Flutter Entertainment (Southern District of New York)*** In 2022, alongside firm managing partner Vineet Bhatia and a lean team of SG attorneys, Musico won a favorable award for Flutter Entertainment when an arbitrator in New York nearly doubled the exercise price its opponent, a subsidiary of FOX Corporation, sought for its option to acquire 18.6% of Flutter's portfolio company, FanDuel Group. This high-stakes, high-profile arbitration resulted from FOX's assertion that it should be entitled to the same price Flutter paid for its share of FanDuel two years before the arbitration took place—\$2.1 billion, with an implied company valuation of \$11.2 billion. The arbitrator, however, found that FOX's payment must be based on a substantially higher FanDuel valuation of \$20 billion it was hoping for, plus an additional 5% interest per year. At the time of the decision, this equated to a valuation for FanDuel of \$22 billion and an option exercise price of \$4.1 billion for FOX—nearly twice the amount that FOX argued it should be required to pay. The arbitrator also rejected FOX's claim that Flutter had not provided commercially reasonable resources to the Fox Bet business. Musico handled several witnesses at trial, including cross-examining FOX's in-house counsel who negotiated the contract in dispute regarding the parties' intent with respect to key terms in dispute. Musico also spearheaded Flutter's pre- and post-trial briefing.
- ***Saba Capital CEF Opportunities 1 Ltd. v. Voya Prime Rate Trust (Arizona Superior Court)*** In 2020, Musico secured a preliminary injunction that allowed his client, Saba Capital, to win the vote for board control of a \$701 million closed-end fund, as reported by the Wall Street Journal. The injunction prevented the fund from enforcing a bylaw that substantially raised the voting threshold required to elect board trustees. At a full-day evidentiary hearing, held "virtually" due to the Covid-19 pandemic, Musico presented the proxy solicitation expert whose testimony the Court called "persuasive, if not compelling" evidence in support of Saba's case. *Saba Capital CEF Opportunities 1 Ltd v. Voya Prime Rate Trust*, No. CV 2020-005293, 2020 WL 5087054 (Ariz. Super. June 26, 2020). Musico also beat back several rounds of emergency appeals seeking to stay the injunction.
- ***Wellstat Pharmaceuticals v. BTG (Delaware Chancery Court)*** In 2017, Musico won a \$70 million verdict for his client, Wellstat Pharmaceuticals (which received \$58 million net of fees), in a bet-the-company lawsuit against the distributor of its leading product. He tried the case in Delaware Chancery Court alongside firm founder, Steve Susman. Musico played an instrumental role in maximizing the client's recovery by presenting Wellstat's damages expert at trial, convincing the court to exclude key testimony from defendant's damages expert, cross-examining defendant's expert who tried to understate the market for Wellstat's life-saving drug,

SUSMAN GODFREY

and cross-examining a defense witness who tried to shift the blame to Wellstat. Musico then wrote the brief that convinced the Delaware Supreme Court to summarily affirm the judgment on appeal.

- ***Public Sector Pension Investment Board v. Saba Capital (New York Supreme Court)*** Musico, together with Jacob Buchdahl and Arun Subramanian, represented hedge fund Saba Capital, and its founder, Boaz Weinstein, in an asset valuation dispute with its investor, PSP. Musico led the strategic effort to chip away at plaintiff's claims against Saba, and successfully briefed motions leading the court to dismiss three of the four claims at issue. The case settled while Saba's summary judgment motion to knock out plaintiff's one remaining claim was pending. Read Forbes' reporting on the settlement of this high-stakes case: "[A \\$116B Pension Fund Is Walking Back Incendiary Claims Against Boaz Weinstein's Saba Capital.](#)"
- ***ViaSat v. SpaceSystems/Loral (Southern District of California)*** In 2014, Musico went to trial to defend Loral Space & Communications and its subsidiary, Space Systems/Loral, against allegations of patent infringement and breach of contract. Working with a team of SG lawyers from around the country, Musico's active role at trial included preparing and arguing the jury instructions and presenting a defense witness. Musico also helped write the post-trial briefs that resulted in the court ordering a new trial on damages. The Court called the original damages award against the defendants a "miscarriage of justice."

Honors & Distinctions

- *Lawdragon* 500 Leading Litigators ([2023](#))
- *Lawdragon* 500X – The Next Generation of Leading Lawyers ([2023](#))
- Fellow, American Bar Foundation
- Up and Coming Lawyer, Chambers USA ([2023](#))
- Rising Star of the Plaintiffs Bar, *National Law Journal's* Elite Trial Lawyers (2021, ALM)
- How I Made Partner, Law.com (2020, ALM)
- John Ordronaux Prize, Columbia Law School 2011 (First in Class)
- James Kent Scholar, Columbia Law School 2009-2011
- Articles Editor, *Columbia Law Review*

Clerkships

Honorable Ruth Bader Ginsburg, Supreme Court of the United States

Honorable Michael Boudin, United States Court of Appeals for the First Circuit

Honorable Douglas P. Woodlock, United States District Court for the District of Massachusetts

Education

Columbia Law School (J.D., , 2011)

Harvard University (B.A., magna cum laude, 2007)

Admissions

Bar Admissions

- New York
-

Court Admissions

- United States Supreme Court
- U.S. Court of Appeals for the Second Circuit
- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of New York

Wins

Susman Godfrey Secures Landmark Win for Flutter Entertainment in Multi-Billion Dollar Arbitration against FOX Corporation

Delaware Supreme Court Upholds \$70 Million Award for Susman Godfrey Client Wellstat Therapeutics

Leadership & Professional Memberships

- LeGaL (LGBT Bar Association of Greater New York)