

## Edward J. Underhill

Principal, Chicago

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### Chicago

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Chair of the firm's Litigation practice, Ed Underhill advises businesses and individuals regarding litigation, dispute resolution and business-related matters. A formidable advocate, Ed represents clients in state and federal courts throughout the U.S. He has resolved high-stakes, high-value claims involving intellectual property, contracts, UCC matters, dealer terminations, unfair competition, business torts and limited non-commercial claims. He frequently represents clients at TRO and preliminary injunction hearings. Ed is dedicated to legal counsel that is practical, and has proven time and again that he is an unrelenting problem-solver.

In an effort to resolve disputes outside the traditional court forum, Ed has developed a proven alternative dispute resolution (ADR) practice in which he counsels and represents clients in mediations and arbitrations, including arbitrations administered by the American Arbitration Association (AAA). In 2016, Ed was appointed as an arbitrator for the Division of the Circuit Court of Cook County and he has been a member of the Federal Trial Bar for the majority of his career.

Ed has practiced at Masuda Funai for nearly three decades. His clients include American and international businesses, as well as the U.S.-based partners and/or subsidiaries of foreign-owned corporations. Ed is at his best when facing serious contention and difficult obstacles head-on, and he determines the right path for cultivating a business solution that is both workable and favors each client he serves. He is particularly well-known for his ability to attain resolution to acrimony that seems insurmountable or where others have failed.

Ed is also a published playwright and short story writer and winner of the Chicago Lawyer Fiction Contest, as well as a finalist in various national fiction writing competitions.



### Education

Northern Illinois University College of Law, J.D., 1984

Northern Illinois University, B.A., 1981

### Admissions

Illinois

U.S. Supreme Court

U.S. Court of Appeals: 7th Circuit

### Practice Areas

Litigation

Commercial, Competition & Trade

## Experience

- Defended various claims asserted by a Wisconsin distributor against the master U.S. distributor of a major machine-tool company in a lengthy arbitration conducted through the AAA. The claimant, a Wisconsin business, was terminated by the master distributor for cause after a several-year relationship. The Wisconsin dealer asserted claims under the onerous Wisconsin Fair Dealership Law (the "WFDL"), as well as claims for breach of a written distributorship agreement. The arbitration panel entered an award in favor of Mr. Underhill's client and against the claimant dealer on all counts at the end of the two-week proceeding.
- Provided "expert witness" opinion testimony in a case filed in the Circuit Court of Cook County on the meaning of a contract entered into by a client and two separate law firms. Mr. Underhill offered the opinion that the so-called referring attorney had an obligation under the contract he sued upon to provide legal services to the client in order to receive a fee from the primary attorney following an extraordinary settlement achieved by the primary attorney in a medical malpractice case. Based in large part on Mr. Underhill's deposition testimony, the plaintiff/referring attorney dropped his claims and voluntarily dismissed his lawsuit.
- Represented an equipment leasing and financing company in obtaining \$20 million from a distressed debtor-lessee. The settlement followed nearly a year of litigation in various courts, including the U.S. District Court for the Northern District of Illinois.
- Represented an equipment leasing company in its appeal of a series of trial court orders dismissing the company's lawsuits against lessees. The state trial court had dismissed the company's breach-of-contract claims asserted against several commercial lessees based on a finding that the company's claim was barred by "res judicata." Mr. Underhill was engaged to represent the company in its appeal of the dismissal orders entered in four separate cases. Mr. Underhill was able to persuade the appellate court in each case that the trial court erred in its application of "res judicata." The appellate court reversed the trial courts' dismissals, and reinstated the company's complaints – a decision that had significant positive impact on the company's lease portfolio.
- Represented a claimant before the U.S. Department of Labor in one of the first cases filed under the "whistleblower" provisions of the Sarbanes-Oxley Act. He participated in the two-week trial of the case before an administrative law judge. The case was eventually settled pursuant to a confidential settlement agreement. Prior to trial, the Department of Labor accepted claimant's

argument that a wholly-owned subsidiary of a publicly-traded company is covered by the Sarbanes-Oxley "whistleblower" protections, and the Court therefore denied Respondents' motion to dismiss the "whistleblower" claim.

- Advised the American subsidiary of an international pharmaceutical company with respect to developing a policy for addressing intimidating and illegal actions taken by animal rights activists who had wrongly targeted company. He helped coordinate on behalf of the company an investigation by federal and state authorities while developing a plan to ensure the safety and well-being of all affected employees.
- Defended an international machine tool manufacturer against claims asserted by former employees alleging, among other things, age discrimination arising out of a reduction in workforce. Lawsuit filed in federal court against client in Detroit, Michigan included a claim for wrongful death based on former employee's suicide several months after termination by company. Mr. Underhill obtained summary judgment for the company on the wrongful death claim prior to trial; he subsequently defended the client through a two-week trial, and although the verdict was for plaintiffs on the remaining counts, the dollar amounts of the verdicts were significantly less than anticipated by the client. All claims were subsequently settled prior to appeal. The Firm and Mr. Underhill continue to represent this client in all matters.
- Appointed as special counsel to an international trading company that filed for Chapter 11 bankruptcy protection in New York. Prior to bankruptcy, he advised the client on how to preserve assets from attachment by creditors; assisted client in selecting bankruptcy counsel, and thereafter assisted the client in defending and asserting multi-million dollar claims in the bankruptcy proceedings. Mr. Underhill also worked with the creditors' committee and the secured creditors to allow client to remain in business for more than a year after filing, even though the Japanese parent and all related companies were in dissolution.
- Represented the family of a Japanese citizen killed in a commercial aircraft crash. Mr. Underhill first assisted the widow in locating aviation disaster counsel and then agreed to assist in the preparation of the case and client for trial over several-year period. Defendants conceded liability so all lawsuits were consolidated into single lawsuit conducted by a federal court sitting in Cleveland, Ohio in 1995; individual juries were empanelled to determine specific damage awards. Mr. Underhill served as "second chair" at trial, and the jury awarded one of the largest damage verdicts to the widow in the consolidated case. The Firm and Mr. Underhill continue to represent the family in its U.S. affairs.

- Represented the families of two Japanese citizens killed in crash of privately-owned and operated helicopter. Assisted families in locating aviation disaster counsel and in the preparation of the case and clients for trial. The case settled in 2001 on the eve of trial for a multi-million dollar figure.
  - Represented executors of probate estates in various will contests and will construction cases and other probate litigation, big and small. See, for example, In re Hatsuye T., 293 Ill.App.3d 1046 (Ill.App. 1997).
  - *Mid-Continent Engineering, Inc., v. Toyoda Machinery USA Corp., et al.*, 676 F.Supp.2d 823 (2009)
  - *IFC Credit Corp. v. Magnetic Technologies, Ltd.*, 2006 WL 3299866 (Ill. App. 1st Dist. 2006)
  - *Elmendorf Grafica, Inc. v. D.S. America (East), Inc.*, 48 F.3d 46 (1st Cir. 1995)
  - *Classic Hotels, Ltd. v. Lewis*, 259 Ill.App.3d 55, 620 N.E.2d 1167, 197 Ill. Dec. 43 (Ill. App. 1st Dist., 1994)
  - *Munters Corp. v. Matsui America, Inc.*, 730 F.Supp. 790, 14 U.S.P.Q.2d 1993 (N.D. Ill., 1989)
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### Memberships

- American Bar Association
  - DuPage Bar Association
  - Illinois State Bar Association
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### Distinctions

- 2016 Candidate for Judge in the Circuit Court of Cook County