

Litigation

The Litigation Practice Group is in the business of resolving disputes. We represent clients in all types of business and personal difficulties. Although we are frequently relied upon to resolve highly complex commercial and business controversies, we represent the individual client with equal zeal.

We provide the basis for good decision making up front. When problems and disputes occur, we work closely with our clients to identify their goals and map a strategy to achieve their defined objectives. Sometimes that strategy will involve litigating a vital business or personal interest. Other times, the right strategy will be to negotiate, to mediate or to arbitrate. After carefully researching and identifying key issues, we will provide the candid dispute assessments and risk/benefit analyses that are critical to pursuing the right strategy for the client.

We are no strangers to courtrooms. When litigation is called for, we will use our skills to aggressively defend and prosecute cases before state and federal courts, appellate tribunals and governmental agencies.

The key to success in all settings is our careful preparation and effective presentation of our client's position. We employ advanced Internet and research methodologies, together with cutting-edge information management tools, to facilitate pre-trial investigation and case management. Whether for use at mediation or at trial, information and research is developed and presented using the latest trial knowledge and technology in order to deliver a powerful and persuasive presentation of our case.

Alternative Dispute Resolution

Many disputes should be resolved outside of a courtroom. Knowledgeable business lawyers recognize that most conflicts, even those that mature into a lawsuit, will settle. Brouse McDowell's lawyers have wide experience in helping clients look outside the limits of the formal litigation process to identify and create solutions to conflicts.

We understand that most clients would rather focus on their business than fight in court. Attorneys at Brouse McDowell employ various forms of Alternative Dispute Resolution (ADR) to work through problems without recourse to litigation, or after litigation has begun. Employed early in a conflict, ADR may lead to good results more quickly and at less expense than litigation.

ADR processes include structured negotiations, early neutral evaluation, mediation (both private and court-facilitated), mock trials and mini-trials, arbitration (binding and non-binding, private and formal) and summary jury trials. As a matter of course, Brouse McDowell's lawyers work with these formats in order to assist clients to achieve their goals.

Appellate Proceedings

Litigation usually does not end when the jury returns a verdict or the judge issues an opinion. Rather, that verdict or opinion merely marks the beginning of the next phase of the litigation: the all-important appellate phase.

The knowledge and skills necessary for success before an appellate court differ from those necessary for success before a trial court. Brouse McDowell recognizes this difference and is prepared to assist clients in holding on to hard-fought victories or overcoming harsh defeats.

Our lawyers have handled numerous significant appellate matters in state and federal forums, both in Ohio and other jurisdictions. Brouse McDowell has been called upon to file amicus curiae briefs in significant cases, particularly in insurance coverage matters. Whether presenting the views of amici or of parties, we recognize the importance of capturing the court's attention and presenting concise, well-reasoned arguments. We stand ready to assist our clients when their litigation moves from the trial phase to the appellate phase.

Banking and Commercial

Like marriage, the debtor-creditor relationship typically begins with hopes for a long and mutually rewarding relationship. All too often, however, repayment becomes more difficult than anticipated and the relationship sours.

Brouse McDowell has extensive experience in representing businesses in their dealings with banks. Our litigation team regularly represents commercial lending institutions, creditors, debtors and trustees. This provides us with a unique perspective in recognizing the strengths and weaknesses of the opponent's position. Often this enables disputes to be resolved short of all-out litigation. When necessary, however, Brouse McDowell attorneys vigorously represent the interests of these clients in federal and state courts.

Many business disputes are simply variations on the debtor-creditor theme. A seller of goods wants to be paid for their product while the buyer refuses to pay, claiming the goods are defective. Brouse McDowell has experience in analyzing complex fact matters, asserting the right theories for relief or defenses, where necessary retaining experts, researching the legal meaning of key contract language, seeking judgment without the necessity of a trial, and also trying the case to a jury.

The vast, varied, and successful experience of Brouse McDowell has earned it a special place in this field.

Construction

Brouse McDowell's Construction Law attorneys provide a full complement of legal resources to help at all stages of the construction project, from project conceptualization, design, contract drafting, implementation, monitoring and scheduling, to claims resolution. Our clients include developers, public and private owners, lenders, builders, general and trade contractors, design professionals, engineers, construction managers, owner's representatives, subcontractors and material suppliers and individuals.

Our experience ranges from the most sophisticated public and private commercial and industrial projects to the residential construction that exemplifies the culmination of personal achievements. We assist our clients in identifying the appropriate project delivery system so that the project is completed on time and within the project budget.

Our construction lawyers identify and eliminate concerns and issues that hinder project commencement, and develop the front-end documents to maintain budgetary integrity.

Brouse McDowell works with its public sector clients to develop bid documents and utilizes an existing network of project consultants, construction managers and other professionals to ensure project success. We are familiar with form construction contracts such as AIA, AGC, ConsensusDocs, EJCDC and forms required by various public entities, and also assist with the drafting and review of customized contracts.

During the project, we are prepared to respond as questions arise regarding project implementation, changes in the scope of work, or requests for information. We aim to assist the project participants to avoid delays, manage claims, and facilitate dispute resolution. Our lawyers understand Ohio's mechanics' lien law and offer practical advice in resolving, or perfecting, preserving and enforcing lien claims. After a dispute arises, we work to make negotiation meaningful and develop strategies for success through mediation, arbitration or litigation as necessary.

We can satisfy your construction needs, including:

- Contract Drafting and Review
- Project Management
- Program Management
- Construction Management
- Bid Spec Development
- Value Engineering
- Public Bid Disputes
- Change Order Management
- ADR—Negotiations, Mediation and Arbitration
- Construction Litigation
- Contract Disputes
- Mechanics' Lien Filing, Foreclosure and Defense
- Labor Disputes, Strikes and Project Interruptions
- OSHA Compliance and Workplace Safety
- Environmental Compliance

- Design Professional Liability Claims
- Schedule Analysis and Delay Claims
- Surety Bond and Insurance Coverage Claims

Contract Disputes, Business Torts

We routinely litigate matters in state and federal courts involving major contractual disputes, whether between national or international corporations or local individuals. We also have extensive trial and appellate experience with matters involving false advertising, fraud, deceptive practices and other business torts. Because the litigation we undertake often involves international corporations, we are proficient in undertaking discovery in foreign countries in accordance with applicable international treaties and conventions.

Employment Law

Our employment law litigation practice involves defending the rights of our business clients in multiple forums, jurisdictions and states. Our employment lawyers litigate cases before administrative agencies such as the Equal Employment Opportunity Commission, the Ohio Civil Rights Commission, the Occupational Health and Safety Commission and the Wage and Hour Division of the Department of Labor.

Brouse McDowell's experience with state and federal court litigation is also very broad. Our employment attorneys defend employers in civil rights litigation, contract actions, employment tort cases and other statutory causes of action such as claims asserted under the Family and Medical Leave Act, Fair Labor Standards Act, Whistleblower statutes and disability or handicap statutes.

Environmental

Brouse McDowell has developed a reputation for results-oriented, cost-effective litigation of complex issues. Senior litigation partners, talented associate attorneys and experienced paralegals are creative and flexible in working with clients and experts as a team to handle the myriad of legal and technical issues involved in environmental cleanup cost recovery litigation.

A significant portion of Brouse McDowell's environmental litigation practice centers on cleanup cost recovery issues. Often, we defend our clients from government and private-party CERCLA actions and actions brought pursuant to similar state statutes, or we prosecute similar claims for indemnification or contribution from responsible parties. Increasingly, our work involves claims by adjacent landowners and community groups with respect to properties ranging in size from large industrial or disposal facilities to neighborhood gas stations.

In addition, Brouse McDowell has vast experience and capabilities in the recovery of insurance proceeds for environmental liabilities, including for asbestos, mold and lead paint-related liabilities.

Brouse McDowell's attorneys are committed to utilizing the most advanced technological resources and the power of the Internet to reduce the expense of litigation and to communicate better, faster and more cost-effectively with our clients and with others, including the public and interested stakeholders.

Insurance Coverage for Insureds

Insurance recovery litigation is one of the most rapidly developing areas of the law. Brouse McDowell has been at the forefront of this development for more than 20 years. We have acted as counsel in insurance recovery actions on behalf of some of the premier companies in the country. We also have participated in important amicus efforts in both federal and state courts to influence the development of the law for the benefit of policyholders. Two of our partners were instrumental in organizing the Ohio Policyholders' Counsel Group, an informal association of counsel who represent policyholders in environmental coverage disputes.

Brouse McDowell's lawyers are versatile, handling insurance recovery issues on behalf of the firm's business clients' insurance coverage cases, ranging from substantial commercial claims involving bet-the-company sums to claims involving modest sums, but where recurring claims or particular legal or factual issues nonetheless warrant concern. Brouse McDowell has specific experience with litigation involving insurance recovery for:

- Environmental claims, including claims involving Superfund liabilities
- Lead paint claims
- Intellectual property claims
- Trademark and trade dress infringement claims

- Directors and officers liability claims
- Product liability claims
- Construction defect claims
- Property losses such as from fire and water damage
- Employment practices liability claims
- Workers' compensation claims
- Professional services claims
- Securities claims
- Builder's risk claims
- Mold claims
- Asbestos claims
- Silica claims
- Aircraft claims
- Hurricane claims

In many instances, we have been able to assist our clients in recovering insurance proceeds without resorting to litigation.

Brouse McDowell can help clients interpret and evaluate insurance policy provisions and formulate sound coverage positions. We can access a wide variety of sources for information on insurance industry practices and provide thorough, reliable analysis of coverage issues. We are skilled at developing successful negotiating positions, negotiating coverage disputes and, if necessary, litigating coverage disputes in both the state and federal courts.

Brouse McDowell has assisted clients in obtaining recoveries ranging from tens of thousands to hundreds of millions of dollars on a wide variety of insurance claims and is one of the most experienced policyholder coverage firms in the country.

Product Liability

Under some circumstances, manufacturers or suppliers of goods may be liable if someone using their product is injured. For example, liability may result if a product is not designed or put together correctly, or if the consumer is not adequately warned of potential risks or dangers.

However, liability for injury caused by a defective or dangerous product is not automatic. Certain defenses are available, and manufacturers and suppliers may, in some circumstances, act to insulate themselves from potential liability.

Members of the Litigation Group are well-versed in the nuances of product liability law. If necessary, we are prepared to defend manufacturers and suppliers in these types of actions, including identifying and taking advantage of all available defenses.

A client may be entitled to indemnity, or reimbursement, from a third party even if the client is determined to be liable. We are skilled at identifying these situations as well, and will aggressively pursue any indemnification rights our clients may have.

Finally, why wait until there is a problem? Because we are thoroughly familiar with product liability law as a result of defending these claims, the members of the Litigation Group are qualified and poised to advise clients of the steps they can take in advance to protect themselves and reduce the risk or extent of potential liability.

Real Estate

Brouse McDowell represents owners, developers, investors, lenders, borrowers, and businesses in industrial, commercial, residential, and public improvement projects and transactions, providing legal counsel, practical guidance, and extensive experience in navigating all stages of a real estate transaction. When conflicts or disputes arise, our real estate lawyers employ litigation and non-litigation alternative dispute resolution remedies and procedures to formulate solutions. Brouse McDowell is experienced in all matters which touch or concern real estate.

Our attorneys represent clients in matters of zoning and rezoning, conditional use permits, variances, and land use development, and appear regularly before the administrative bodies of local political subdivisions. Brouse McDowell currently represents four national title insurance companies and their insureds in various matters involving title claim defense and prosecution, including claims brought against the companies and their insureds. Our attorneys defend claims which relate to chain-of-title or purport to arise from closing protection letters. As multi-state claims defense counsel, the firm investigates agent defalcation, initiates recovery proceedings, responds to claims arising from the current sub-prime mortgage lending crises, and defends claims asserted under closing

protection letters.

Our eminent domain experience offers consultation and advice before litigation ensues, tapping consulting experts to perform property analysis for settlement negotiations, mediation, trial and appellate proceedings as appropriate. Our attorneys, to protect their clients' interests, maintain a ready network of other professionals such as appraisers, land planners, and engineers, and collectively target those resources to defend public takings or maximize the award from the condemning authority. Brouse McDowell proactively counsels and provides both practical and technical advice concerning commercial lease administration and enforcement.

We have a depth and breadth of litigation experience, including the following matters:

- Boundary Disputes
- Breach of Contract
- Construction Litigation
- Development and Land Use
- Easements
- Eminent Domain
- Forecible Entry and Detainer (Evictions)
- Foreclosures
- Land use, planning, zoning, and development
- Lease Disputes
- Mechanics' Liens
- Purchase Disputes
- Real Estate Fraud Claims
- Slander of Title
- Title Insurance Claims and Defense
- Variance Issues
- All matters which touch or concern real estate

Trade Secret and Non-Competition - Litigation

As the portability of proprietary information increases, so does the risk that former employees will inappropriately use confidential company information. As a result, protecting such proprietary information has become a critical part of doing business.

We assist our clients in developing a trade secret protection program that identifies their unique and valuable business, manufacturing and marketing data, and then defines the best mechanism to safeguard that information. Such safeguarding measures include developing policies and procedures to protect against the use of trade secrets by vendors and customers, as well as disclosure via the Internet. When litigation is necessary to protect a company's trade secrets, we quickly initiate action to fix the problem, including seeking the necessary injunctive relief to limit dissemination of the information and, when appropriate, preventing competitive employment of the former employee. In some instances, we are also called upon to protect departing employees from employers who improperly seek to restrict the individual's right to work because of contentions that the former employee will use company trade secrets at his new job.

If any of your clients need litigation assistance in our area, then they should contact: Christopher J. Carney in Cleveland or Christopher F. Swing in Akron.

Christopher J. Carney
216.830.6830, Ext. 580
ccarney@brouse.com



Christopher F. Swing
330.535.5711, Ext. 351
cswing@brouse.com



*Serving the legal needs of
enterprising people and
innovative companies for
over 90 years.*

AKRON
388 S. Main St., Suite 500
Akron, Ohio 44311-4407
PHONE: 330.535.5711
FAX: 330.253.8601

CLEVELAND
600 Superior Ave. East
Suite 1600
Cleveland, Ohio 44114-1151
PHONE: 216.830.6830
FAX: 216.830.6807

AVON
36901 American Way, Suite 2-B
Avon, OH 44011-4057
PHONE: 440.934.8080
FAX: 440.934.8115