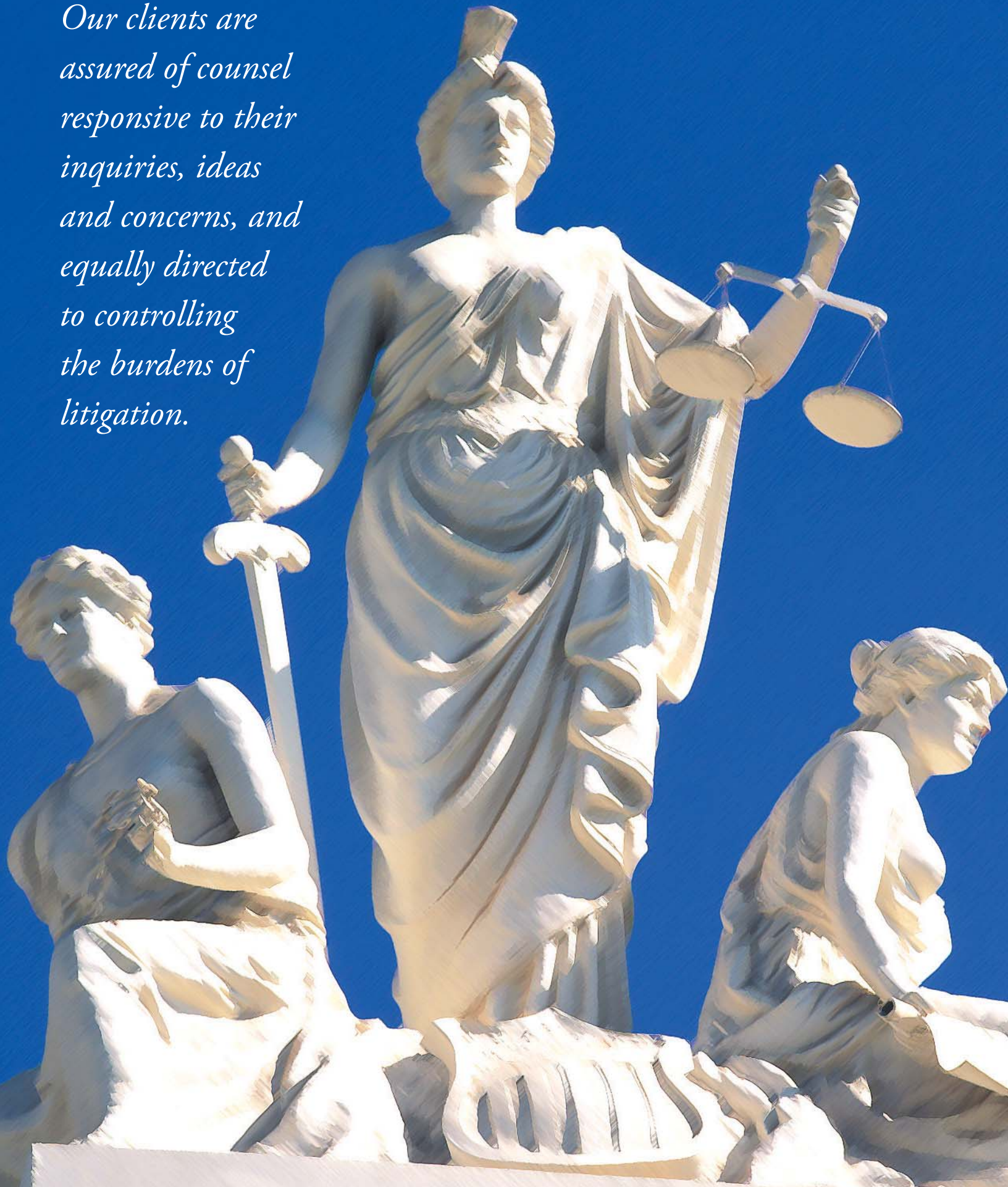


# Commercial Litigation Practice Group



Breadth. Depth. **Results.**

*Our clients are assured of counsel responsive to their inquiries, ideas and concerns, and equally directed to controlling the burdens of litigation.*



# The Seyfarth Shaw Advantage

Our clients are not in the “business” of litigation. We are. Our knowledge of that business and our uncompromised dedication to advancing and protecting your company’s vital interests are your advantage in every litigation in which we represent you.

Seyfarth Shaw’s Commercial Litigation Practice Group combines the dedicated focus of a litigation boutique and the resources of a national firm in a singular commitment to the client’s objectives and the successful resolution of claims. As a national firm, we can draw immediately upon a depth of resources and the remarkable expertise of attorneys in a broad range of practices, from tax to healthcare, intellectual property to real estate, transportation to employee benefits. As commercial litigation and trial attorneys, we bring to every matter our own expertise in civil procedures and advocacy marked by thoroughness, energy and ingenuity.

## Litigation and Your Vital Interests

Litigation can be a critical tool in protecting a company’s vital interests. Litigation can also attack those vital interests, putting a company’s future at risk. We represent businesses in both positions. Our goal in either circumstance is to learn our client’s needs and expectations; to determine, in cooperation with our client, how its goals are best achieved; and to implement effectively an agreed-upon litigation strategy.

From outset to ending, we invest ourselves in understanding the business context in which our clients operate, in crafting solutions to the problems involved in the litigation they pursue or confront, and in obtaining favorable results. In every forum, our clients receive the personal and consistent attention of a dedicated litigation team of skilled practitioners fully conversant in both the facts and the law at issue and skilled in the efficient use of the most current litigation technologies. Beyond these advantages, in retaining us our clients are assured of counsel responsive to their inquiries, ideas and concerns, and equally committed to controlling the burdens of litigation.

## The Experience and Talent to Meet Your Goals

Seyfarth Shaw’s Commercial Litigation Practice Group is composed of experienced and talented trial and appellate attorneys whose insights valuably serve our clients in both boardrooms and courtrooms. Some have government agency backgrounds; others have served as general counsel to public and private companies; still others have dedicated their entire careers to private business litigation practices. All fully recognize the commitment of financial resources and the distraction from daily business operations attendant upon every commercial litigation.

We creatively pursue business solutions where possible and appropriate, and we bring extensive experience to achieving resolutions in the largely private forums of mediation and arbitration—in all their variations. We do not hesitate to take cases through trial, before judge and jury, in the courtroom.

As experienced trial lawyers—from associates to partners—we think strategically and creatively with the perspective that every case must, from its outset, be positioned for trial if it is to be either successfully settled or successfully tried. Attorneys in the group have tried hundreds of cases dealing with a wide variety of claims in state, federal and appellate courts at every level, across the nation, from large class actions, to multi-district litigation, to regulatory and administrative proceedings.

Our experience affords our clients the advantages of unique insight, consistently honed skills in effective argument and examination, and the mature perception necessary to identify the most effective trial themes and presentations of their case and the evidence. We are meticulous in our preparations and skilled at conveying the most complex issues to juries and judges in a clear and meaningful way.

## Areas of Practice

Attorneys in the group serve clients of all sizes and across all industries. Our substantial experience encompasses a broad array of subject areas, including:

### *Antitrust and Trade Regulation*

Seyfarth Shaw's Commercial Litigation Practice Group counts among its members nationally recognized counsel with wide experience in antitrust law, from criminal investigations to counseling on the competitive aspects of corporate acquisitions. These attorneys regularly advise companies on the antitrust implications of their distribution and pricing policies, and typically handle high stakes litigation involving predatory pricing, price fixing, market allocation, and price discrimination. We provide innovative counseling and training aimed at meeting compliance requirements under both federal and state antitrust and unfair competition laws.

### *Business Torts*

Business torts are typically complex matters arising out of commercial relationships that involve detailed, multiparty

contracts and a variety of legal issues. The injuries central to these claims can extend beyond tangible losses to include serious harm to a company's intangible assets of good will and business reputation, and to prospective and existing economic interests and business relationships.

Attorneys practicing in this area are experienced not only in prosecuting claims aimed at preserving commercial interests and contracts, ensuring fair competition and vindicating business interests, but also in defending against claims that challenge these important interests and expectations. Our attorneys regularly—and successfully—assist our clients in confronting issues involving defamation; unfair competition; breach of fiduciary duties; fraud and deceptive business practices; tortious interference with contract and prospective economic advantage; and trade libel.

### *Contract Disputes*

Contracts—whether written, oral, or implied—define a company's legal relationships, obligations, and entitlements, with those businesses and persons with which it deals, including its customers, suppliers, employees, lenders, investors, distributors, vendors, and even competitors.

## Antitrust Protection

Corporate executives in a company engaged in worldwide shipping faced a market and bid-rigging investigation by the Department of Justice (and subsequent governmental and private treble damage litigation). The individuals faced significant criminal exposure.

- ▶ Our team quickly determined that the best strategy was to obtain immunity for the witnesses and at the same time work with the employer to protect its interest to the extent possible.

*Result: We were successful in obtaining immunity even though the Antitrust Division had previously given amnesty to the largest competitor in the industry and its top executives. The individuals were not adversely affected and have subsequently achieved advancement to top-level positions within their company.*

## Fighting for Our Clients

A large truck manufacturer decided not to approve a request for the location of a new dealership. The dealer brought claims against the manufacturer under a state law to overturn the manufacturer's contractual right to disapprove the location of new dealerships. As is typical in the industry, state laws and procedure often favor dealers and allow them to pursue interests that are outside of their contractual rights.

- ▶ Facing a dealer-dominated administrative board and a state statute favoring dealers' rights, we successfully represented the manufacturer in this trial, defending their decision to decline approval for a new dealer location it felt was not in their best interest.

*Result: After a one-week trial, we obtained a judgment in favor of our client, allowing it to assert its contractual rights to decide the best location for dealerships consistent with its business goals.*

Whether seeking to enforce a contract or confronting claims of breach or interpretation, a company can quickly find itself embroiled in disputes that compromise, at various points in its chain of relationships, its ability to do business.

Our attorneys bring a well-trained eye to the review, evaluation and resolution of these problems. They have deep experience in the analysis of contract-based disputes and the laws governing the interpretation and scope of contractual agreements in a diverse range of industries and contexts, including manufacturing, construction, insurance, real estate, UCC, government procurement, partnership, joint ventures, personal services, franchising, distribution, the Internet, and more. These disputes can sometimes be resolved by effective business solutions, or require litigated resolutions. Our team brings the necessary experience and skills to either course.

### *Ownership and Management Disputes*

Privately held corporations and other small to mid-size businesses, together with their owners and managers, can face unique and difficult legal issues arising from the absence of stock liquidity and general marketability common

to such entities. Myriad questions present themselves with such entities—returns on equity; executive compensation for working and non-working owners; forced sale and exit issues; the treatment of minority, non-controlling owners. Out of these circumstances claims of waste, fraud and breach of fiduciary duties, among others, frequently emerge, bringing with them potentially broad remedies ranging from dissolution of the company, to the appointment of disinterested boards of directors, to the buyout of minority owners at values determined by a court. Companies operating simply on the basis of historic practices can be surprised by these claims and the vigilance of courts in enforcing the rights of minority owners and the fiduciary duties of controlling shareholders.

Our attorneys have extensive experience in these areas representing companies, management, controlling owners and minority owners of corporations, LLCs, partnerships, and joint ventures. We are thoroughly familiar with the legal and emotional complexities these situations present, and our broad experience has invaluablely assisted our clients both in counseling directed at preventing disputes and in litigating to successful judicial conclusion those disputes that must be confronted in the courts.

### **Novel Defense Strategy**

Five major waste-haulers in a large metropolitan area were sued for breach of contract on behalf of all their customers. The claim alleged the waste-haulers charged for garbage pick-ups that they did not make during a 10-day driver strike, and sought to recover the costs of garbage collection for several million customers.

- ▶ Our team challenged their breach of contract theories and developed a novel defense based upon the voluntary payment doctrine, which provides that payments voluntarily made cannot be recovered.

*Result: We succeeded in obtaining a dismissal of the complaint, which was subsequently upheld at the state Appellate and Supreme Court levels.*







