

Commercial Litigation Practice Group

Practice Overview





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.

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

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. Whether seeking to enforce

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.

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.

Franchising and Distribution

The legal and economic challenges faced by franchisors, manufacturers and distributors can be considerable. Beyond the frequently intense product and service competition they confront, there are complex and often overlapping state and federal laws that regulate the

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.

conduct of their businesses from the recruiting of franchisees and dealers to the termination of those relationships.

We have significant experience handling these challenges from both plaintiff and defendant perspectives. Our attorneys have proven to be indispensable partners in confronting claims arising from franchise and distribution business relationships—including breach of contract, business torts, common counts, unfair competition, and regulatory and statutory violations.

Insurance and Reinsurance

Representing both insurers and reinsurers, we handle litigation covering virtually every aspect of their business operations and insurance products. Our attorneys are adept at handling various types of problems and litigation respecting insurance, from single party to class action claims and lawsuits. Our experience extends beyond the protection of insurers against claims-related litigation to dealing with the accusations that arise out of their business operations.

Our broad experience in such litigation includes matters involving insurance coverage and disputes; reinsurance disputes; subrogation; liquidation-related matters; property insurance policies (from general liability to advertising and financial institution bonds, life, health and disability insurance); casualty insurance (including directors and officers policies); financial services and variable universal life policies; bad faith accusations; antitrust and unfair business practices; surety policies; and ERISA.

Real Estate Litigation

Whether on local issues or matters of nationwide scope, the real estate litigation attorneys in the group bring a wealth of experience in such critical and diverse areas as commercial lease disputes, land use matters, workout-related litigation, real estate partnership disputes, real estate brokerage, and condominium association and cooperative corporation disputes.

They have a keen understanding of the business issues involved in these disputes, and work closely with clients to develop a plan of action intended to either quickly resolve or avoid litigation, or position it aggressively for a successful litigation outcome.

eDiscovery

Electronic data is a mainstay of every business organization today. From e-mails to data storage, companies of all sizes utilize and rely on computer-related devices to conduct and record their business. The prevalence of electronic data has led to new emphases both on the discovery of electronic information in litigation and on efforts to take control of data, managing where it can be stored,

REAL ESTATE LITIGATION

A large group of limited partners had invested in various different single-entity real estate partnerships. The limited partners learned that the general partner had commingled funds and otherwise used partnership assets to support and fund other unrelated partnerships.

- ▶ With detailed preparation, we devised an appropriate strategy to support claims against the general partner of each of those partnerships for breach of his fiduciary duties and defalcation of partnership assets.

Result: We were able to obtain a multi-million dollar recovery from the general partner as well payment of our clients' attorneys' fees without having to formally commence an action.

establishing enforceable IT policies, and controlling the implementation of new technologies. While eDiscovery issues are not raised in the same measure in every case, control of data is the key to handling such issues successfully when they do arise. In an ever-increasing number of actions these become

the central issues of litigation and a chief source of its burdens and cost. Our attorneys practicing in this area both counsel on and litigate these complex matters efficiently and effectively. We have the experience and talent to craft defensible approaches to electronic discovery that comply with statutory obligations and appropriately address the costs and the realities of continuing to operate an organization during investigations and discovery arising in the litigation

process. In this crucial area, we assist companies in shaping data preservation, document retention and e-mail usage policies, in confronting privacy, information security, spoliation and data collection issues; in providing customized training on eDiscovery issues; in coordinating computer forensic and other technology related experts; and in managing outside vendor relationships and costs.

Alternative Dispute Resolution

In response to the growing congestion of the nation's court system, alternative forms of dispute resolution have proven to be extremely effective means of achieving favorable conclusions to many of our clients' disputes. Whether voluntary, contractual, or judicially required, alternative dispute resolution is often more economical, faster and less public than traditional courtroom litigation.

Seyfarth Shaw attorneys have been extensively involved in the development and practice of mediation, arbitration, and summary and mini-trials, encompassing most substantive areas of civil litigation. Authors of numerous texts on the subject, our attorneys not only represent clients in these forums, they act as mediators and arbitrators themselves.

Our firm is a member of the CPR Institute, a not-for-profit organization that fosters alternative dispute resolution. This ensures that our attorneys are knowledgeable about these forums and are able to offer them to clients as an appropriate means of dispute resolution. This philosophy dovetails with our own emphasis on providing dispute resolution that meets clients' objectives economically and effectively. ■

eDISCOVERY LITIGATION

Several co-defendants in an antitrust class action faced incredible eDiscovery obstacles when significant and potentially costly issues arose as to whether the parties would be required to cease the rotation of all of their backup tapes as part of their duty to preserve evidence.

- ▶ We quickly analyzed the true costs relating to backup tapes and found that the costs of ceasing the rotation of tapes was significant. We educated the Court on the myriad issues concerning backup tapes, prepared affidavits supporting the cost and prevailed against the argument that "defendants are destroying information that might be relevant."

Result: The court ultimately issued an order allowing the defendants to continue to overwrite tapes as they would in the ordinary course of business, resulting in a cost savings of nearly \$20 million dollars per year.

About Seyfarth Shaw

Seyfarth Shaw was founded in 1945 by three lawyers and has grown to more than 800 lawyers across ten offices. We handle issues for our clients in all key areas including commercial litigation, construction, corporate and finance, employee benefits, environmental, government contracts, intellectual property, labor and employment, litigation, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.



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