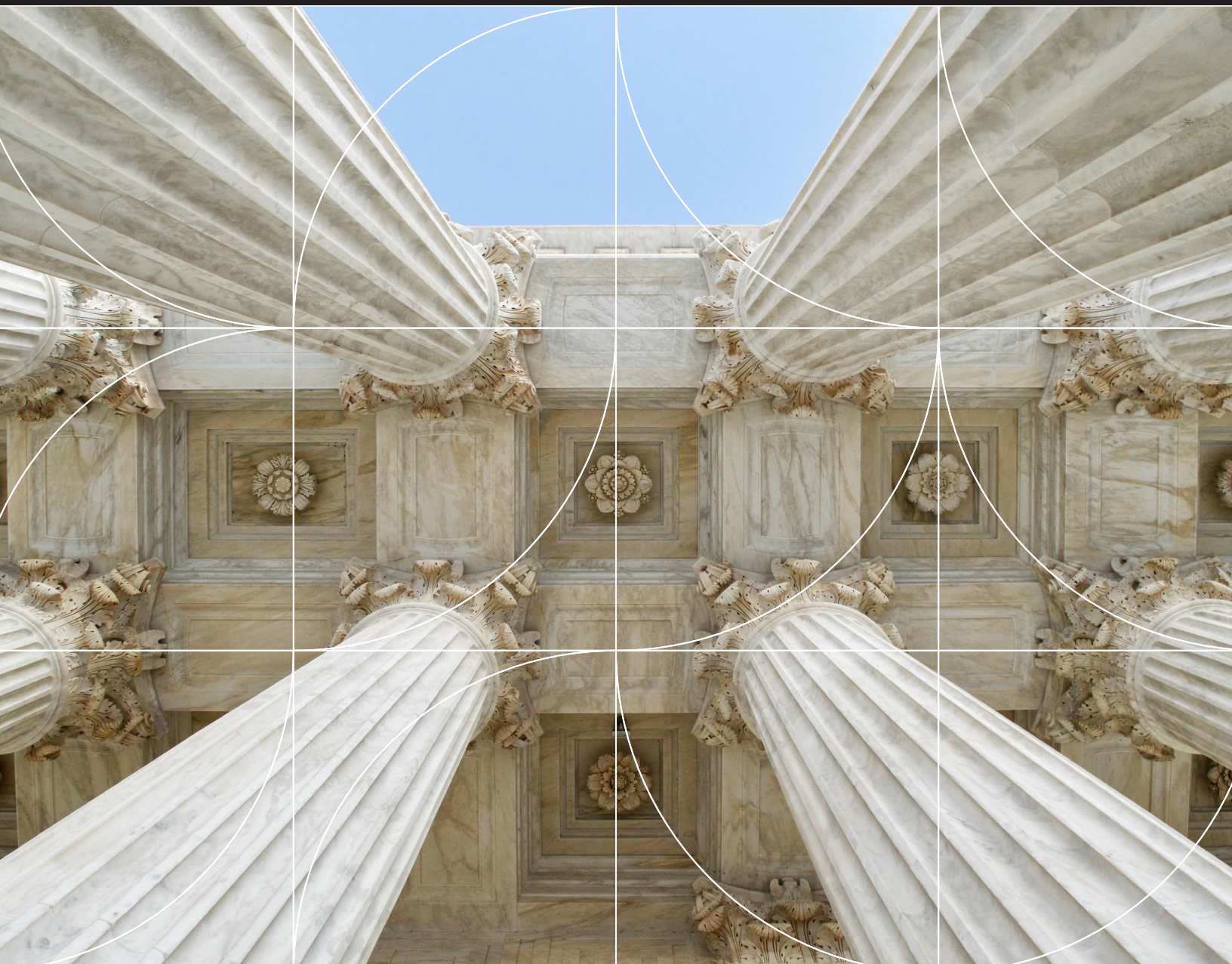




Commercial Disputes

PRACTICE OVERVIEW





We offer proactive commercial disputes strategies with your business interests and objectives in mind.

Commercial disputes come in many sizes, shapes, and levels of complexity, and no business is immune to their threat. From pre-dispute counseling and case analysis to battle in the courtroom, companies trust our team of problem solvers not only to aggressively pursue their interests, but also to step back and see the big picture—even as litigation moves at lightning speed.

How We Help

While our attorneys have litigation experience across many industries and with many types of clients, we know there is no shortcut for understanding your business. That's why our Commercial Disputes attorneys start by diving in to each client's business and the issues at hand.

Transparency, partnership, and alignment guide our thinking at every turn. In high-stakes litigation, we keep the lines of communication open, giving clients real-time access to each step of the process, including strategy, staffing, and budgeting. By partnering with clients, our team is prepared when the opposing side throws the inevitable curve ball, and we work together to achieve the best outcome, even as those goals shift.

Comprised of more than 150 litigators and trial attorneys throughout the US, our team works with clients in all industries to address virtually every type of complex business dispute. This breadth of experience means deep insight into the effective arguments, examinations, and themes that resonate in the courtroom. At the same time, ensuring our services hit the mark often means avoiding traditional litigation. In those situations, our team guides clients through alternative dispute resolution, arbitration processes, and settlement strategies as soon as disputes arise.

The Seyfarth Experience

Instinct and experience are crucial ingredients in a winning litigation strategy, but Seyfarth offers more. Our attorneys take a data-driven approach to litigation, fueled by sophisticated analytics

that give us a comprehensive view into each client matter. With the client's bottom line in sharp focus, the team uses quantitative litigation tools to evaluate the potential ROI of various dispute resolution strategies—giving real-time insight into each potential path. Our quantitative decision trees and backward-facing budgeting tools enable us to monitor and control client costs in real time.

Maximizing the knowledge and skills of Seyfarth's attorneys worldwide, our Commercial Disputes team collaborates with the right attorneys, paralegals, and litigation project managers across many practices—including corporate, real estate, eDiscovery, and bankruptcy—for results that dovetail perfectly with our clients' interests.

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 Disputes practice 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.

CASE STUDY

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.

CASE STUDY

Fighting for 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.

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 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 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.

CASE STUDY

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.

CASE STUDY

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.

CASE STUDY

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.

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, 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 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. ■





“Seyfarth” and “Seyfarth Shaw” refer to Seyfarth Shaw LLP, an Illinois limited liability partnership. Our London office operates as Seyfarth Shaw (UK) LLP, an affiliate of Seyfarth Shaw LLP. Seyfarth Shaw (UK) LLP is a limited liability partnership established under the laws of the State of Delaware, USA, and is authorised and regulated by the Solicitors Regulation Authority with registered number 556927. Legal services provided by our Australian practice are provided by the Australian legal practitioner partners and employees of Seyfarth Shaw Australia, an Australian partnership. Seyfarth Shaw (賽法思律師事務所) is a separate partnership operating from Hong Kong as a firm of solicitors.