



## Mark A. Vander Laan

Of Counsel

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Mark is a litigator companies want on their side when the stakes are high. With over 40 years experience trying cases and settling business disputes, his clients see him as fair-minded but aggressive in bet-the-company cases — always prepared to go to trial, but with an ability to quickly discern the best course of action for their business. His first step with any new matter is to sit down with his client and get a thorough understanding of their needs and tolerances. Only then can they develop a proper legal strategy — whether tackling complex corporate/shareholder disputes or high-profile client disputes or a white collar defense. Because business disputes often take unexpected twists and turns, Mark’s style is to err on the side of more communication, making an effort to explain situations and legal options in clear, concise business terms.

His legal experience is comprehensive, including business and fiduciary litigation, white collar crime and investigations, representing municipalities as well as appealing and advocating for business and individuals at the state and federal levels. His clients have included Procter & Gamble, the Archdiocese of Cincinnati and a variety of large privately-held and public companies, and individuals and institutions serving in fiduciary capabilities.

He pays close attention to the development of the firm’s next generation of litigators. He believes that Dinsmore attorneys need to be “hands-on” early in their careers — gaining trial and appellate experience whenever possible — increasing the firm’s ability to provide a deep and experienced bench well into the future.

Mark teaches legal ethics as an adjunct professor of law at the University of Cincinnati College of Law. He is also a champion for the less fortunate, having served as trustee and former president of the Legal Aid Society of Greater Cincinnati, the Volunteer Lawyers for the Poor, and the Ohio Justice & Policy Center. He has also served as board chair and continues to serve on the board of the Center for Closing the Health Gap.

### Services

- Litigation
- White Collar Defense
- Government Relations
- Government Investigations

- Municipal & Government
- Securities Enforcement & Litigation

## Education

- University of Michigan Law School (J.D., 1972)
- Hope College (A.B., *cum laude*, 1970)

## Bar Admissions

- Ohio

## Court Admissions

- U.S. Supreme Court
- U.S. Tax Court
- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Southern District of Ohio
- U.S. District Court for the Northern District of Ohio
- U.S. District Court for the District of Colorado

## Affiliations/Memberships

- Ohio Ethics Commission
- University of Cincinnati College of Law, Legal Ethics adjunct professor
- Cincinnati Bar Association, Ethics Committee past chair
- Ohio State Bar Association, Litigation Section
- American Bar Association, Litigation Section
- State of Ohio, past deputy special prosecutor
- City of Blue Ash, Ohio, city solicitor
- National Diocesan Attorneys Association
- Cincinnati Southern Railway, trustee and president (1992 - 2012)
- Potter Stewart Inn of Court, master of the bench
- Supreme Court of Ohio, Rules Revision Committee past member
- Indian Hill Church, Board of Stewards past president
- University of Cincinnati College of Law, Board of Visitors
- The Health Gap, Board of Directors chair

## Distinctions

- Peer Review Rated AV in *Martindale-Hubbell*

- *Best Lawyers*®
  - "Lawyer of the Year" in Cincinnati for Appellate Practice (2012, 2014, 2019, 2021)
  - "Lawyer of the Year" in Cincinnati for Litigation (2009, 2013)
  - "Lawyer of the Year" in Cincinnati for Litigation – Municipal (2015)
  - Appellate Practice; Arbitration; Bet-the-Company Litigation; Commercial Litigation; Litigation – Municipal; Mediation (2021)
- Ohio *Super Lawyers*®
  - For Business Litigation (2021)
- *Who's Who in America*
- *Who's Who in the Midwest*
- *Who's Who in Law*
- *Chambers USA*®: *America's Leading Lawyers for Business*, Litigation: General Commercial
- Cincy Leading Lawyer by *Cincy Magazine*
- American Board of Trial Advocates
- *Benchmark Litigation* Star in Ohio (2016)

## Experience

### **Richard Loreto and Larry Buffa v. The Procter & Gamble Company**

Serving as co-counsel in attempted consolidated actions alleging false advertising rules under the consumer protection laws of various states involving Vicks NyQuil. The matter is currently on appeal before the Sixth Circuit.

### **Unfair Competition Litigation**

We represented our client and a number of individual employees in a lawsuit filed by a competitor. The competitor asserted claims for conspiracy, misappropriation of trade secrets, breach of non-compete agreements, tortious interference with contractual and business relations, breach of fiduciary duty, unfair competition, unjust enrichment, and violations of the Computer Fraud and Abuse Act. We tried the case for approximately two weeks in federal court before the parties settled the matter.

### **Successful representation of educator in disciplinary proceeding**

The State Board of Education sought to permanently revoke the teaching licenses of our client, a long-time educator in the state of Ohio. The Board alleged that our client improperly disciplined a student with disabilities and disclosed the student's confidential health information. Eleven witnesses testified at a week-long trial in Columbus, Ohio. Ultimately, Hearing Officer appointed by the Board concluded that a preponderance of evidence did not appear in the hearing record to support the Board's charges against the principal. As a result, the Hearing Officer recommended that the case be closed without discipline upon the State of Ohio educational licenses held by our client. The State Board of Education rejected the Hearing Officer's recommendation and suspended the educator's licenses for five years. We appealed the Board's decision to the Hamilton County, Ohio Court of

Common Pleas. Like the Hearing Officer, the Common Pleas Court judge determined that no discipline was warranted and he vacated the Board's suspension. The Board appealed the trial court's decision to the First District Court of Appeals. But the First District dismissed the appeal.

**See Ohio State Bd. of Educ. v. Blum, 1st Dist. Hamilton No. C-150427, 2016-Ohio-2918**

**In re: Structural Dynamics Research Corporation Derivative Action**

Served as lead counsel in defending Structural Dynamics Research Corporation, a publicly-traded software development company, in a class-action shareholder lawsuit following allegations of fraud and artificially inflated earnings. The shareholder suit was filed following a restatement of earnings over a three-year period and a Securities and Exchange Commission financial fraud action and accompanying fines against five former senior officers of SDRC. The class-action shareholder suit was settled prior to trial.

**Surles v. P&G-Clairol, Inc.**

Our firm represented P&G-Clairol in a product liability case claiming personal injuries resulting from the use of a consumer product. We obtained summary judgment and dismissal on behalf of our client following discovery.

**Consultant v. Intellectual Property Owner / Inventor**

As part of our trial team, I served in 2012-2013 as counsel for the consultant on his claim for breach of a consulting agreement. Our client had assisted the defendant, an inventor of intellectual property, in successfully marketing his inventions to medical device companies, but the inventor then refused to pay our client the millions of dollars in contingent commissions which were owed. After we successfully obtained summary judgment on liability, the case became centered around complex proof of past and future damages which totaled many millions of dollars. I served as lead counsel for the client on several critical depositions, including depositions of defendant's damages expert, defendant's accountant, and the defendant-inventor himself. I also served as a liaison for some of our experts on damages-related infringement issues and on complex accounting issues. Using materials developed in discovery and at depositions, I served as lead counsel in responding to a critical motion in limine, whereby the Court approved central parts of our damages theory. This ruling helped lead to successful resolution of the matter shortly before trial.

**Represented minority shareholder against majority shareholder in privately-held company**

Represented minority shareholders in successful litigation against majority shareholders of major privately-held company. Negotiated settlement and thereafter successfully litigated the efficacy of the agreement itself

**Basinger, et al. v. Pilarczyk. et al.**

Dinsmore & Shohl represented the Archdiocese of Cincinnati in a breach of contract and age discrimination suit filed by two teachers who were dismissed from one of its parochial elementary schools. The reason for termination given by the school was that the teachers' marriage was canonically invalid and that their co-habitation was contrary to the school's religious mission. The teachers claimed this reason was a mere pretext for age discrimination, since they were replaced by younger teachers. Following two separate appeals, the judgment of the trial court dismissing the suit was affirmed.

**Defended financial firm and officers in NASD arbitration relating to broker misconduct**

We defended a financial firm and two of its officers in NASD arbitration arising out of misconduct from

a former principal of the firm. The former principal systematically stole millions of dollars from customers by intercepting customer funds, changing customer addresses and falsifying account statement. After the Securities Investor Protection Corporation initiated liquidation proceedings against our client, the claimants moved to assert claims against two officers of the firm based on common law theories of liability. We moved to dismiss the claims in NASD arbitration, and the arbitration panel ordered dismissal of the federal securities fraud claims. The only claims that remained against our clients were allegations of negligent supervision, negligent hiring, breach of fiduciary duty and liability based upon the *respondeat superior*. Over a period of two weeks, the matter was heard before a panel of three arbitrators and we received a judgment granted in favor of one of the officers. The other officer agreed to a minimal settlement after rejecting a six-figure settlement prior to the hearing.

#### **Doe v. Archdiocese of Cincinnati**

Plaintiff brought suit against the Archdiocese of Cincinnati for breach of fiduciary duty, negligence, engaging in a pattern of corrupt activities, and respondeat superior. The trial court granted the Archdiocese's motion to dismiss because the claims were not timely and plaintiff failed to properly plead a claim arising under Ohio's corrupt practices act, which mirrors RICO. The Third District Court of Appeals for the State of Ohio reversed and the Supreme Court of Ohio granted cert and an appeal as of right because of a conflict in jurisdiction and constitutional issues presented in the case. The Supreme Court affirmed the dismissal, which resulted in the dismissal of numerous lawsuits pending in Southern Ohio, saving the client millions of dollars in defense costs. The case was also significant because it is the first ruling by the Ohio Supreme Court regarding the requirements for Ohio's corrupt practices act.

#### **Greater Cincinnati Plumbing Contractors' Association, et al. v. City of Blue Ash**

Our firm represented the City of Blue Ash, Ohio, in a suit brought by trade associations and contractors challenging the legality of the city's use of a design-build bidding process for renovation of the city recreation center. The court of appeals determined that the city's use of the design-build bidding process was a proper exercise of its home-rule power, and affirmed the lower court ruling granting of the city's motion for summary judgment.

#### **James H. Huff, et al. v. Real Living, Inc., Case No. A0908858, Court of Common Pleas, Hamilton County, Ohio**

Breach of contract from the collapse in 2005 of the 2002 merger of Huff Realty and HER Realtors, which formed Real Living. Under the terms of the 2005 dissolution, Real Living paid Huff's owners \$4 million for their share of the merged company. They were to pay an additional \$4.5 million by Jan. 1, 2007. After a hearing, the judge agreed that Huff is entitled to payment, which is now \$5.8 million and building by \$1,110 a day with interest. The ruling was issued April 1, 2010 by Hamilton County Common Pleas Judge Steve Martin.

#### **L.F.P. IP, LLC, et al. v. Hustler Cincinnati, Inc., et al.**

Representing Larry Flynt and associated corporations organized under the trade name Hustler in breach of fiduciary duty, fraud, unjust enrichment and related allegations stemming from an effort by Plaintiff to dissolve existing relationships in the form of a partnership and joint ventures. We proved no joint venture and obtained an injunction precluding plaintiff from using Hustler trademark.

#### **Multiple Cases Involving Allegations of Sexual Abuse**

Represented Archdiocese of Cincinnati in case with allegations of sexual abuse by members of the clergy. Negotiated global resolution through a settlement fund and successfully prevailed in two Ohio Supreme Court cases, based on statutes of limitations defenses, thereby terminating most of such litigation in the state of Ohio.

### **Obtained dismissal of case involving allegation of Medicare and Medicaid fraud**

We represented the chief financial officer of a health care organization in securities litigation. During a class action for allegations of federal securities violations, it was alleged that our client and its officers concealed material information and issued materially false and misleading statements concerning the company's compliance with federal and state Medicare and Medicaid laws. It was further alleged that these false and misleading statements inflated the value of the company's publicly traded securities, which when corrected, cost shareholders significant financial damage. We moved to dismiss the claims against our client and the case was dismissed.

### **Official Committee of Unsecured Creditors, On Its Own Behalf And On Behalf of Dwight's Piano Company et al. v. Karen L. Hendricks et al., Adversary Proceeding Case No. 02-1158, U.S. District Court, Southern District of Ohio**

Obtained Judgment in favor of former CEO of Baldwin Piano Company after a two-week trial in Federal Court in the Southern District of Ohio. The Committee of Unsecured Creditors alleged, among other things, that the CEO breached her fiduciary duties in the management of the Company and sought damages in excess of \$28 million. Earlier in the case, we obtained the dismissal of approximately \$24 million in unsatisfied secured and unsecured claims and administrative costs associated with the bankruptcy.

### **Prosecuted multi-million dollar trademark action and defended counterclaim**

We represented the owner of a \$400 million business enterprise in prosecuting a trademark action. We contended that the defendant, who previously had claimed to be in a partnership with our client before the court dismissed his theory, was infringing upon our client's trademarks. We proved that the defendant had no evidence to support his claims that license fee payments he had made were "capital contributions" to our client and their alleged partnership. A federal judge ruled that the defendant had infringed upon our client's trademark and granted summary judgment to our client. He also entered a permanent injunction to prevent the defendant from using our client's trademarks.

### **Stand Energy Corp. v. Cinergy Services, Inc.**

Our firm represented Cinergy Energy Services, Inc. in a suit filed by Stand Energy seeking a declaration that it was not liable for failing to provide power under the terms of an "interchange agreement" due to *force majeure*. Stand claimed that it could not afford to provide energy to Cinergy at the price agreed to in the contract when unseasonably hot temperatures resulted in unprecedented high hourly prices for electric power. The Court of Appeals determined that economic hardship did not constitute a *force majeure* which would relieve Stand of its obligations under the interchange agreement.

### **State of Ohio v. Marvin L. Warner, et al.**

A significant and complex engagement in the wake of Ohio's savings and loan crisis in 1985. One of the state's largest savings banks, Home State, collapsed as a consequence of a massive fraud involving the fictitious trading by the bank in government securities through reverse repurchase agreements through a small Florida-based securities dealer. The collapse brought with it the collapse of the Ohio

Deposit Guaranty Fund, the failure of numerous smaller savings institutions, and runs on many institutions.

Through passage of special legislation, the Ohio Attorney General was empowered to appoint an independent Special Prosecutor having criminal jurisdiction over the entirety of the state's savings and loans. Dinsmore & Shohl partner, Lawrence A. Kane, Jr. was named Special Prosecutor. He, in turn, assembled a staff led by his chief deputy, Dinsmore & Shohl partner, Mark A. Vander Laan, who had principal responsibility for presentation to a special grand jury, the litigation of the ensuing prosecution, and argument of the two cases which reached the Ohio Supreme Court, which in turn affirmed convictions of Home State's principals.

Over the course of five years, the team of Dinsmore attorneys, with the assistance of experienced former prosecutors, academics, and investigators assembled cases that led to the convictions and imprisonment of the owner of Home State (a former Ambassador to Switzerland), two of its former presidents, all of the surviving principals of ESM Government Securities, Inc., and the chief outside accountant for ESM; Restitution orders in excess of \$100,000,000 were secured through the prosecutions. The four-month trial against Home State's owner and its two former presidents was the longest in Hamilton County, Ohio history.

#### **Trademark Infringement Litigation**

We represented our client's organization in a lawsuit filed against his brother and his brother's company for infringement of a trademark. After successfully defending through trial against a counterclaim that our client's brother was a partner in our client's business empire, the Court granted summary judgment in our client's favor on the trademark claims in October 2011. A permanent injunction was entered against our client's brother and his organization shortly thereafter.

#### **U.S. v. Sowell**

Represented death row inmate in case before U.S. Court of Appeals for the Sixth Circuit. Plaintiff was convicted of aggravated murder and sentenced to death in 1983. The Southern District of Ohio Court found plaintiff received ineffective assistance of counsel during the penalty phase of his trial by not performing adequate sentence-phase investigation. The Sixth Circuit Court affirmed the judgment of the district court to grant habeas relief. This followed two other previously successful appeals before the Sixth Circuit involving inmates who had been sentenced to death.