



Andrew R. Kwiatkowski

Partner
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Andy leverages extensive experience litigating complex commercial, tort, and class action matters with a personal approach to partnering with clients. He works with clients in a variety of industries, including motor vehicle distributors, consumer product businesses, manufacturers, and construction companies. He seeks to understand both the business and goals of the client and approaches issues with a cost-effective, logical, and well-communicated plan. In addition to litigation, Andy has assisted clients in drafting contracts, preparing consumer/commercial warranties, issuing product recalls, and providing legal guidance on litigation avoidance.

His recent litigation experience includes acting as counsel for automobile, motorcycle, and RV manufacturers in product liability, class action, and warranty litigation. He has also defended companies against complex and significant tort cases. He also has substantial experience working with clients in the construction industry, having defended and prosecuted delay claims, construction defect, and bid protest cases.

Andy is a member of the firm's Recruiting and Professional Development committees and is active in several community efforts.

Services

- Product Liability
- Litigation
- Mass Tort
- Tort
- Construction Industry
- Transportation Industry

Education

- Duquesne University School of Law (J.D.)
 - Duquesne Law Review, executive comment editor
- Duquesne University (B.A., *cum laude*)

- English and Psychology
- O'Donnell Award for Excellence in English

Bar Admissions

- Ohio
- Pennsylvania

Court Admissions

- U.S. District Court for the Southern District of Ohio
- U.S. District Court for the Northern District of Ohio

Affiliations/Memberships

- Defense Research Institute
- 4C for Children, past member, Board of Trustees
- Cincinnati Zoo and Botanical Garden, Ambassador Council
- C-Change, Class VI, Cincinnati USA Regional Chamber
- Duquesne Law Alumni Association
- Cincinnati Academy of Leadership for Lawyers (CALL), Class XVII
- Archbishop Moeller High School, Scholarship Committee

Distinctions

- Ohio *Rising Stars*®

Experience

Mechanics Lien and Payment Act Matter

Dinsmore represented an electrical and instrumentation services subcontractor in a mechanics' lien and Contractor and Subcontractor Payment Act (CASPA) matter. Following the provision of services for the construction of a natural gas pipeline, the subcontractor was not paid in accordance with the parties' contract in an amount in excess of \$1,000,000. Dinsmore noticed and filed mechanics' liens, along with a complaint alleging CASPA violations. The contractor defended the claim by invoking a "pay if paid" provision in the contract. Following protracted litigation, the Dinsmore team argued that the "pay if paid" provision was not enforceable because of the "prevention doctrine," and recovered approximately 99% of the amount contractually due.

Fixodent Denture Cream Litigation

Dinsmore's Product Liability Team recently received a ruling in favor of The Procter & Gamble Defendants ("P&G") which is the first in the country to assess and reject the scientific basis for lawsuits filed by a number of Fixodent® users.

Frank C. Woodside, III, and his team serve as counsel for P&G defendants concerning Denture Adhesive Litigation. In that litigation, Judge Cecilia Altonaga oversees discovery in the Multi-District Litigation involving more than 150 plaintiffs who seek damages for personal injuries that allegedly resulted from their use of excessive amounts of Fixodent, manufactured by P&G, and/or Poligrip, manufactured by GlaxoSmithKline. The current litigation was initiated in 2009 against P&G. The Federal cases were eventually consolidated in Miami with a number of other cases pending in state courts throughout the country. P&G has steadfastly defended the safety of Fixodent.

On June 13, 2011 Judge Altonaga issued a *Daubert* opinion granting P&G's motion to exclude virtually all of the Plaintiffs' proposed expert opinion testimony that purportedly supported the link between extremely excessive use of Fixodent denture adhesive and neurological disease.

Construction Bid Protest Matter

We represented a large window manufacturer and installer in a construction public bid protest matter. Our client submitted a bid for work on an Ohio school, but was not selected after claims that their bid did not match the specifications outlined in the bid proposal.

Allegations of Unintended Acceleration

Dinsmore represented a major motor vehicle manufacturer in cases filed in Ohio associated with allegations of sudden unintended acceleration. We removed the cases to federal court and were involved in successfully litigating the matters as part of the multi-district litigation procedure.

Automobile Class Action Litigation

Dinsmore & Shohl represented a large automobile distributor in class action litigation initiated in Ohio and Kentucky, alleging the automobiles distributed by our client that were subject of a nationwide recall, unintentionally accelerated or were prone to such an alleged defect. The class action plaintiffs alleged a variety of claims, including fraud, breaches of express and implied warranties, negligence, and violations of consumer protection statutes. Plaintiffs also sought compensatory relief in the form of diminished value of the subject vehicles or injunctive relief. Dinsmore & Shohl either successfully removed all such actions to federal court, where they were consolidated in multi-district litigation, or obtained a dismissal of the entire suit.

Bohl v. Hauke

Dinsmore & Shohl defended American Building Components in a Highland County, Ohio case involving allegations American Building Components breached its limited written warranty, was negligent, and breached an alleged obligation of good faith and fair dealing when it supplied a roof to a general contractor, who constructed a commercial dairy barn for the plaintiff. The case was dismissed based upon the Court's enforcement of a forum selection clause contained in the limited written warranty. In essence, the Court refused to let the plaintiff selectively enforce the provisions of the limited written warranty. The Court's ruling was upheld by Ohio's Fourth Appellate District, and the opinion is published as: *Bohl v. Hauke* (4th App. Dist. 2009) 180 Ohio App.3d 526.

Breach of Contract Claims

Represented a commercial/residential roofing contractor who asserted claims of breach of contract relating to monies due from general contractor for work on a large condominium project. Also defended client against claim of faulty workmanship. Case was settled on terms favorable to our client.

Breach of Warranty Case Involving Alleged Vehicle Defects

We represented a major motor vehicle distributor in a breach of warranty case that went to a jury trial in Licking County, Ohio. The Plaintiffs alleged that defects with the vehicle were causing significant and premature wearing of the vehicle's tires. We obtained a defense verdict on behalf of our client.

Quantum Construction Company v. Board of Township Trustees of Anderson Township

Dinsmore & Shohl represented Quantum Construction Company ("Quantum") in a lawsuit filed against the Board of Township Trustees of Anderson Township ("Anderson Township") related to breach of contract and construction delay claims arising from Quantum's work as a general contractor on the construction of the Anderson Center. Anderson Township counterclaimed for more than one million dollars in liquidated damages pursuant to the parties' contract for construction delays. After significant litigation, Quantum favorably settled the case in return for a substantial payment by Anderson Township.

Thomas and Marker Construction v. Big Box Retailer

Worked on motion for summary judgment in a matter where plaintiff claimed damages for work on purported "unforeseen" site conditions where subsurface rock was encountered during excavation. Was successful in convincing court that *Spearin* doctrine, which permits an action for implied warranty of accuracy of plans, was not applicable in Ohio to non-government construction projects and this claim, along with claims for promissory/equitable estoppel, unjust enrichment, fraud in the inducement, and breach of implied duty of good faith and fair dealing should be dismissed.

Wilbur & Virginia Estep v. Kia Motors America, Inc.

The Plaintiffs asserted claims against Kia Motors of America, Inc. alleging violations of the Ohio Lemon Law and Ohio Consumer Sales Practices Act. The case was tried to a jury in the Court of Common Pleas, Licking County, Ohio. By utilizing effective cross-examination of the Plaintiffs and their expert as well as persuasive testimony from Kia's expert witness, we were able to obtain a complete defense verdict from the jury on behalf of our client.

Publications

November 9, 2023

Ohio Appeals Court Ruling Upholds Strict Limits on Timing for Bringing Negligence Claims Against Design Professionals

March 31, 2020

Construction Impacted by Coronavirus? Know Your Lien Rights