



## H. Toby Schisler

Partner

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When his clients need assistance, whether it be with an individual or class action case, complex or routine issues, Toby is able to provide the skills necessary to achieve an optimal result through the litigation process in an even-keeled, results-oriented manner. In an era where many civil litigators have increasingly limited courtroom experience, he sets himself apart with extensive and meaningful experience as a trial lawyer. He has represented his clients as lead counsel in more than 40 jury trials successfully tried to a verdict in state and federal courts in 9 different states throughout the country. He has also successfully handled dozens of bench trials and arbitration proceedings in multiple jurisdictions. He has successfully handled cases ranging from catastrophic injury or wrongful death claims, complex commercial and business litigation disputes, class action cases, construction defect claims, breach of warranty or lemon law matters, real estate disputes, and countless others. He has also successfully defended more than 50 putative class action cases in state and federal courts throughout the country.

Toby has a local, regional, and nationwide practice having litigated or managed individual or class action litigation in nearly every state in the country. He also has significant appellate experience, having successfully navigated his clients through a variety of complex issues, and argued before the U.S. Sixth Circuit Court of Appeals, Supreme Court of Ohio, and all twelve of Ohio's appellate districts. Toby regularly counsels clients in the financial services industry, including banks, mortgage servicers, lenders, and debt recovery agencies. In that role, he has defended individual and class-based claims asserting alleged violations of RESPA, FCRA, TILA, ECOA, FHA, FDCPA, TCPA, various state consumer protection statutes, and common law claims.

A considerable portion of Toby's practice also involves defending motor vehicle manufacturers and distributors, and several other manufacturing or component supplier clients, in individual and class action cases involving consumer sales practices, product liability, dealer protest actions, fraud and warranty claims. He has successfully defended multiple class action cases arising out of product recalls or other alleged product defects where the plaintiff class seeks the recovery of diminished value or other economic damages. He currently serves as national coordinating counsel for all of the warranty litigation claims asserted against a major international motor vehicle manufacturer.

With regard to his class action experience, Toby has handled all aspects of class action litigation including responding to class-based discovery, opposing class certification, preparing motions to dismiss or summary judgment, and negotiating settlement on an individual or class-wide basis. In that role, he has successfully defended putative class claims ranging from a proposed class of employees from a single employer to proposed nationwide classes. He has developed effective and creative strategies to oppose or limit class certification, and has established relationships with a diverse network of expert witnesses to address issues which typically arise in class action cases.

Toby also has significant experience handling a variety of commercial, business, real estate and trade secret litigation matters for a diverse set of clients, including professional service providers, plumbing companies, consumer good manufactures, general contractors, subcontractors, material or component suppliers, non-profit companies, and healthcare providers.

In addition to his considerable trial experience, he has successfully helped his clients achieve settlement in litigated matters. He has an ability to come up with creative “out of the box” settlement concepts and has an ability to find common ground, when appropriate, between his clients and their adversaries. By utilizing his extensive trial and appellate experience, Toby is able to provide his clients with honest and thorough assessments about potential risk and exposure, enabling him to assist his clients with achieving cost-effective resolutions to minimize risk and exposure.

Toby is actively involved in the community and internally at Dinsmore. Toby has served on various non-profit Boards, and is currently the chair-elect of the Board of Directors for the largest soup kitchen and social services provider in Greater Cincinnati. He also previously chaired a large fundraising event for the American Cancer Society, and has spent many years volunteering as a youth soccer, basketball, and track coach. He has chaired or co-chaired Dinsmore’s Associate Evaluation Committee for many years, and is a member of Dinsmore’s Board of Directors.

## **Services**

- Litigation
- Class Action
- Tort
- Product Liability
- Mass Tort
- Transportation Industry

## **Education**

- University of Cincinnati College of Law (J.D., 1997)
- Miami University (B.A., *cum laude*, 1994)
  - Political Science

## **Bar Admissions**

- Ohio

## Court Admissions

- 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

## Affiliations/Memberships

- Ohio State Bar Association
- Cincinnati Bar Association
  - Admissions Committee chair (2014 - 2015)
  - Unauthorized Practice of Law Committee
- Cincinnati Academy of Leadership for Lawyers (CALL) Class XI
- American Cancer Society's Relay for Life, co-chair, Anderson Township, Ohio (2015, 2016)
- United Way of Greater Cincinnati
  - Roebling Society
  - Dinsmore's Annual United Way Campaign past chair
- Trial Advocacy Institute Co-Sponsored by NITA and CBA, faculty and steering committee member
- Our Daily Bread, Board Member
- Guardian Angels Church
  - Stewardship Committee and
  - Athletic Boosters board member
- Lockland High School Mock Trial Team, past legal adviser
- Clark Montessori High School Mock Trial Team, past legal adviser
- Volunteer youth soccer, basketball, and track coach for multiple teams

## Distinctions

- Peer Review Rated AV in *Martindale-Hubbell*
- Difference Maker Award in Honor of Alice J. Neeley
- Ohio Rising Star by Law & Politics (2005, 2012 - 2013)
- *Best Lawyers*®
  - Product Liability Litigation -Defendants (2021-2024)



Toby Schisler was lead counsel representing a plumbing services company in a wrongful death lawsuit arising out of a fatal motor vehicle accident involving one of its drivers. Through effective use of the discovery process, he was able to limit the potential recovery on certain aspects of the case, and ultimately was able to assist the client in obtaining a favorable settlement for a confidential amount of compensation.

#### **Allegations of a Defective Vehicle**

We represented an international motor vehicle manufacturer in a case that was pending in Warren County, Ohio. The case involved allegations that the vehicle had a significant pulling or drifting condition. Following a trial, we obtained a defense verdict on behalf of our client.

#### **Allegations of Employment Discrimination Relating To FMLA**

We represented an employer that operates a hotel in suburban Cincinnati, Ohio in an employment discrimination lawsuit. The Plaintiff asserted alleged violations of the FMLA. The case went to trial in the Southern District of Ohio. The Plaintiff sought in excess of \$250,000 from the jury, plus attorney fees. Through effective presentation of the evidence and cross-examination of witnesses, we were able to limit the jury's verdict to only \$10,000.

#### **Allegations of Fraud Against a Home Services Provider**

We represented a residential home services provider in a dispute pending in the Montgomery County, Ohio Court of Common Pleas. The case involved allegations of fraud and alleged violations of Ohio's Consumer Sales Practices Act. We successfully pursued an appeal to enforce the provisions of an arbitration agreement between the parties. As a result of the victory in the court of appeals, we were able to assist the client in obtaining a favorable settlement of the litigation. The Motion we prepared to Stay the Proceedings and Compel Arbitration was selected for inclusion in *Ohio Forms of Pleading and Practice*.

#### **Allegations of Negligence and Breach of Contract Against a Non-Profit**

We successfully defended a non-profit entity that served as a source of funding for the renovation of a residence in Cincinnati, Ohio. The homeowners asserted claims against our client and the contractor who worked on the residence under a number of legal theories including negligence, breach of contract, and alleged violation of the Consumer Sales Practices Act. After the homeowners settled with the contractor, the claims against our client went to trial. We obtained a defense verdict from the jury on all but one of the claims. The sole claim in which the jury found in favor of the Plaintiffs resulted in a verdict of only \$5,000. We appealed the \$5,000 verdict, and the court of appeals reversed that portion of the jury's verdict (leaving intact the portion of the jury's verdict that returned a defense verdict in favor of our client). Thus, all claims against our client were dismissed.

#### **Allegations of Tortious Interference Against a Software Company**

We represented several individual investors of a software development company in a complicated dispute with the software company. We successfully defended claims against the investors by the software company alleging, among other claims, that our clients had tortiously interfered with the company's business. The court granted our motion to dismiss the claims asserted against our clients. We also prevailed on a related action for our clients where we enforced the clients' security interest in software developed by the software company. As a result of prevailing in that litigation, the software company assigned all of the rights and interests in the software to our client. After our clients obtained the software, we were able to navigate the clients through a complicated international sale of the software, which produced a very beneficial result for our clients.

### **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.

### **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.

### **Breach of Warranty Dispute Involving a Vehicle**

We represented an international automobile manufacturer in a breach of warranty/consumer sales practices act case that was litigated in Franklin County, Ohio. The case involved a multitude of alleged defects and non-conformities with the vehicle's warranty. We argued that the conditions did not substantially impair the use, value, or safety of the vehicle. Following the conclusion of a trial we obtained a defense verdict on behalf of our client.

### **Car Fire Case Involving a Repair Facility**

We represented an international motor vehicle manufacturer in a car fire case in Lawrence County, Ohio. We contended that the fire could have been avoided through effective investigation by a repair facility that serviced the vehicle shortly before the fire. Accordingly, we asserted a cross-claim against the repair facility seeking contribution. Following the completion of a trial, the jury returned a verdict in our client's favor on the cross-claim, awarding our client contribution damages. The repair facility appealed the decision to the court of appeals, and the court of appeals affirmed the jury's verdict.

### **Commercial Construction Dispute Relating to Payment**

We represented a material supplier in a commercial construction dispute in which our client was seeking in excess of \$400,000 for materials supplied to the project. After the general contractor failed to pay the amounts due (and subsequently went out of business), we made a claim on the payment bond associated with the project. The surety company refused to pay our client's claim on the bond, contending that our client was not entitled to recover because the project owner had issued joint checks payable to the general contractor and the owner. We successfully overcame the surety company's reliance upon the "joint check rule" by prevailing on a motion for summary judgment. The court of appeals and the Supreme Court of Ohio affirmed the summary judgment ruling in favor of our client. Accordingly, our client was able to recover the entire unpaid amount from the bonding company, plus interest and fees.

### **Dispute Over Physician Compensation**

We represented a medical practice in a case in Northern Kentucky in which one of the practice's former physicians was contending that he was owed several hundreds of thousands of dollars of additional compensation associated with his departure from the practice. The case culminated in a bench trial. At the conclusion of the bench trial proceedings, the judge agreed with our arguments associated with the interpretation of the pertinent contracts, and dismissed all of the Plaintiff's claims.

### **Foreclosure Proceeding Involving Shopping Malls**

We represented the lender in a multi-million dollar commercial foreclosure proceeding involving shopping malls located in Ohio and Indiana. We successfully sought the appointment of a Receiver for the properties, and were able to efficiently and effectively complete the foreclosure proceedings.

#### **Foreclosure Proceedings Involving Rental Properties**

We represented the lender in a multi-million dollar commercial foreclosure proceeding involving several multi-family rental properties spread throughout several counties in Southwest Ohio. We were able to have a Receiver appointed over all of the properties, and the Receiver was able to sell all of the properties within nine months of the commencement of the foreclosure proceedings, resulting in a favorable outcome for our client.

#### **Fraud and Lemon Laundering**

We represented a major international motor vehicle distributor in a fraud and “lemon laundering” case filed in Clark County, Ohio. The Plaintiff alleged that our client had improperly sold a repurchased vehicle in Ohio in violation of Ohio’s Consumer Sales Practices Act. Through effective motion practice, particularly successfully presenting a number of motions in *limine*, we were able to negotiate a very favorable settlement for our client on the first day of trial.

#### **Lemon Law Case Relating to Vehicle Repairs**

We represented an international automobile distributor in a lemon law case that was tried in Chicago, Illinois. The case involved a variety of alleged non-conformities with the vehicle, which the Plaintiff contended had not been repaired within a reasonable number of repair attempts. We obtained a defense verdict on behalf of our client.

#### **Lemon Law/Breach of Warranty**

We represented an international motor vehicle distributor in a lemon law/breach of warranty case that was tried to a jury in Lake County, Ohio. The Plaintiff sought compensatory and treble damages close to \$100,000, plus attorney fees. The jury returned a defense verdict on all but one of the claims for our client, and the remaining claim resulted in a verdict for the Plaintiff of only \$600. We also successfully opposed the Plaintiff’s efforts to recover attorney fees, with the court awarding the Plaintiff’s counsel less than 10% of the fees sought.

#### **Litigation Relating to Change Order For a Construction Contract**

We represented a general contracting company based out of Atlanta, Georgia in a complicated construction litigation matter in the United States District Court for the Southern District of Ohio. The case related to issues associated with change orders for the scope of work and contentions regarding the quality of workmanship. Following the conclusion of a two-week trial, we obtained a jury verdict in excess of \$1,000,000 for our client. We were subsequently able to negotiate a favorable settlement of this matter and two related cases that were pending in State court.

#### **Motorcycle Manufacturer**

We served as lead counsel on behalf of an international motorcycle manufacturer and distributor in a class-action lawsuit involving alleged violations of the consumer sales practices act. The case involved a situation in which the National Highway Traffic Safety Administration (“NHTSA”) had determined that certain design features of the product needed to be revised to comply with the motor vehicle safety standards for motorcycles, and ordered a recall of the affected vehicles. We were successful in having the majority of the claims dismissed through a Motion for Judgment on the Pleadings. Following the dismissal of the majority of the claims, we were able to negotiate a nationwide class action settlement resulting in a very favorable resolution for the client.



**Personal Injury Case Related to a Vehicle Seatbelt**

We represented a major automobile manufacturer in a personal injury product liability lawsuit. The Plaintiff alleged that her seatbelt failed to restrain her during an accident, and she contended that she suffered severe head injuries resulting in alleged cognitive impairment. By effective presentation of our expert witnesses, and through extensive discovery, we were able to negotiate favorable settlement terms to resolve the litigation.

**Product Defect Case Involving Cladding Installed On a Home**

We represented home owners in a highly contested and aggressively litigated product defect case associated with "EIFS" cladding installed on their residence. The manufacturer of the product contended that our clients' claims were precluded by the terms of a class action settlement agreement. We obtained a favorable ruling from the court of appeals that our clients' claims were not barred by the class action settlement. As a result of the favorable ruling from the court of appeals (upheld by the Supreme Court of Ohio), we were able to negotiate a favorable settlement to resolve the matter.

**Product Defect Case Involving Marine Products**

We represented an international motor vehicle manufacturer in a product defect case in Atlantic City, New Jersey involving allegedly defective marine products. Following the conclusion of a trial, the jury returned a verdict awarding the Plaintiff only nominal damages.

**Product Liability Case Involving Vehicle Airbag**

We represented an international motor vehicle manufacturer in a product liability personal injury action in Ohio. The Plaintiff asserted that the vehicle's airbag system failed to deploy, and further asserted this alleged defect resulted in enhanced injuries arising from an automobile accident. By effectively developing persuasive expert witness testimony, we were able to reach a favorable settlement through a mediation session.

**Product Liability Case Relating a Vehicle Fire**

We presented a major automobile manufacturer in a product liability case in Hamilton County, Ohio arising out of a car fire. At the conclusion of the Plaintiff's case-in-chief, the court granted our Motion for a Directed Verdict and dismissed all of the Plaintiff's claims.