



Luke A. Lafferre

Partner
luke.lafferre@dinsmore.com

Huntington, WV
Tel: (304) 691-8308

In his legal career, Luke has used his innovative problem-solving skills to defend commercial cases, product liability cases and personal injury and premises liability cases brought in state and federal trial and appellate courts. He has litigated thousands of cases in trial and appellate courts and has tried over thirty cases to verdict, with many taking over a week to try, and several taking three weeks or more to complete. His sense of humor and imaginative approach to litigation give him the ability to work easily with clients and see cases with a unique perspective.

Among those trials have been the successful defenses of occupational cancer and other serious injury cases, as well as the defense of several multi-million dollar contract claims. Luke is also a member of the LinkedIn “Million Dollar Trial Lawyers” group for having won more than a million dollars for a client in litigation.

He approaches cases with an eye open for unconventional defenses. In one class-action case filed in state court with a potential class of thousands, the case was removed successfully to federal court even though the plaintiffs’ alleged claims were of a type that is specifically non-removable under federal law. Then the case was dismissed for failure to state a claim. In another group of cases, he used an extraordinary writ to get a venue issue before the West Virginia Supreme Court, which then adopted a new Common-law venue doctrine for the State. In another class of cases in which plaintiffs had settled and released earlier injury claims but later brought cases alleging related but more serious injuries, he successfully counter-claimed to use their releases not only as a defense but also as a contract requiring plaintiffs to indemnify his client for its expenses incurred in defending itself from their cases.

Luke has written legal articles, and his quick-wit and significant experience make him a favorite speaker at legal seminars.

Services

- Litigation
- Product Liability
- Tort

- Gaming & Sports Industry

Education

- West Virginia University College of Law (J.D., 1984)
 - Foundation Scholar
- West Virginia University (B.S., *cum laude*, 1981)
 - Political Science

Bar Admissions

- West Virginia

Court Admissions

- U.S. Court of Appeals for the Fourth Circuit
- U.S. District Court for the Southern District of West Virginia
- U.S. District Court for the Northern District of West Virginia

Affiliations/Memberships

- West Virginia State Bar
- Cabell County Bar Association
- Defense Trial Counsel of West Virginia, board member
- National Association of Railroad Trial Counsel
- Federalist Society for Law and Public Policy Studies, West Virginia Chapter, president
- Vice president of the Catholic Bar Association
- Former member of the Defense Research Institute
- 4.5 Gallon Red Cross blood donor

Distinctions

- *Best Lawyers*®
 - "Lawyer of the Year" in West Virginia for Railroad Law
 - Mass Tort Litigation/Class Actions - Defendants, Personal Injury Litigation - Defendants, Railroad Law (2021-2022)

Experience

Unique defense of medical monitoring case leads to case dismissal

Our railroad client was sued in state court under the Federal Employers Liability Act (FELA) for medical-

monitoring damages in a supposed class action case brought for all present and past employees who were exposed negligently to deleterious airborne substances at work but who had not yet developed any disease. Railroad employees are compensated for work-related injuries under the FELA instead of state workers' compensation systems. A FELA case is treated like any other civil lawsuit, with extensive discovery and trial to a jury.

Although the federal removal statute specifically says that FELA cases cannot be removed from state court to federal court, we filed a petition for removal anyway, on the grounds that the case could not be a FELA case since an essential element of a FELA case is "injury" and the plaintiffs alleged that they were only exposed, but had no injury. In other words, just because plaintiffs said the case was a non-removable FELA case did not necessarily make it one. We then moved to dismiss the case on the grounds that the FELA occupied the field for claims about workplace negligence, but since it required the existence of an injury and the plaintiffs affirmatively alleged that they had none, they had failed to state a claim. The judge agreed, refused to remand the case to state court, and dismissed the case for failure to state a claim.

Plaintiffs' counsel filed a Notice of Appeal to the Fourth Circuit Court of Appeals, then abandoned it.
Client avoids potential multi-million dollar judgment with separate-case argument

Our client, a national transportation company, was sued under the Federal Employers Liability Act (FELA) by many employees in "mass" asbestos complaints that first listed all of the plaintiffs, and then alleged general claims for malignant and non-malignant injury from asbestos exposure without specifying for each plaintiff what type of claim he had. Many of the plaintiffs had only non-malignant disease when the cases were filed, but while the cases were pending several plaintiffs developed what they thought was asbestos-related cancer. Several years later, their cases were set for trial, and plaintiffs' counsel made exorbitant settlement demands for the plaintiffs with cancer.

We refused to make substantial offers, because, in our view, the malignant and non-malignant claims were two separate claims, which was the position that plaintiffs' counsel had argued in earlier cases to defeat defenses of Release or Statute of Limitations. Since they were separate claims, any plaintiff who contracted cancer while his case was pending needed to file an amendment to the complaint or do something similarly substantial to preserve the cancer claim. Since they did not, the statute of limitations had expired and the cases were time-barred. Thus, for settlement purposes the plaintiffs' claims were "worth" a few thousand dollars, instead of hundreds of thousands.

Plaintiff's economist witness contradicts testimony during cross-examination

We were brought into the defense of this contract and tort case fewer than 40 days before trial started. Plaintiff sought millions in damages, and we did not have an opportunity to depose plaintiff's economic witness who was a professor of Economics at a local university. We investigated the professor and obtained a copy of the syllabus for an economics course he taught. We then got a copy of the textbook he used to teach the course, and showed in cross-examination that the method he used to put a value of millions on the plaintiff's supposed business losses was grossly different from the methods that he taught his students to use for business valuation. As a result, the

plaintiff's damage claim was shown to be grossly inflated and the jury returned a verdict that was a fraction of what plaintiff had been seeking.

Psychologist's documents lead to settlement of case for client over contract dispute

Our client was sued for not giving plaintiff another 1-year contract after having done so for a series of years. The plaintiff, a local kennel owner, claimed this led to the loss of his business and the loss of his family.

Initially, we argued our client was well within its rights not to enter in another contract with the plaintiff for another year as it had fulfilled its contract for the year and had no obligation to issue another. We moved for summary judgment, but the case continued to trial.

Because the plaintiff was claiming emotional distress, we carefully investigated the plaintiff and discovered that he had seen a psychologist for several years. We obtained his records, and found that all of the things plaintiff claimed were caused by the expiration of his contract actually were present long beforehand. Moreover, some of the problems shown in the records were among the reasons our client decided not to award another contract.

In opening statement, we used the records to show that plaintiff's personal and professional issues began before his contract lapsed, despite being interrupted by multiple objections by plaintiff's counsel. As a result of the discovery of these records, the case was settled.