



Mark G. Arnzen, Jr.

Partner
mark.arnzen@dinsmore.com

Cincinnati, OH
Tel: (513) 977-8440

Mark represents a wide variety of clients in complex litigation, including both public and private companies, as well as small businesses and individuals. His litigation experience encompasses an array of commercial litigation matters, including defending clients in cases involving breach of contract, trade secret infringement, and other business disputes. Knowing that these disputes often involve industry-specific issues, he works closely with clients to gain a full understanding of their business and operations before determining a litigation strategy.

His practice also extends into other areas of litigation, including construction disputes and personal injury matters, where he has represented both plaintiffs and defendants in traumatic brain injury cases. Additionally, Mark represents municipalities and government entities, schools, educators, and attorneys in disciplinary proceedings. He has tried cases to judges and juries, and he has argued before the U.S. Court of Appeals for the Sixth Circuit, as well as the Ohio First and Second District Court of Appeals.

Mark is also a member of the firm's Ethics Committee.

Services

- Litigation
- Municipal & Government
- Education Industry
- Construction Industry

Education

- University of Cincinnati College of Law (J.D., *cum laude*, 2006)
- University of Dayton (B.S., 2002)
 - Business Administration

Bar Admissions

- Ohio

- Kentucky

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 Eastern District of Kentucky
- U.S. District Court for the Western District of Kentucky
- U.S. Bankruptcy Court for the Western District of Kentucky

Affiliations/Memberships

- Cincinnati Bar Association
- Kentucky Bar Association
- Education Law Association
- City of Blue Ash, Ohio, deputy solicitor
- City of Blue Ash, Ohio, prosecuting attorney (2007 - 2012)
- City of Silverton, Ohio, prosecuting attorney (2007 - 2011)
- Potter Stewart Inn of Court, barrister
- Covington Business Council Foundation, Inc., board member (2012 - 2015)
- Cincinnati Academy of Leadership for Lawyers (CALL) graduate, Class XX
- National Diocesan Attorneys Association, member
- Ohio Supreme Court Lawyer to Lawyer Mentoring Program, mentor

Distinctions

- Ohio *Rising Stars*®
- Peer Review Rated AV Preeminent by *Martindale-Hubbell*
- *Best Lawyers*®
 - Commercial Litigation
- *Cincy* Leading Lawyer

Experience

Successfully Defended Ohio Hospital at Trial

We represented a local hospital and its employee in a lawsuit filed by a patient in the Hamilton County, Ohio Court of Common Pleas. The patient claimed that his hearing was permanently damaged because of an MRI at our client's facility. We tried the case for approximately one week. After 45 minutes, the Hamilton County jury returned

a unanimous verdict in favor of our client, finding that the hospital employee did not violate the standard of care for an MRI technician.

Successfully Defended Private High School in Lawsuit

We successfully defended our client, a private high school, in a lawsuit challenging the principal's decision to withdraw a student for a disciplinary infraction. The student and his family sued the school, claiming breach of contract and discrimination, and sought an injunction overturning the principal's decision and reinstating the student. We worked in a two week span to brief the injunction request, accomplish all necessary discovery and depositions, and prepare the case for trial. After the plaintiffs presented their case, we moved for involuntary dismissal under Rule 41, arguing they had failed to meet the burden of proof required. The court agreed, and in a written decision denied plaintiffs' motion for injunction, dismissed the injunction claim altogether, and entered complete judgment in our client's favor on that count. Plaintiffs then agreed to resolve the remaining damages claims for nonmonetary consideration.

Successful Representation of Vehicle Distributor at Trial

We represented a vehicle distributor in a lawsuit filed in the United States District Court for the Central District of California. The plaintiffs, a married couple, claimed the vehicle they leased from our client had multiple defects that substantially impaired its use, value, and safety. The plaintiffs asserted a claim for breach of express warranty under California's Song-Beverly Consumer Warranty Act, commonly known as the "lemon law," as well as a claim for breach of the implied warranty of merchantability. They sought restitution from the vehicle distributor of all payments they had made under the lease, as well as the amounts they still owed. The plaintiffs were also asking for civil damages of up to two times any compensatory damages award. At the close of the plaintiffs' case, the court granted our motion for judgment as a matter of law on the implied warranty claim and the request for civil damages, and the jury ultimately found in favor of our client on the plaintiffs' Song-Beverly express warranty claim, awarding them nothing.

Successful Representation of Client in Premises Liability Case

We successfully obtained a complete dismissal of a lawsuit brought against our client, a local Catholic parish, in a premises liability case. In this case, the plaintiff tripped and fell in a landscaping area near the church entrance. She alleged the parish was negligent for the installation and maintenance of certain landscaping features and demanded damages for her significant injuries.

After discovery, we filed a motion for summary judgment on behalf of our client, arguing that under Ohio's open and obvious doctrine, the parish owed no duty to the plaintiff as a matter of law. Instead, as we established through photographs, documents we obtained through discovery, and deposition testimony from the plaintiff herself, the area where she fell would have been observable to a reasonable person if she had simply looked down. After summary judgment briefing and oral argument, the trial court agreed. The judge granted our motion from the bench and dismissed the case with prejudice.

The favorable result for our client reinforces venerable premises liability law in Ohio and provides another precedent for property owners in the future.

Charging Order Against Three LLCs Reversed

After a judgment had already been entered, the defendant hired Dinsmore to represent him in connection with the plaintiffs' collection efforts. The plaintiffs claimed our client was a member of three limited liability companies, and

they asked the trial court to charge his alleged membership interests. We opposed the plaintiffs' motion for charging order because our client was not an owner of any of the LLCs, as evidenced by their operating agreements. Nevertheless, the trial court granted the plaintiffs' request. The First District Court of Appeals reversed, finding the trial court "lacked competent evidence of [our client's] membership" in the companies. The First District held: "when determining if an individual is a member of a limited liability company for the purpose of R.C. 1705.19, the trial court must consider records maintained by the company for the purpose of its corporate governance that name those owners entitled to receive distributions and share in the profits and losses of the company." Because "the only records of the limited liability companies before the trial court established" that our client was not a member of the LLCs, the trial court erred in granting the plaintiffs' motion for charging order.

[Stanfield v. On Target Consulting, 1st Dist. Ham. App. No. C-160890, 2017-Ohio-8830.](#)

Successful Representation of Municipality in Right to Take Hearing

Our client, a municipality, filed an action to appropriate private property for a road improvement project. The private owner challenged our client's right to take its property and the necessity of the appropriation. A Hamilton County, Ohio Court of Common Pleas judge heard testimony and evidence over six days. The court concluded the private owner's property was needed for our client's road project and the project was necessary to improve safety and traffic control and efficiency at the intersection. Finally, the evidence established that the municipality operated in good faith and fully complied with R.C. 163.04 and R.C. 163.59. Thus, the court determined our client had the right, and had established the required necessity, to appropriate the property for the road improvement project. We later tried the remaining parts of this eminent domain case to a jury for approximately two weeks.

Successful Representation of Client in Breach of Contract Dispute

We represented a Catholic parish (among others) in a lawsuit filed by a former principal who had been fired. All fourteen claims asserted by the plaintiff in his Second Amended Complaint were initially dismissed by the trial court. On appeal, the Second District Court of Appeals concluded that the trial court properly dismissed all of the claims except the breach of contract claim against the parish (the principal was employed by the parish). [Boyd v. Archdiocese of Cincinnati](#), 2nd Dist. Montgomery App. No. 25950, 2015-Ohio-1394. After the case was remanded, we tried the breach of contract claim for two days in the Montgomery County, Ohio Court of Common Pleas. On December 7, 2016, the trial court entered judgment in favor of the parish. [Final Judgment Entry.](#)

Defended Property Owner in Nuisance/Trespass Suit

Our client, a limited liability company, purchased property on the west side of Cincinnati that included a steep hill running down to a neighbor's property. Prior to purchase, there was a landslide from our client's property onto the neighbor's property. As a result, our client was sued for nuisance, trespass, and quiet title. We filed Counter-Claims against the neighbor, including a claim for trespass because the neighbor had constructed a retaining wall on our property without our permission. Ultimately, the Ohio Court of Common Pleas granted our summary judgment motion against the neighbor on our client's Counter-Claims, and the Court entered judgment in our client's favor on all the claims asserted by the neighbor. The First District Court of Appeals affirmed the trial court's decision. [See R&R Family Invs. v. Plastic Moldings Corp., 1st Dist. Hamilton App. No. C-160382, 2016-Ohio-8125.](#)

Guardianship Proceedings

Our client's elderly mother was unable to care for herself or handle her finances. We assisted our client in obtaining an Order for Emergency Appointment of Fiduciary from the Boone County, Kentucky District Court. The Emergency Order was granted due to financial exploitation and health and medical issues our client's mother was experiencing. Our client's sister challenged the Emergency Order at a hearing. However, the trial court reaffirmed its ruling and set a trial date of May 4, 2016. A number of witnesses testified at the trial, including our client, his sister, and a social worker who had examined our client's mother. Ultimately, the jury concluded that our client's mother was disabled, and the court appointed our client Guardian and Conservator for his mother.

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 seven days in federal court before the parties settled the matter.

Represent Client on Multiple Challenges from Other Company

We represented The Procter & Gamble Company (P&G) in a lawsuit filed by Definitive Solutions Company, Inc. (DSC) in the Hamilton County, Ohio Court of Common Pleas. DSC sued its former employees and their new employer, as well as P&G, when those employees left DSC. DSC asserted claims against P&G for breach of contract, promissory estoppel, tortious interference with business relationships, misappropriation of trade secrets, and civil aiding and abetting. After extensive discovery, P&G moved for, and was granted, summary judgment on each of DSC's claims.

A bench trial on various claims DSC asserted against the other defendants was held in 2014. The trial court ruled against the former employees and awarded DSC damages. DSC ultimately settled with its former employees, and it appealed the trial court's decision granting P&G summary judgment on the breach of contract and tortious interference claims.

On appeal, DSC claimed that P&G breached an agreement not to "directly solicit for employment" employees who had worked on its account and also that P&G had tortiously interfered with DSC's relationship with the employees. The First District Court of Appeals rejected both of DSC's arguments and affirmed summary judgment for P&G. The Court of Appeals found that the agreement between DSC and P&G prohibited solicitation for employment, not solicitation of another company to perform work. The Court also found nothing in P&G's conduct that rose to the level of tortious interference.

See Definitive Solutions Co., Inc. v. Sliper, 1st Dist. Hamilton App. No. C-150281, 2016-Ohio-533.

Pro Bono Case Representing Inmate in Excessive Force, Eighth Amendment to U.S. Constitution Violation

At the request of the court, Dinsmore accepted pro bono representation of a state prisoner who had filed a pro se action against three prison guards employed or formerly employed by Northpoint Training Center in Burgin, Kentucky. The prisoner claimed that the guards used excessive force on him during a 2012 training exercise, in violation of 42 U.S.C. § 1983 and the Eighth Amendment to the United States Constitution. The court permitted us to conduct limited discovery, and we prepared for trial on our client's claims against the guards. Two days before

trial was scheduled to begin in federal district court in Lexington, Kentucky, the Commonwealth of Kentucky agreed to pay our client \$10,000 and return 383 days of good time credit that he had lost.

Class Action Lawsuit

Obtained beneficial settlement of shareholder class action lawsuit by City of Pontiac General Employees' Retirement System seeking to preclude the sale of assets in multi-million dollar transaction. In a related matter, successfully defended against a motion for preliminary injunction where management company sought to delay termination of a management agreement in light of the pending sale of assets.

Successful representation of client in elementary school disciplinary case.

We successfully represented our client, an elementary school, in a lawsuit challenging the principal's decision to suspend two students for intimidating behavior. After a bench trial, a Hamilton County Court of Common Pleas judge found in favor of the school and dismissed the lawsuit. The Court ruled that the school had not abused its discretion in determining the manner in which the two students would be disciplined.

The First District Court of Appeals affirmed the decision in favor of our client, holding the school handbook was not a contract, and, even if it was, the school did not abuse its discretion. It was an important decision in several respects. It reaffirmed the broad discretion given to private schools in disciplinary matters. It was the first appellate court in Hamilton County to address the issue of student discipline in the private elementary school context. And it was the first court in Ohio to squarely answer the question of whether a grade school handbook constitutes a binding contract on the school. In answering that question in the negative, Judge DeWine's majority opinion represents a significant victory for private schools moving forward and only increases the burden student/parent plaintiffs face in challenging a disciplinary decision.

See D.T. v. St. Gabriel Consol. School, 1st Dist. Hamilton App. No. C-150640, 2016-Ohio-784

Dismissal of Federal Lawsuit

We represented John Tisch and Tisch Environmental, Inc. in complex litigation in federal court in Boston, MA. In April 2012, Plaintiff BGI sued John Tisch and his company, Tisch Environmental, Inc. BGI sought millions of dollars in damages from Tisch, alleging Lanham Act violations and claims for misappropriation of trade secrets, conspiracy, and others. BGI also sought millions of dollars from Thomas Merrifield, the former President of BGI, as well as damages from Greentech Instruments, Inc. BGI attempted to add John Tisch's brother as a defendant, but the Court granted our motion to dismiss due to lack of personal jurisdiction. Two days before the lawsuit was scheduled to begin in Boston, BGI dismissed the lawsuit. Tisch paid no money to BGI.

BGI Inc. v. Merrifield, D. Mass. No. 12-10658-RWZ, 2013 U.S. Dist. LEXIS 10300 (Jan. 25, 2013).

BGI Inc. v. Merrifield, D. Mass. No. 12-10658-RWZ, 2013 U.S. Dist. LEXIS 35431 (Mar. 14, 2013).

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 four day hearing 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

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.

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.

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.