



## Richard D. Porotsky, Jr.

Partner  
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Rick's practice focuses on complex commercial litigation, including private equity matters, minority shareholder issues, international dispute resolution, and insurance coverage issues. Within the insurance arena, he has successfully handled coverage issues and bad faith litigation for a number of clients. The disputes have involved coverage for asbestos-related bodily injuries, coverage for intellectual property claims under advertising injury provisions, and coverage for construction-related claims arising from contractual indemnity and additional-insured coverage among many others. Rick has also participated as a speaker at numerous seminars on insurance coverage litigation, and in 2011, his Ohio insurance law handbook was published through the Ohio State Bar Association (OSBA).

His extensive experience representing private equity interests includes a variety of cases involving business valuation, disputed accounting issues, profitability levels, and disclosures to investors. For more on his successful representation of investors in an earn-out dispute, click on the Publication tab above to read his case study: *Will Your Stock Purchase Agreements Hold Up to the Challenge*.

Rick's commercial litigation experience covers not only domestic disputes but also international disputes. His successful representation of international business clients includes Brazilian arbitration through the International Court of Commerce, forum selection disputes involving Canadian arbitration and Indian arbitration, and jurisdictional issues arising from European goods shipped to America.

Regardless of the subject matter, Rick excels in gathering, organizing and presenting the complex details that are necessary to obtain an efficient, favorable resolution under the law, whether in court, out-of-court or via alternative dispute resolution. His analytical style and ability to quickly discern his client's objectives enables him to become a trusted ally whenever complex business issues arise.

### Services

- Insurance Industry
- Litigation
- Appellate

- International Business
- International Dispute Resolution

## **Education**

- Vanderbilt University Law School (J.D., 1996)
  - Journal of Transnational Law
- Vanderbilt University (B.S., *summa cum laude*, 1993)

## **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 Northern District of Ohio
- U.S. District Court for the Southern District of Indiana
- U.S. District Court for the Eastern District of Kentucky

## **Affiliations/Memberships**

- Cincinnati Bar Association (1997 - present)
  - Community Service Committee (2000 - present)
  - Community Service Committee past chair (2009 - 2012)
- Ohio State Bar Association (1997 - present)
  - Insurance Handbook Author (2011)
- Colerain Chamber of Commerce, Board of Directors (2020 - present)
  - Vice Chair of the Board (2022)
- Claims and Litigation Management Alliance (2014 - present)
  - Annual Conference Speaker (2018-present)
  - SW Ohio Executive Committee (2015-2018)
- Western [Hamilton Co.] Economic Council, Executive Board and legal adviser (2014 - 2020)
- Towing and Recovery Association of Ohio, associate member (2007 - present)

- St. Thomas More Lawyers Guild of Greater Cincinnati
  - Chair of the board (2017 - present)
  - Red Mass co-chair (2006, 2015)
  - Executive Committee (2005 - present)
- St. James the Greater Church:
  - Athletic Board Faith Liaison (2022)
  - Lector & Fathers Ministry Committee (2002 - present)
  - Council member (2005 - 2009)
- Youth Baseball Coach and Soccer Coach (1997 – present) (St. Aloysius Bridgetown; St. James White Oak; White Oak Athletic Club)
- Dan Beard Council of Boy Scouts of America
  - Cubmaster of Cub Scout Pack 24 (2011 - 2016)
  - Committee chair of Cub Scout Pack 24 (2014 - 2021)
  - Chair of William Henry Harrison District Fundraising for the annual Good Scout Award Lunch (2020-present)

## Distinctions

- Peer Review Rated *AV* in *Martindale-Hubbell*
- Listed in AM Best's Recommended Insurance Attorneys
- Ohio *Rising Star*®

## Experience

### **Multi-party Insurance Dispute About Additional Insured Coverage and Indemnity Obligations Related to Construction Lawsuit**

At the request of our insurer client, we successfully analyzed the allegations of a multi-party construction-related lawsuit and the tender of defense between parties for purposes of determining coverage and defense obligations. The underlying lawsuit involved construction of a natural gas pipeline for the energy industry. The suit presented allegations of breach of contract, negligence, blasting liability, trespass, emotional distress, and fraud. The insurance issues involved additional insured coverage, property damage coverage, contractual indemnity rights, and anti-indemnity statutes. After presenting our opinion, we assisted the insurer client in obtaining payment from the insurer of another party based upon the indemnity and insurance rights between the parties.

### **Successful suit by minority shareholder against majority owners of family business enterprise**

To assist our client, a minority shareholder who was being denied her share of the profits in a lucrative family business, we filed suit against the majority owners alleging breach of fiduciary duty. After filing suit and obtaining

access to certain business and financial records, we employed forensic accountants and valuation experts to calculate the value of the client's losses and ownership share. As discovery demonstrated the unfairness of the majority's actions, we obtained a successful settlement of the lawsuit for our client through mediation efforts.

### **Foreign Plaintiff v. U.S. Corporation**

I lead a team which successfully assisted a foreign plaintiff in obtaining financial information from U.S. entities for use in a foreign proceeding. To do so, our team obtained a federal court order under 28 U.S.C. § 1782 requiring certain U.S. businesses and banks to provide discovery for use in the foreign proceeding.

### **Suit Against Insurer Dismissed on Favorable Terms**

We represented a liability insurer in complex, multi-party coverage litigation relating to a theft by a security guard. The guard stole equipment from a manufacturing facility where he was assigned to work. To recover the theft loss the manufacturer sued its own insurer, seeking coverage for property damage. The property insurer then brought a third party complaint against the security company under a theory of negligent hiring of the employee-guard. The security company then sued our client seeking coverage and a defense in the suit. We defended our client in its position that its policy, with its limited theft endorsement and in the absence of a fidelity bond, did not provide coverage or a defense for employee theft, regardless of the negligent hiring theory. After refusing to order a defense, and denying all dispositive motions, the court granted our motion to bifurcate and delay the claims against our insurer-client, indicating a potential for denying all coverage. Achieving this position of leverage allowed us to obtain an agreed dismissal of our client on confidential, favorable terms.

### **Multi-party subrogation dispute as to liability for large fire losses**

At the request of a large insurer, we defended an insured, commercial policyholder-tenant against subrogation claims from a landlord's insurer who claimed our policyholder shared liability for a vehicle fire on the landlord's premises. The fire resulted in hundreds of thousands of dollars in fire/smoke damage to the leased premises. There were actually two defendants, the second being the mechanic that our client, the policyholder-tenant, had hired to address electrical issues in the vehicle. Those electrical issues caused the fire, though the co-defendant tried to deny any fault. Accordingly, at the start of the case, we hired a fire causation expert who pinpointed the cause as faulty electrical repairs by the co-defendant. When the co-defendant still denied liability, we hired an auto mechanic expert to address the repairs that were made and the additional steps that should have been taken to prevent the fire. I then took the deposition of the co-defendant's mechanic, using our expert input to discredit the position of the co-defendant. I also analyzed the level of damages claimed by plaintiff with the help of an adjuster-expert. Our efforts and analysis led to a favorable settlement at mediation in which we were able to effectively exonerate our client and avoid any substantial liability.

### **Sexual Assault Coverage Opinions and Defense Analysis**

We assisted a large insurer in evaluating coverage issues, and then related liability and damages issues, pertinent to sexual assault claims against a commercial entity in multiple cases. One case related to a developmentally disabled victim. Another related to a physically handicapped victim. Our work allowed us to provide settlement recommendations in light of our detailed coverage opinions, apportionment of liability amid intentional acts and potentially non-delegable duties, and then compilation of relevant jury verdicts.

### **Acquisition of Interest in Laser Technology Company**

Dinsmore was lead counsel representing a private equity firm in its acquisition of an ownership interest in a laser technology company.

## **Successful defense of client in TRO hearing regarding allegations of fraud and embezzlement**

Rick Porotsky led a four-day TRO hearing which vindicated our client, who had been unjustly accused of fraud and embezzlement in his role as manager of a \$50 million real estate complex. After an initial ex-parte TRO had removed our client from his managerial role, the court permitted arguments, cross examination, and expert testimony. Mr. Porotsky played the lead role in developing and presenting the case, working closely with forensic accounting experts to address detailed accounting issues. Mr. Porotsky's presentation and examinations in court led the court to reverse its initial conclusions, finding that the opponent acted without foundation, in an appalling fashion, and with sinister motives when it accused our client of wrongdoing. The client was fully re-instated in his role as manager, and a new TRO prevented the opponent from acting to remove him while the case proceeded, now with counterclaims by our client. Ultimately, the parties reached a resolution to dismiss the matter with our client retaining his role as manager

## **Represented a Brazilian distributor in international dispute resolution proceedings**

Rick Porotsky represented a Brazilian importer and distributor in a dispute with a large U.S. manufacturer, which was arbitrated in Sao Paulo Brazil through the International Chamber of Commerce (ICC). Working with Brazilian co-counsel in a bi-lingual proceeding, Mr. Porotsky took the lead role in pre- and post-hearing briefings, opening statements at the arbitral hearing, presentation of economic experts, and cross examination of key English-speaking witnesses.

## **Manufacturer of Asbestos Products v. Insurance Company**

Served on our trial team as counsel to insurer in multi-million dollar dispute over coverage for asbestos bodily injury. The dispute involved issues of policy limits for product liability versus non-product liability. After years of discovery, briefing, and a trial of issues relating to the types of asbestos exposure experienced by underlying plaintiffs, we succeeded in obtaining an arbitration ruling in our client's favor on the issue exhaustion of policy limits.

## **Litigated dispute involving claims of breach of fiduciary duty**

We successfully assisted the minority shareholders of a large privately-held company in litigating and settling a disputed claim of improper self-dealing and breach of fiduciary duty by the majority shareholder and CEO with respect to subordinated, shareholder debt. After we investigated the company's finances, board-level discussions, and management correspondence, I took multiple depositions of officers and of Defendant's expert witness. The admissions I obtained at deposition, and information we gathered in discovery, allowed us to present summary judgment arguments to the Court which demonstrated that the defendant-CEO used the debt instrument to divert millions of dollars to himself, without proper consideration of financing alternatives. We used the deposition testimony, damaging documents, and a concise summary judgment presentation to help force a favorable settlement just prior to trial.

## **American Automobile Industry Supplier v. German Automobile Industry Supplier**

I served as lead litigation counsel, successfully assisted our client, a European manufacturer and supplier of tooling for the automobile industry, in avoiding suit in the United States. This particular German manufacturer has always tried to keep its operations and management within Germany. It has also sought to avoid the hassle and expense of legal proceedings in foreign venues. In 2007, however, this manufacturer was sued in the United States District Court for the Northern District of Ohio. Some of its tooling was being used there by an American automobile industry supplier. The American company alleged that the tooling was defective, claiming damages in

excess of \$5 million. With the benefit of the briefing which I authored, the German manufacturer obtained a victory in February 2008 on its initial motion to dismiss. The Court found that the German manufacturer's practices and forms prevent jurisdiction in Ohio. It found "no indication that [the German manufacturer] sought to exploit Ohio markets." The plaintiff failed to establish that [the German manufacturer] purposely availed itself of the benefits and protections of Ohio's laws." The Uniform Commercial Code (UCC) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) provided additional support for the Court's decision. The Court thus dismissed all claims for lack of personal jurisdiction.

### **International Arbitration**

We represented a scrap steel company in International arbitration before the American Arbitration Association concerning alleged breach of several sale contracts by an Indian company.

Dinsmore attorneys prepared the case for its final hearing but were able to negotiate a favorable settlement before the client incurred the fees associated with a final hearing, and one that resulted in payment to the client quickly without protracted litigation in India. Because we were cognizant of legal costs and processes throughout the case, the result was a quick recovery for the client, but reached in a cost-effective manner.

### **Represent an Indian family business in international forum selection dispute**

Rick Porotsky played a leading role in representing an Indian family business entity in U.S. federal court proceedings brought by a U.S. manufacturer who sought to invoke arbitration to avoid parallel Indian court proceedings. Mr. Porotsky participated in video conference court proceedings, conducting examination of the firm's client online in Mumbai while also conducting cross examination of opposing witnesses. He also played a leading role in briefing to the federal court to address forum selection, jurisdiction, and Indian law.

### **Defended insurance company against allegations of bad faith**

On behalf of an insurer client, I successfully litigated and resolved an insurance coverage claim seeking \$1.5 million in coverage and an additional \$2.2 million in punitive damages for alleged bad faith. The claim involved storm damage that allegedly occurred on dozens of roofs at an insured homeowners association. I led the team which first reviewed and analyzed historical documentation and communications relating to the financial, maintenance, and governance issues at the association. I then worked with experts to understand the alleged damages and roof conditions. Armed with data about the association's roofs and finances, I then deposed the homeowners' association president, treasurer, and maintenance chairperson. I was able to gain admissions of reasonable handling by our client and admissions of past roofing and maintenance issues unrelated to storm damage. I used these admissions to file a detailed motion for summary judgment, which helped lead to a successful mediation and settlement in February 2014.

### **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.

### **Breach of Stock Purchase Agreement with Alleged Fraud-Related Counterclaims**

When early negotiations failed, I filed suit on behalf of a group of shareholders who were seeking recovery of contingent payments from a multi-billion dollar international corporation. The payments were owed for breach of a stock purchase agreement and for unauthorized transfers of intellectual property. The opposing corporation filed fraud-related counterclaims, vigorously contesting the claim. I advised the client at each step, including seeking detailed discovery and undertaking thorough analysis of intellectual property transfers to demonstrate the triggering of payment obligations. I personally handled five key depositions of lead witnesses, and our team handled more than 20 depositions overall. I also employed a predictive coding document review system, enabling our team to efficiently examine approximately 250,000 of the opponents' documents as we prepared our case against a better-financed adversary. The corporation decided to settle the matter prior to trial, resulting in the successful resolution of contingent payments owed to the client under the stock purchase agreement.

### **Title Insurance Company v. Title Agency**

I successfully represented the title insurer in obtaining an injunction to freeze accounts of a title agency when the title agency went out of business amid claims that numerous liens and taxes had gone unpaid from prior real estate closings. Through the related lawsuit for breach of contract and negligence, I helped the client to recoup a significant portion of the losses caused by the title agency's actions. Our quick action in obtaining an injunction helped the client to limit its exposure and limit the loss of pertinent information.

### **Local Manufacturer v. Foreign Supplier**

I served as lead litigation counsel in 2009 in successfully assisting local equipment manufacturer in establishing personal jurisdiction over a German engine supplier in \$15 million dollar dispute over defective engines.

### **CAE, Inc., et al. v. Three Cities Research, Inc., et al., District of Oregon**

I played a lead role in obtaining dismissal in 2009-2010 of a \$97 million claim brought against a private equity fund and pertinent directors and officers in Federal District Court in Oregon. The case, brought under civil RICO provisions, involved an international transaction with Canadian entities, and concerned alleged contingent consideration owed under a stock purchase agreement. The issues had been previously raised in Canadian proceedings and remain subject to international arbitration in Canada. I served as the lead attorney in extensive briefing on issues involving forum non conveniens, abstention, arbitration, and RICO, which led the Court to dismiss the case with prejudice.

### **Employee Policyholder v. Insurance Agent**

I successfully represented an insurance agent who had been sued for misrepresentation in selling an employee benefit plan to a small business. The plan included disability and life insurance benefits. When an employee sought substantial benefits beyond those set forth in the policy, I filed and argued a motion to dismiss, invoking contract law and the ERISA statute, which required benefits to be described in writing, preempting common law misrepresentation claims. I thus obtained a dismissal of claims from state court due to exclusive federal jurisdiction over the alleged claims for benefits beyond those set forth in the written ERISA plan.



## **Executive Spouse v. ERISA Benefit Plan for Large Corporation**

I successfully represented an ERISA plan and plan administrator in a suit where a participant's spouse, during the course of a divorce, sought a share of the participant's retirement benefits via a qualified domestic relations order (QDRO). The QDRO that she sought was contrary to the plan's terms and it was denied by the plan administrator. Unhappy with the plan administrator's actions, the spouse sued in federal court to force a particular apportionment of the retirement benefits. Invoking the discretion conferred upon administrators, and highlighting some related procedural shortcomings in the spouse's efforts, I was able to obtain a dismissal of the suit.

## **Group of Employees v. Employee Leasing Company**

We successfully negotiated a dismissal of our client from a suit involving alleged failure to provide health insurance. Certain employees claimed that our client was liable as the successor to a prior company which had experienced problems in setting up a self-insured ERISA plan. The prior company had utilized a third party administrator (TPA) to procure excess insurance coverage and to handle medical claims, but the TPA failed to procure the insurance or pay the claims. After investigating the claims for coverage under the ERISA plan, and analyzing the issues of successor liability, we obtained a dismissal of our client from the litigation.

## **Insurance Coverage Opinion**

I provided coverage opinions to a large insurance company on complex issues arising out of an alleged scheme by alcohol manufacturers to market and sell to underage consumers. The underlying plaintiffs sought to pursue a class action on behalf of the underage consumers and their parents, alleging intentional actions and certain negligent actions by the alcohol manufacturers. The manufacturers, in turn, sought insurance coverage. The coverage opinion addressed a number of issues, including the alleged marketing plans of these consumer products manufacturers and whether these could form the basis for a duty to defend or duty to indemnify under the insurance policies.

## **Local Manufacturer v. Supplier of Electronic Component Parts**

I served as lead counsel in 2010-2011 for local manufacturer in a case involving alleged breach of contract and breach of warranty against out-of-state supplier of electronic component parts. The case involved detailed analysis of product defects, compilation of extensive out-of-pocket damages, and formulation of claim for lost profits. I successfully negotiated resolution via mediation and then obtained enforcement of settlement in court when post-settlement difficulties arose.

## **Materials Supplier v. Brewing Company (In receivership)**

I successfully represented our client, a beer brewing company, in enforcing its right of first refusal with respect to trademark rights in certain local beer brands. A receiver who took control of these trademarks from a defunct brewery sought to sell both the brewery and the trademarks to another entity, in violation of our client's rights. After objecting to the sale, I argued our client's position at a hearing in state court in Northern Ohio. The hearing involved the receiver, the bank, a competing buyer, and other creditors. After the argument, the client and I successfully negotiated a resolution whereby our client obtained the desired beer brands at a favorable price.

## **Official Committee of Unsecured Creditors of Genesis Worldwide, Inc., et al. v. Three Cities Research, Inc., et al.**

I played a lead role in successfully assisted our clients, two private equity funds and their investment advisors, in resisting a \$62 million claim made against them. The case centered around the sale of the stock of Precision Industrial Corporation, a company which manufactured and serviced steel coil processing machinery. After the



sale, and amid an industry downturn, the buyer defaulted on its loans and filed for bankruptcy. The buyer then claimed that it had substantially overpaid for the stock of Precision and that our clients had unfairly benefited as part of an alleged leveraged buyout. Filing an adversary proceeding in Bankruptcy Court, the Plaintiffs sought to recover most or all of the original sale price. They blamed the selling stockholders and their advisors for subsequent industry problems and technical issues which surfaced after the stock purchase. When settlement negotiations proved unsuccessful, I argued and prevailed in discovery motions in Court. I then lead the effort to obtain detailed accounting, engineering, and business data which ultimately vindicated our clients in demonstrating that the deal had been fair and reasonable. I worked with expert witnesses, including forensic accountants and business valuation experts, to gather and analyze the pertinent data. I personally took numerous key depositions of the critical fact and expert witnesses. When we presented our case in Court on summary judgment, we convinced Plaintiffs to dismiss their fraud claim, and admit that as to remaining claims, it was "impossible to say Plaintiffs were likely to succeed at trial." The Bankruptcy Court then approved a nuisance value settlement in an amount less than the remaining cost of defense, less than one-half of one percent of the amount claimed in the Complaint.

#### **Policyholder-Attorney v. Legal Malpractice Insurer, U.S. District Court**

I served as lead, local trial counsel for insurer in successfully obtaining summary judgment in 2011 in a claim for coverage and bad faith involving underlying allegations of legal malpractice. In the only oral hearing in the case, I presented our position to the federal judge in a related-discovery motion that ultimately formed the basis for the summary judgment.

#### **Regional Insurance Company v. Local Manufacturer**

I obtained favorable rulings from the trial and appellate courts on the insurer's duty to defend certain underlying intellectual property claims. The underlying claims involved trade dress infringement, patent infringement, and unfair competition. The coverage issue arose because one of our client's insurance policies provided coverage for certain trade dress claims, among other types of advertising injury. I obtained summary judgment on the duty to defend, served as co-counsel in conducting a trial on damages issues, and then was the lead author of the brief that prevailed in the First District Court of Appeals.

## **Publications**

January 26, 2021

**Recent Federal Cases in the N.D. Ohio Split on COVID-19 Business Interruption Insurance Coverage**

May 6, 2020

**Dinsmore Earns Temporary Case Closure for Client Facing COVID-19 Financial Burden**