



## Richard H.C. Clay [Inactive]

Of Counsel  
[richard.clay@dinsmore.com](mailto:richard.clay@dinsmore.com)

Louisville, KY  
Tel: (502) 540-2300

Dick currently serves as president and C.E.O. of the Filson Historical Society in Louisville. He is of counsel at Dinsmore and has practiced in the areas of business and fiduciary litigation, appellate practice, and administrative law. He has represented corporate clients and individuals in distributorship purchases and disputes, negligent investment/sub-par appreciation claims, trust interpretation issues and disputes, breach of fiduciary duty claims, will contests, board governance issues, regulatory issues and appeals at the state and federal level, federal and state constitutional issues, class actions, defamation actions, business and contract disputes, trademark infringements, business interruption and interference, enforcement of non-competition agreements, lender liability actions, Equal Credit Opportunity Act actions, Fair Credit Reporting Act actions, and civil rights actions.

He has represented a major national church foundation with its own trust company, having served previously on its board and as its interim CEO. He has tried more than 80 jury trials in state and federal court and has argued more than 35 appeals in the United States Court of Appeals for the Sixth Circuit, the Kentucky Supreme Court, and the Kentucky Court of Appeals.

He has also served as Kentucky counsel for major pharmaceutical companies, manufacturers and retailers confronting nation wide claims.

Additionally, Dick has served as the firm's Kentucky ethics partner.

### Services

- Litigation
- Antitrust & Trade Regulation
- Appellate
- Class Action
- Government Relations
- Nonprofit Organizations
- ESOPs

- Mass Tort
- Product Liability
- Corporate Taxation
- Tort
- Life Sciences Industry
- Insurance Industry
- Transportation Industry
- Education Industry
- Municipal & Government
- Beer, Wine & Spirits Industry

## **Education**

- University of Kentucky College of Law (J.D., 1977)
  - Kentucky Law Journal, managing editor
- Middlebury College (M.A., 2022)
  - English
- Yale University Divinity School (Rockefeller Brothers Foundation Fellowship, 1974)
- Davidson College (B.A., 1973)
  - Economics

## **Bar Admissions**

- Kentucky

## **Court Admissions**

- Kentucky Supreme Court
- U.S. Court of Appeals for the Sixth Circuit

## **Affiliations/Memberships**

- Kentucky Bar Association
  - President (1999)
  - Board of Governors (1992 - 2000)
  - Annual Convention, chair (1991)
- Sixth Circuit Judicial Conference, life member
- International Society of Barristers, fellow
- Litigation Counsel of America, fellow emeritus

- Kentucky Bar Foundation, fellow
- American Bar Foundation, fellow
- The Speed Art Museum,
  - Board of Trustees (2003 - 2009, 2011 - 2019), chair (2007 - 2009)
  - Trustee emeritus
  - Co-chair of \$60 million capital campaign for the museum's expansion
- The Norton Foundation, Inc., trustee emeritus
- Kentucky Country Day School
  - Trustee (2003 - 2009, 2016 - 2019)
  - Co-chair of \$10.5 million capital campaign for new performing arts center
- Louisville Second Presbyterian Church
  - Elder
  - Chair of \$4 million capital campaign for church expansion and renovation
- Presbyterian Church (U.S.A) Foundation
  - Interim president and CEO (2009)
  - Trustee (1998 - 2004)
  - The Jarvie Program, NYC, Board of Directors
- Museum of Early Southern Decorative Arts, Winston-Salem, N.C., Past Advisory Board Chair
- American Shakespeare Center/Blackfriars Playhouse, Staunton, Virginia, Board of Directors

## Distinctions

- Peer Review Rated AV in *Martindale-Hubbell*
- *Best Lawyers*®
  - "Lawyer of the Year" in Louisville for Litigation - Trusts and Estates (2018)
  - Commercial Litigation, Litigation - Trusts and Estates, Personal Injury and Product Liability Litigation - Defendants
- *Kentucky Super Lawyers*®
  - For Business Litigation (2021)
  - Top 50 lawyers for Kentucky
- *Chambers USA*®: *America's Leading Lawyers for Business*, Litigation: General Commercial
- Davidson College Alumni Service Award
- Kentucky Country Day Distinguished Service Award

- "Top Lawyers" by *Louisville Magazine* (2016)

## Experience

### **Representation of International Malt Beverage Manufacturer**

Representation of client over last 20 plus years on issues pertaining to distributors, distributorship acquisitions, advertising, employment and labor-related issues, antitrust (Kentucky tied house issues), and regulatory issues governed by Kentucky Department of Alcohol Beverage Control

### **Negligent Investment Claims**

Plaintiffs are two purported beneficiaries of an \$80 Million Trust. They assert claims of breach of fiduciary duty against the Trustee, an investment management firm, based on allegedly improper investment management by the Trust's investment manager. The Trustee filed a third-party complaint seeking indemnity and apportionment from our client. Dinsmore has defended the client against the third-party complaint and has asserted all available defenses against the Plaintiffs as well. Dinsmore has taken the lead in deposing the Plaintiffs, one of whom is himself a senior partner in a well established Kentucky law firm. The case has involved substantial expert discovery from leading regional experts in investment management, on issues such as portfolio diversification, concentration, and capital gains taxes.

### **Breach of Fiduciary Duties Relating to Life Insurance Policies**

We brought this case on behalf of a Trust against a broker and the financial services company employing the broker. Our client claimed that the broker and the company had breached multiple duties in advising the Trust to surrender millions of dollars in life insurance policies. The case took place in FINRA arbitration. After substantial document and witness discovery, including expert witnesses on the duties of broker-dealers, the duties of insurance agents, and handwriting analysis, we were able to obtain a very favorable monetary settlement for our client.

### **Representation of Major National/Regional Bank**

Representation in trust and estate disputes, will contests, beneficiary relationship issues and lender liability issues

### **Representation of Major National Investment Banks**

Representation in fraud claims, FINRA broker/dealer actions and negligent trustee claims

### **Representation of Denominational Foundation and Trust Company**

Representation of 200-year old, \$1.6 billion denominational foundation, with wholly-owned trust company on issues pertaining to structure, governance, trust, endowments, charitable gift annuities, mutual funds, registered investment adviser issues, and employment matters

### **Natural Gas Exploration**

Regional representation of large privately controlled natural gas exploration company in contract, real estate and environmental actions in Kentucky, Ohio, West Virginia and Pennsylvania.

### **Representation of Supplemental Insurance and Benefits Company**

Kentucky representation of major supplemental insurance and benefits company, including regulatory work, arbitrations, advertising issues and defense of lawsuits

## **Advice regarding Establishment and Operation of Natural Gas utility (Gas/Water/Sewage)**

We are currently assisting a large, municipal water and sewage utility in Kentucky with respect to its plans to enter the natural gas business in order to spur economic development in the region. We are advising the client on all aspects on the statutory and regulatory issues implicated by this new venture, as well as the related issues implicated by its status as a municipal instrumentality. In addition to helping the client navigate these issues, we have also been retained to assist with negotiations regarding gas purchase agreements, transmission and distribution issues, eminent domain issues, and all aspects of the project – “from A to Z” - that will help them secure the supply of gas and deliver it to customers.

## **Representation of Institution of Higher Education**

Representation of theological institution and institution's board on major contract, corporate and senior management issues

## **Pharmaceutical Litigation**

Managed statewide defense of original manufacturer's diet drug litigation over a 10-year period, managed ongoing statewide defense of original manufacturer of Fosamax (oral bisphosphonates), and managed ongoing statewide defense of original manufacturer of Reglan (metoclopramide).

## **Video Games Litigation**

Successful defense of creator/manufacturer of video games in which the parents of decedents of a high school shooting claimed that the students were shot by a young man who was addicted to violence by video games and movies.

## **Representation of Manufacturer of Utility Vehicles**

State wide defense over a 12-year period of manufacturer of CJ 5 and CJ 7 Jeep vehicles against allegations of vehicle instability, with directive to dramatically reduce claims

## **Representation of Manufacturer of ATVs and Motorcycles**

State wide defense over a 10-year period of manufacturer of ATVs and motorcycles against allegations of vehicle instability, with directive to dramatically reduce claims

## **Representation of Large Retailer**

Represented client on state-wide basis with directive to dramatically reduce claims. Tried 8 to 10 jury trials a year for 7 year period, with 90% rate of success.

## **Diet Drug Litigation**

This multi-year representation included defense of a proposed statewide class action, and dismissal of a proposed medical monitoring class affirmed by the Kentucky Supreme Court. Significant experience in MDL practice and the interplay between state court cases and MDL cases.

## **Breach of Fiduciary Duties Relating to Large Revocable Trust**

We defended a national financial services firm against allegations of breach of fiduciary duty relating to a large revocable trust that became irrevocable at the grantor's death. Our client served as the corporate trustee for the

trust. The co-defendant was an individual co-trustee who had power of attorney for the disabled grantor during her lifetime and was her nephew. The suit was brought by the deceased grantor's daughter and granddaughter, alleging breach of fiduciary duty relating to the grantor's disability and competency to make testamentary dispositions – which were in favor of the nephew and other members of his family. We have taken or attended more than 20 depositions, filed motions to disqualify the plaintiff's experts, and worked with our experts on the grantor's disability and the fiduciary duties of the corporate co-trustee.

#### **Metoclopramide Litigation**

Lead Kentucky counsel in metoclopramide litigation from 2006 through present.

#### **Oral Bisphosphonates (Fosamax) Litigation**

We are currently serving as lead Kentucky counsel in oral bisphosphonates (Fosamax) litigation, which has arisen from allegations that the product causes osteonecrosis.

#### **Product Liability Litigation**

The Kentucky Supreme Court in a unanimous opinion held that the doctrine of equitable estoppel did not bar a product manufacturer's statute of limitations defense because of the manufacturer's alleged concealment of product defects from governmental regulatory agencies. The Court also held that the discovery rule would not be extended to cases not involving latent injuries or illnesses, or professional malpractice.

#### **Tax Litigation**

Amicus representation in United States Court of Appeals for the Sixth Circuit concerning whether the IRS appropriately charged heavy truck excise taxes on heavy-truck chassis, when the vehicles were specially designed for off-highway use, even though they could be operated on highways.

## **Publications**

March 2017

**Chapter 13 – Written Discovery of the Kentucky Civil Practice Before Trial Handbooks**

UK/CLE