

Litigation

We provide innovative thinking and creative litigation strategies to businesses and individuals nationwide facing complex disputes.

Our litigation team advises and represents clients of all sizes in trials, arbitrations, mediations, negotiations, and on appeal in matters ranging from complex multiparty commercial conflicts to disputes between individuals. We successfully defend and prosecute matters in state and federal courts and in arbitrations nationwide, and we have litigated many of the leading and defining cases in Minnesota jurisprudence.

We focus on achieving the best possible outcomes for our clients by providing top-quality, cost-effective, and customized approaches to each engagement. The firm's structure and staffing enable us to form efficient litigation teams that place the strongest talent on every case. Our lawyers also leverage the experience of team members from our bankruptcy, business law, corporate finance, family law, real estate, and wealth preservation groups.

Sometimes, it is in our clients' best interests to avoid litigation. For that reason, a cornerstone of our litigation practice is comprehensive counseling to assess litigation risk in advance. Whether minimizing the likelihood of going to trial or reducing our clients' exposure, we focus on our clients' bottom line without compromising their position should litigation arise.

Our state-of-the-art technology and software streamlines our case management and enhances our efficiency. We use technology to simplify and effectively communicate complex issues to juries, judges, and arbitrators. Our technology also provides a communications platform for effective and efficient information sharing with our clients.

Our areas of litigation experience include:

- Appellate
- Arbitration and mediation
- Banking
- Bankruptcy
- Business and commercial litigation
- Collections
- Construction
- Contracts
- E-discovery and record retention

- Employment
- Fair Debt Collection Practices Act
- Family law
- Financing
- Intellectual property
- Professional liability
- Real estate
- Securities
- Shareholder rights
- Tax
- Telephone Consumer Protection Act
- Trade secrets
- Unfair competition
- Utilities and telecommunications
- Wealth preservation and estate planning
- Will and trust contests

Experience

- **Defense of \$8 million claim for theft of trade secrets, employee disloyalty, breach of non-solicitation agreement, and aiding and abetting.** Our client, a large truck parts supply company, hired the top two managers of one of its branch offices, with employment to start after a new branch office was built out by client. After waiting in place for three and a half months, the managers resigned from plaintiff's branch without notice and immediately began recruiting plaintiff's employees – and were successful in getting 55 percent of the workforce to join our client. The managers and all employees were “at will,” but one of the managers had a non-solicitation agreement, and the new employees brought customer lists with them. Plaintiff contended that the employee “lift out” irreparably destroyed their business in the state where the branch office was located. After a three-week jury trial in federal court, the jury returned a defense verdict on all counts.
- **Ponzi auditor exonerated.** *In re Kelley* (Bankr. D. Minn. 2015; File No. 12-0X008). After the collapse of a massive Ponzi scheme, the bankruptcy trustee sued an auditor of one of the special purpose entities used to conduct the fraud alleging the CPA had negligently failed to detect the fraud, causing damages of \$116 million. After a two-week trial, the arbitration panel rejected the claim and awarded a total defense victory to the CPA firm.
- **High-damage lawsuit defeated.** A CPA firm was sued when several years of audits it performed did not uncover a massive lapping scheme involving a revolving line of credit from a bank. The accounting firm faced claims for the thefts and massive consequential damages from the audit client, its shareholders, the lender, and the holding company that acquired the lender.

We quickly negotiated a resolution with the audit client's shareholders in return for the audit client dropping its claim. We then won a jury verdict against the bank and sustained a dismissal of the holding company's claim in a ruling by the state supreme court.

- **Breach of contract trial.** A major manufacturer of private label food products was sued by its former business partner for breaching their joint venture agreement. The partner's damage claim exceeded \$34 million. During the six-week trial, our team of trial lawyers convinced the court that the partner's expert had made substantial errors and had limited the damages awarded to \$275,000, less than had been offered in settlement and 1 percent of the amount claimed. Our efficiency in handling large cases was further confirmed when the partner's financial records disclosed that the plaintiff's attorneys' fees were approximately double the amount of our fees.
- **Employer wins in non-compete fight and back pay.** Our client hired a new salesperson. Shortly after the salesperson started working, his former employer, a competitor in the same industry, sued the salesperson and our client, claiming breach of a non-compete agreement, and sought to prevent the salesperson from working for anyone in the industry anywhere in the world for a full year. The former employer actually secured a court order that temporarily forced the salesperson, who had also become our client, to stop working. After a hearing where we were able to present the full facts, the court declared the non-compete agreement unenforceable, allowing the salesperson to return to work immediately. He was also awarded back pay of more than \$31,000 for the time he was wrongfully prevented from working, and his new employer was awarded more than \$36,000 in attorneys' fees for having to defend the case.
- **Settling a former shareholder's claims.** The majority owner of a successful company was sued by a former minority shareholder she had previously bought out. The plaintiff alleged that his rights as a minority shareholder were violated before he sold his stock. In a case of first impression, the plaintiff claimed that he had been illegally terminated from his employment and was entitled to lost salary. He also claimed emotional distress damages for having been forced off the board of directors, and he argued that his stock sale did not preclude either claim. Our team of trial lawyers first persuaded the court to dismiss the employment claim, and then resolved the rest of the claim successfully. Decisive developments in the case included locating the plaintiff's pertinent medical records and forcing the production of his personal diary, which revealed multiple sources of distress beyond his employment termination.
- **Swift action protects brand, shuts down IP infringement.** When the brand name of a highly successful food product was misappropriated to sell an energy drink to young people as a faux illicit substance, our litigation and trademark teams combined forces, obtained an immediate temporary restraining order, and quickly obtained a preliminary injunction in federal court. The result was the entire removal of the infringing product from shelves within days.
- **Protecting a client's \$10 million business opportunity.** Our client had negotiated a very favorable financing arrangement with a wholesaler of electronic goods. Key to the transaction was credit insurance issued by an international insurer. A few months into the arrangement, the credit insurer decided it wanted to withdraw from the deal in violation of its contract. We sued the credit insurer and obtained a temporary restraining order, which prohibited the insurer from withdrawing from the transaction. The case then quickly settled, which allowed our client to earn in excess of \$10 million over the life of the arrangement.

- **Successful resolution of non-compete/non-solicitation dispute.** Our client was a top executive of a national retail grocery, supply chain, and wholesale distribution company. After leaving the company to take a position at one of its largest competitors, our client and his new employer were sued in federal court for breach of a non-competition and non-solicitation agreement, misappropriation of trade secrets, and interference with contractual relations. After persuading the court to refrain from issuing a temporary restraining order against our client that would have prevented him from working for the competitor, we successfully settled the dispute, and our client now enjoys unencumbered employment with his new employer.

Professionals

Justin S. Boschwitz

John P. Boyle

Craig A. Brandt

Matthew R. Burton

Madeline E. Davis

Aaron A. Dean

Sarah E. Doerr

Kelly C. Engebretson

Michael T. Etmund

Sara E. Filo

Charles E. Jones

Brandi J. Kasheimer

Matthew P. Kostolnik

Austin J. Malinowski

Aaron P. Minster

Issa K. Moe

Michael S. Poncin

Glen E. Schumann

Randall L. Seaver

Taylor D. Sztainer

Misty J. Tautges

Bryant D. Tchida

Jeffrey A. Wieland

News

Attorney Issa K. Moe Rejoins Moss & Barnett

04.03.2024

Randall L. Seaver Featured: "Student loans and credit cards fuel spike in bankruptcy filings in Minnesota"

KSTP-TV, 03.31.2024

Litigation Attorney Austin J. Malinowski Joins Moss & Barnett

02.13.2024

Craig A. Brandt Named a Qualified Neutral Under Rule 114 of the Minnesota General Rules of Practice

01.16.2024

Bankruptcy Attorney Randall L. Seaver Joins Moss & Barnett

11.21.2023

Attorney Charles E. Jones Rejoins Moss & Barnett

10.11.2023

Bankruptcy Attorney Matthew R. Burton Joins Moss & Barnett

10.03.2023

Moss & Barnett Congratulates Our Lawyers Selected for Inclusion in *The Best Lawyers in America* and *Best Lawyers: Ones to Watch* for 2024

08.17.2023

Alert: Hennepin County Addressed at SCOTUS

Moss & Barnett Advocate (Spring/Summer 2023 edition), 08.15.2023

Moss & Barnett Congratulates Our 2023 Minnesota *Super Lawyers* and *Rising Stars*

07.17.2023

Attorneys Debra M. Bulluck and Madeline E. Davis Join Moss & Barnett

02.24.2023

Moss & Barnett Announces New Shareholders: Michael T. Etmund, Mary Frances Price, and Jeffrey A. Wieland

02.22.2023

Moss & Barnett Congratulates Our Lawyers Selected for Inclusion in *The Best Lawyers in America*, *Best Lawyers: Ones to Watch*, and *Best Lawyers "Lawyers of the Year"* for 2023
The Best Lawyers in America, 08.18.2022

Moss & Barnett Congratulates Our 2022 Minnesota *Super Lawyers* and *Rising Stars*
07.18.2022

Attorneys Sara E. Filo and Katherine J. Marshall Join Moss & Barnett
03.15.2022

John P. Boyle and Jana Aune Deach Re-elected to Moss & Barnett Board of Directors
02.23.2022

Lawyer Justin S. Boschwitz Joins Moss & Barnett
01.19.2022

Moss & Barnett Congratulates Our Lawyers Selected for Inclusion in *The Best Lawyers in America* for 2022
The Best Lawyers in America, 08.19.2021

Moss & Barnett Congratulates Our 2021 Minnesota *Super Lawyers* and *Rising Stars*
07.20.2021

Court Operations Update
Moss & Barnett Advocate (Spring 2021 edition), 05.26.2021

Moss & Barnett Announces New Shareholders: Kathy Y. Allen, Kelly C. Engebretson, Brittney M. Miller, John M. Schmid, and Alex R. Schoephoerster
01.20.2021

Fifteen Moss & Barnett Lawyers Named to 2021 *Best Lawyers*® List
The Best Lawyers in America, 08.20.2020

Moss & Barnett Congratulates Our Lawyers Listed to Minnesota "Super Lawyers" and "Rising Stars" Lists for 2020
07.20.2020

Aaron P. Minster Joins Moss & Barnett
02.04.2020

Moss & Barnett Congratulates Our Lawyers Selected for Inclusion in "The Best Lawyers in America" for 2020
The Best Lawyers in America®, 08.15.2019

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars" Lists for 2019
07.05.2019

Moss & Barnett's New Certified Paralegal, Misty J. Tautges
06.27.2019

Bryant D. Tchida Joins Moss & Barnett
05.13.2019

Moss & Barnett Expands with Arrival of Craig A. Brandt, Peter J. Kaiser, and Jeffrey A. Wieland
04.18.2019

Thomas J. Shroyer Named "Best Lawyers" 2019 Minneapolis "Lawyer of the Year"
09.10.2018

Moss & Barnett Congratulates Its Lawyers Selected for Inclusion in "The Best Lawyers in America®"
for 2019
08.15.2018

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars"
Lists for 2018
07.05.2018

Moss & Barnett Congratulates Its Lawyers Selected for Inclusion in "The Best Lawyers in America®"
for 2018
08.15.2017

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars"
Lists for 2017
07.05.2017

Aaron A. Dean, Susan A. King, and Taylor D. Sztainer Elected Shareholders of Moss & Barnett
04.04.2017

Moss & Barnett Congratulates Its Lawyers Selected for Inclusion in "The Best Lawyers in America®"
for 2017
08.15.2016

Moss & Barnett is Pleased to Recognize Taylor D. Sztainer
07.18.2016

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars"
Lists for 2016
07.05.2016

Jana Aune Deach and Tom Shroyer Elected to Board of Directors
03.01.2016

Kelly C. Engebretson Joins Moss & Barnett
10.21.2015

Aaron A. Dean Joins Moss & Barnett
02.05.2015

Moss & Barnett Congratulates Its Lawyers Selected for Inclusion in "The Best Lawyers in America®"
for 2015
08.18.2014

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars"
Lists for 2014
07.07.2014

Events

Moss & Barnett's Upper Midwest CPA Firm Summit, in partnership with the Minnesota Society of CPAs (MNCPA) (St. Cloud, MN)
The Regency, 912 West Saint Germain Street, Suite 204, St. Cloud, MN 56301, May 9, 2024

Moss & Barnett's Upper Midwest CPA Firm Summit, in partnership with the Minnesota Society of CPAs (MNCPA) (Minneapolis, MN)
Fifth Street Towers Engage Conference Center, 150 South Fifth Street, Third Floor | 150 Tower,
Minneapolis, MN 55402, May 2, 2024

Sara E. Filo, Aylix K. Jensen, and Moss & Barnett are Pleased to be a Diamond Sponsor of Women in Consumer Finance 2023
The Renaissance Esmeralda in Indian Wells, CA, 12.11.23-12.13.23

Current Issues in Minnesota Employment Law
MNCPA Management & Business Advisors 2022 Virtual Conference, 06.14.2022

Deposition Techniques that Deliver Results
Minnesota CLE 2020 Civil Litigator Seminar Series | Raising Your Deposition Game, MN CLE
Conference Center, 600 Nicollet Mall, Suite 370, Minneapolis, MN 55402, 01.28.2020

How Can Innovations at the Intersection of Law and Technology Influence Practice, Pedagogy and Scholarship in Law?
The New Realism in Business Law and Economics Conference, University of Minnesota Law School,
Mondale Hall, 229 19th Avenue South Minneapolis, MN 55455, 11.07.2019

What Happens After Trial? Post-Trial Motions and Appeals and Attorneys' Fees
Probate and Trust Disputes – The Litigator's Guide to the Galaxy, Minnesota CLE Conference Center
600 Nicollet Mall #370 3rd Floor, City Center Minneapolis, MN 55402, 11.28.2018

To Appeal or Not to Appeal: That is the Question
2016 Appellate Practice Institute, 600 Nicollet Mall, Suite 370, Third Floor City, Center, Minneapolis,
MN 55402, 03.18.2016

Publications

"Sick and Safe Leave" Policies on the Rise at City and State Levels
Moss & Barnett Advocate (Spring/Summer 2023 edition), 08.15.2023

To Disclose or Not to Disclose: A Primer on Data Breach Notification Rules
Moss & Barnett Advocate (Fall 2022 edition), 12.15.2022

You Got Served (with a Subpoena), Now What?
Moss & Barnett Advocate (Summer 2022 edition), 08.15.2022

With the Great Resignation, Comes Great Employer Responsibility
Moss & Barnett Advocate (Spring 2022 edition), 05.13.2022

Handy at Bandy – Kelly Engebretson Keeps it Cool on the Ice
Minnesota Super Lawyers Magazine 2021, 07.22.2021

Post-Pandemic Hybrid Work from Home: Is Comfort Worth the Risk? Cybersecurity and Data Privacy Considerations
Moss & Barnett Advocate (Spring 2021 edition), 05.26.2021

To Arbitrate or Litigate?
Moss & Barnett Advocate (Winter 2021 edition), 02.25.2021

Are Employer-Mandated COVID-19 Vaccinations Worth a Shot?
Moss & Barnett Advocate (Winter 2021 edition), 02.25.2021

The Predicament of the Accidental Landlord
Summer 2018 Firm Newsletter, 08.22.2018

A Primer on Standing in Federal Court
The Woman Advocate (Winter 2017, Vol. 22, Issue 2) (a publication of the American Bar Association Section of Litigation), 03.02.2017

Did You Know? (featuring Kelly C. Engebretson and the USA Women's National Bandy Team)
Summer 2016 Firm Newsletter, 07.18.2016

Consequential, Special and Incidental Damages
Business Disputes: Claims and Remedies (2d ed.), 2015

Efficient Breach of Contract: If the Cost to Comply with a Contract Exceeds the Cost to Break It, What Can Be Done?
Spring 2014 Firm Newsletter, 04.11.2014

Minnesota State District Court Civil Practice Deskbook, Second Edition (2014)
Minnesota State Bar Association Continuing Legal Education, 04.01.2014



Everybody Pays: Attorneys Fees and the American Rule
Winter 2013 Firm Newsletter, 02.01.2013

Attention Fiduciaries: Do You Know Your Duties
Spring 2012 Firm Newsletter, 04.02.2012

Pitfalls in the Formation of LLCs
December 2011 Firm Newsletter, 12.01.2011

Managing Risk: Personal Guaranties in Commercial Transactions
Summer 2011 Firm Newsletter, 07.01.2011

What Exactly Are the Duties of a Fiduciary?
06.01.2011

Beware the Boilerplate (or pay attention to the fine print)
Spring 2010 Firm Newsletter, 04.01.2010

Violations of Professional Ethics in Malpractice Litigation
May 2008, 05.01.2008

Electronic Discovery: Be Careful of What You Delete
July 2007, 07.02.2007

A Very Close Call for Minnesota's Statue of Limitations
October 2006, 10.02.2006

