

Professional Liability

Professionals, firms, and their insurers across the country rely on our expertise to defend against malpractice claims and ethics complaints.

Our professional liability team defends and advises CPAs and firms of all sizes in courtrooms and offices nationwide on liability claims, government regulations, loss prevention, professional discipline, and business and employment matters.

Managing Accountants' Unique Legal Challenges

Accountants and accounting firms encounter unique challenges when providing services to their clients. For example, when clients of professionals have financial problems unrelated to the services provided, the professional firms servicing those clients still may find themselves thrust into lawsuits through no fault of their own. Accountants' clients may even attempt to blame the accountants for the clients' own business failures. Such clients may try to hold accounting liable under a wide variety of theories, increasing the stakes of the lawsuit in a frustrating and dramatic fashion.

Clients trust us to manage their multimillion-dollar accounting law cases because we have been resolving these disputes for more than three decades. Our depth of knowledge often allows us to handle a claim facing an accountant even before a lawsuit is commenced. Early, proactive resolution is one of the valued results we often achieve for clients.

In cases in which a lawsuit is brought, Moss & Barnett lawyers also have experience in presenting compelling and persuasive defenses as well as in minimizing the chances of a claim or lawsuit occurring in the first place.

Experience

- **Tax advice claim defeated.** The owners of a small business chose a risky tax strategy to deal with the gain on the sale of their business. Years after the IRS came calling, the owners sued their CPA firm, claiming the accountants had assured them the tax strategy would succeed. We successfully defended the CPA firm. Bottom line: The costs incurred by the CPA firm were a fraction of the total exposure.
- **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.



- **RICO charges by heiress against CPA dismissed.** When the disgruntled heir of a family fortune wanted a “deep pocket” to pay her claim that another heir had stolen from the decedent, she sued the decedent’s CPAs for treble damages and her attorneys’ fees under the Racketeer Influenced and Corrupt Organizations Act. We argued that the allegations of fraud and common enterprise lacked credibility, and the federal court dismissed the claim.
- **Medicare reimbursement lawsuit dismissed for no payment.** After a hospital chain was sold to another operator, several of the sold hospitals were hit with millions of dollars in Medicare cost assessments. The buyer and the seller “tag teamed” a lawsuit in an effort to squeeze the CPA firm of the sold chain into paying the assessments on the grounds that financial statement audits had been inadequately reserved for the risk of subsequent assessment and had failed to properly disclose the risk in footnotes. We used creative discovery to demonstrate that the parties specifically bargained for the risk of a future Medicare assessment in their purchase price, as well as aggressive case management techniques (including an appearance at a mediation and refusing to offer any payment for settlement) and the use of an engagement letter indemnity clause, to force the dismissal of the lawsuit without any payment.
- **Complex cross-border tax claim rejected.** When a foreign corporation hired a U.S. CPA firm to prepare domestic, federal, and state tax returns, the CPAs never bargained to provide tax consulting on the client’s international operations. After the client was hit with tax in another country, it sued the U.S. accounting firm for failing to advise on ways to avoid the foreign tax. We used vigorous discovery (including detailed requests for the tax advisory records and files of the client’s foreign-based CPA firm) to demonstrate the baseless nature of the claim; the claim was dropped without any payment.
- **Established precedent regarding statute of limitations.** *Client v. CPA*, 798 N.W.2d 557 (Minn. Ct. App.). A lawyer now with Moss & Barnett defended an accountant against a claim of tax malpractice. The case established that the statute of limitations for such claims begins when the returns are filed.
- **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.

Professionals

Yuri B. Berndt

Justin S. Boschwitz

Kelly C. Engebretson

Sara E. Filo

Charles E. Jones



Matthew P. Kostolnik

Aaron P. Minster

Taylor D. Sztainer

Misty J. Tautges

News

Attorney Charles E. Jones Rejoins Moss & Barnett

10.11.2023

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

03.15.2022

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

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

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



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

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

08.18.2014



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

Recent Accounting Malpractice Decisions, Trends, and What to Expect
Grand Hyatt Denver, 1750 Welton Street, Denver, Colorado, 09.29.2023

Risk and Accounting Firms

Presented to multiple Minnesota-based Accounting Firms, 11.10.2022 and 11.11.2022

Current Issues in Minnesota Employment Law

MNCPA Management & Business Advisors 2022 Virtual Conference, 06.14.2022

Employment Law Update: Practical Guidance and COVID-19 Impacts

2021 MNCPA Management & Business Advisors Virtual Conference #MNCPAMBAC21, 06.21.2021

Moss & Barnett is Pleased to Sponsor Accountants' Liability 2019

Washington, D.C., 10.17.2019

Moss & Barnett is Pleased to Sponsor Accountants' Liability 2018

Accountants' Liability 2018 Presented by ALI-CLE, Renaissance Washington, DC Downtown Hotel, Washington, D.C., 10.18.2018

Charles E. Jones and Moss & Barnett are Luncheon Sponsor of 2017 MNCPA Tax Conference
63rd Annual MNCPA Tax Conference, Minneapolis Convention Center, Minneapolis, MN, 11.30.2017

How is Cognitive Dissonance Impacting your Forensic Case Work?

AICPA 2017 Forensic & Valuation Services Conference, Las Vegas, Nevada, 11.15.2017

Becoming a Better Testifying Expert – Seen it all...Done it all...Fire Away!

AICPA 2017 Forensic & Valuation Services Conference, Las Vegas, Nevada, 11.14.2017

Neutral Work: Best Practices, Tips and Pitfalls

16th Annual MNCPA Business Valuation Conference, Crowne Plaza Minneapolis West, 3131 Campus Drive, Plymouth, MN 55441, 11.02.2016



Publications

The Corporate Transparency Act: Where are we now?

Footnote, a publication of The Minnesota Society of Certified Public Accountants (June/July 2024 edition), 05.29.2024*

Understanding the Corporate Transparency Act

Minnesota Lawyers Mutual Insurance Company, 02.15.2024

Planning for the Worst: Who Needs a Practice Continuation Agreement?

Footnote, a publication of The Minnesota Society of Certified Public Accountants (December 2023/January 2024), 12.04.2023*

Handy at Bandy – Kelly Engebretson Keeps it Cool on the Ice

Minnesota Super Lawyers Magazine 2021, 07.22.2021

What to Know About Unclaimed Property – Avoid These Traps

Business & Industry eNews, a bi-monthly publication of the Minnesota Society of Certified Public Accountants, 08.27.2019*

A Contract Game – Use these tips to delve in

Footnote, a publication of the Minnesota Society of Certified Public Accountants, 11.26.2018*

Managing Client Expectations for Tax Reform

Footnote, a publication of the Minnesota Society of Certified Public Accountants, 11.01.2018*

The Importance of Practice Continuation Agreements

Footnote, a publication of The Minnesota Society of Certified Public Accountants, 12.01.2017*

The Vanishing Paper Trail: How CPAs Can Help Clients Protect Digital Assets Upon Death

Footnote, a publication of The Minnesota Society of Certified Public Accountants, 06.01.2016*

Responding to Professional Discipline

May 2008, 05.01.2008

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

Responding to the Minnesota Board of Accountancy

October 2006, 10.02.2006

Accountant Accountability

St. Paul Pioneer Press, 08.04.2002

Avoiding Litigation in a Tax Practice
Minnesota Society of Certified Public Accountants, 05.11.1996

Is Your Firm a Candidate for a Lawsuit?
The Practical Accountant, 12.01.1993

Conflicts of Interest, Subpoenas, and Other Matters

We routinely represent CPA, law, and other professional firms on questions of managing actual or potential conflicts of interest, responding to subpoenas, acquisition agreements, and other matters.

Web Hosting Services Agreements

We advise Moss & Barnett's accounting firm clients – many of which have large regional or national client bases – on web hosting service agreements. In one transaction, we advised on the creation of a master services agreement (MSA) that called for construction of a dedicated third-party data center to host and support our client's applications. We structured the MSA to allow the accounting firm's clients to have exclusive use of the data center infrastructure, with appropriate service-level obligations and payments terms structured to meet our client's objectives.

Attorney Malpractice Defense

In addition to accountant law cases, Moss & Barnett also defends members of the legal profession:

- *Client v. Attorney*, 383 Wis.2d 45 (Wis. Ct. App.). Defended attorney sued by client in real estate transaction; established that client suffered no damages.
- *Client v. Attorney*, 922 F.Supp.2d 800 (D. Minn.). An attorney now with Moss & Barnett defended attorney sued by client on theories of conflicts of interest and other claims.
- *Client v. Attorney*, 551 F.3d 802 (8th Cir.). An attorney now with Moss & Barnett defended attorney sued by multiple clients arising out of failed investment.
- *Client v. Attorney*, 394 F.3d 1062 (8th Cir.). Defended attorney sued on conflict of interest claim following incorporation of a new business.
- *Client v. Attorney*, 1998 WL 373276 (Minn. Ct. App.). Won defense of legal malpractice claim for alleged negligence in handling underlying trial and probate court.
- *Investor v. Law Firm* (D. Minn.). Defended major Minnesota law firm on securities fraud and legal malpractice class action brought under fraud on the market theory.