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Trusts & Estates Litigation

David is a seasoned trial lawyer whose practice focuses on complex business litigation, including class actions. He represents parties in cases involving contracts, business torts, banking, bankruptcy, shareholder rights, oil and gas, legal malpractice and administrative proceedings.

David joined Fredrikson in 1987. He is a shareholder, and serves as Chair of the Banking & Financial Services Litigation Group and in-house litigation counsel to the firm. From 2006-2019, he served as Co-Chair of the Business Litigation Group. David appears in state and federal courts throughout the country and has successfully tried many cases to verdict or award.

David also has extensive appellate experience and has argued cases in both state and federal courts of appeal.

Martindale Hubbell Law Directory has given David its highest (AV) rating. He also is listed in *The Best Lawyers in America* for commercial litigation and banking and finance litigation. In 2020, David was selected by *Best Lawyers in America* as Attorney of the Year in Minneapolis for banking and finance litigation. In 2022, David was selected as one of *Minnesota Lawyer's* "POWER 30" for business litigation, which highlights 30 business litigators "whose mere presence on a case signals the stakes, who have influenced the direction of the law, whose leadership in the community is pervasive and whose respect within the bar is undeniable."

Experience

Trial/Defense Work

- David represented a company in the digital marketing industry that was sued for fraud by an investor. The trial court granted the company summary judgment on all counts. The dismissal of all claims was affirmed on appeal. *Jacobson v. AOM Holding, LLC*, No. A21-1707, 2022 WL 3022376 (Minn. Ct. App. Aug. 1, 2022).
- David was co-counsel for the defendants in a multi-billion dollar putative shareholder class action relating to Medtronic's inversion transaction with Covidian. Class certification was denied.
- David represented the members/governors of an LLC that were sued for allegedly breaching the membership agreement and destroying the value of the company.

All eleven counts were dismissed by the trial court. The decision was affirmed on appeal. *40 Ventures LLC v. Minnesquam, L.L.C., et al.*, No. A19-2082, 2020 WL 5507887 (Minn. Ct. App. Sept. 14, 2020).

- David represented one of the largest steel companies in the world in a breach of contract case relating to the construction of a taconite processing facility in Northern Minnesota. The client was sued for in excess of \$1.3 billion. The Court granted the client's motion to dismiss all claims.
- David represented an oil and gas company that owned a facility that was being annexed by a neighboring city. The annexation would have resulted in significantly higher taxes for the company. After an evidentiary hearing, the court ruled in favor of David's client and rejected the annexation.
- David represented the co-founder of a company that sold consumer goods, who was sued for \$46 million in a dispute regarding ownership of the company. David obtained summary judgment on behalf of his client, which was upheld by the Minnesota Court of Appeals and the Minnesota Supreme Court. (*Star Tribune*, June 20, 1997 "Minnesota Supreme Court Affirms Rulings in Damark International case.") The result was cited by *Minnesota Law & Politics* magazine as among "the most notable civil litigation defense work of the past year." (*Minnesota Law & Politics*, September 1997) The Supreme Court's opinion (566 N.W.2d 60), is one of the most often cited opinions for the standard that Minnesota trial courts apply in determining whether to grant summary judgment.
- David represented a public company that manufactures computer hardware in two putative class action lawsuits brought by shareholders of the company. The shareholders alleged that the company's proposed merger would undervalue the company's stock. Both suits were dismissed by the Court prior to the commencement of discovery. (*Star Tribune*, June 16, 2005 "Two Suits Against August Dismissed.")
- David represented a company that manufactured alarm systems in a lawsuit brought by the company's former CEO. The CEO asserted that the company breached the CEO's right of first refusal to purchase the company. The Hennepin County jury returned a verdict in favor of David's client, and all claims were dismissed.
- David represented a national bank/trustee in a lawsuit brought by the beneficiary of a trust for breach of fiduciary duty. After a trial in state court in North Dakota, the Court entered judgment in favor of the bank and dismissed all claims.
- David represented a public company that negotiated to purchase the assets of another company. The transaction did not close. The seller sued David's client for breaching the purchase agreement and asserted the right to keep the client's deposit. After discovery, David's client filed a motion for summary judgment. Prior to the hearing on the motion, the plaintiff agreed to return the entire deposit, plus interest. (*Star Tribune*, April 15, 2003, "Zomax, Inc., Plymouth, said it settled litigation regarding iLogistix and the return of 100 percent of its escrow deposit of \$3.9 million, plus accrued interest.")
- David represented a company being sued for brokerage fees in connection with the purchase of a business. The plaintiff's claim, which was in excess of \$100

million, was dismissed on summary judgment.

- David represented a manufacturer of hydraulic garage lifts, which was sued in Federal District Court in Texas. The plaintiffs alleged that the lifts were defective. After one day of trial (before the plaintiffs had completed their presentation to the jury), all claims were dismissed.
- David represented a designer of a waste water treatment facility in Eastern Siberia. The General Contractor alleged that the designer's plans were deficient. After discovery and motion practice, the case was resolved on favorable terms.
- David represented the general partner of a limited partnership in a putative class action by the limited partners. The plaintiffs' motion for class certification was denied, and the case was resolved on favorable terms.
- David represented a public oil and gas company in a case in which the plaintiffs alleged that the company was responsible for environmental damage associated with a ruptured pipeline that released in excess of one million gallons of salt water. After discovery and motion practice, the case was resolved on favorable terms.
- David represented a public oil and gas company, which was sued by an owner of mineral interests in spacing units where wells had been drilled and operated by the oil company. The Plaintiff asserted claims for breach of contract and breach of fiduciary duty based on the defendant's refusal to provide well information in the absence of a non-disclosure agreement. In a case of first impression, the trial court granted the defendant's motion for summary judgment, which was upheld by the North Dakota Supreme Court. (*Come Big or Stay Home, LLC v. EOG Resources, Inc.*, 2012 N.D. 91.)
- David represented a public oil and gas company that was sued in a putative class action alleging that the company had flared gas in violation of state statutes. The federal district court granted the company's motion to dismiss all claims. (Associated Press, May 16, 2014, "Flaring Lawsuits Are Tossed.")
- David represented a public company that manufactures software in a putative class action lawsuit brought by shareholders of the company. The shareholders alleged that a tender offer undervalued the company's stock. The Court denied the plaintiff's motion for expedited discovery and denied the plaintiff's request to schedule a hearing on a motion for a temporary restraining order. The plaintiff's claims were subsequently dismissed with prejudice.
- David represented a public company in an arbitration in which the company's former CEO asserted a claim for several hundred thousand dollars in severance pay. After presentation of testimony and argument in the arbitration hearing, the arbitrator denied the claim in its entirety and awarded the company its attorneys' fees and costs.
- David represented a bank in a lawsuit brought by 20 account holders for breach of contract and fraud associated with the account holders' IRA accounts. After discovery and motion practice, the case was resolved on favorable terms.
- David represented a law firm in a case in which a former client (corporation) of the law firm sued the firm for malpractice, and the firm asserted a claim against the

owner of the client arguing that the owner was personally responsible for unpaid fees and costs. The malpractice claims were dismissed by the court pursuant to a motion for summary judgment. The firm's claim was tried to a Hennepin County jury, which returned a verdict in favor of the law firm.

- David represented a local law school in a lawsuit brought by a law professor for alleged violations of employment statutes. The case was resolved on a favorable basis without any payment to the plaintiff.

Trial/Plaintiff's Work

- David represented a freight rail company in a lawsuit against the Metropolitan Council and the Hennepin County Regional Railroad Authority regarding the Southwest light rail project. After four full-day mediation sessions, the case was resolved favorably for the client. (*Star Tribune*, April 26, 2018 "Railroad Files Suit Over Route of SWLRT"; *Star Tribune*, July 19, 2018 "Southwest LRT Gets Back on Track with Pact, The County will Vote on the \$18.5M Deal with TC&W Thursday.")
- David represented the former CEO of a software company in a breach of contract lawsuit against his former employer. The Hennepin County jury returned a verdict in favor of David's client for the full amount requested. (*Star Tribune*, November 22, 2003, "A question of authority—GOP Chairman Eibensteiner involved in contract flap"; *Star Tribune*, May 1, 2004 "Jury Sides With Executive in Severance Case.")
- David represented a company that manufactured baked goods against the company's former customer in a breach of contract action. The Hennepin County jury returned a verdict in favor of David's client for close to the full amount requested. (*Star Tribune*, January 28, 2000, "Coffee clash: Caribou, bakery head to court"; *Star Tribune*, March 23, 2000 "Caribou Must Pay Supplier \$900,000.")
- David represented the founder and former CEO of a company that manufactures medical products in a breach of contract action against the company. David's client asserted that the company breached his severance agreement. The Hennepin County jury returned a multi-million dollar verdict in favor of David's client. The verdict was upheld by the Minnesota Supreme Court. (*Augustine v. Arizant, Inc.*, 751 N.W.2d 95 [Minn. 2008]; *Minnesota Lawyer*, February 4, 2008, "High Court Looks at Indemnity in Fraud Cases"; *Star Tribune*, June 27, 2008, "Arizant Owes Augustine Fees, High Court Rules.")
- David represented a provider of steel mill services in a case in which David's client and its former partner sued each other for breach of contract. After a bench trial, the Federal District Court in Baltimore dismissed the partner's claims and found that David's client suffered several million dollars in damages.
- David represented minority shareholders in a suit against the majority shareholder of a closely held company. The suit involved several claims relating to the nature of the minority shareholders' interest in the company. Several procedural issues were resolved by the Minnesota Court of Appeals and the Minnesota Supreme Court before a trial was held. (*Wessin v. Archives Corp.*, 592 N.W.2d 460 (Minn. 1999)). Following the trial, the case was resolved by the parties. (*Star Tribune*,

November 21, 2000, "Case Could Have Wider Meaning for Closely Held Firms.")

- David represented a medical device manufacturer in a dispute regarding rights to an invention that had several million dollars in potential value. After presentation of testimony and argument in the arbitration hearing, the arbitrator ruled that all rights to the invention belonged to David's client.
- David represented the creator and producer of a successful television series in a breach of contract action against the network that aired the Series. The case was resolved by the parties prior to the commencement of discovery. (*Star Tribune*, August 30, 2011, "Diners, Drive-Ins and Dives Feud Gets Vented;" *City Pages*, October 12, 2011, "Diners, Drive-Ins, and Disaster.")
- David represented the owner of a manufacturing company in a dispute with his partner regarding ownership of the company. Both parties asserted the right to purchase the other party's shares. After presentation of testimony and argument in the arbitration hearing, the arbitrator awarded David's client the right to buy and become the sole owner.
- David represented a law firm that brought a claim against its bank a connection with the bank's payment of checks that had been forged by one of the firm's lawyers. After discovery, the claim was resolved on favorable terms.

Appeals Argued

- *Minnesota Hotel Co., Inc. v. ROSA Development*, 495 N.W.2d 888 (Minn. Ct. App. 1993)
- *Aratex Services, Inc. v. Blue Horse, Inc.*, 497 N.W.2d 283 (Minn. Ct. App. 1993)
- *Broken Aero Services, Inc. v. Marquette Bank Monticello*, 33 UCC Rep. 2d 930 (Minn. Ct. App. 1996)
- *Digi-Tel Holdings, Inc. v. Proteq Telecommunications (PTE), Ltd.*, 89 F.3d 519 (8th Cir. 1996)
- *Brandt v. Marshall Animal Clinic*, 540 N.W.2d 870 (Minn. Ct. App. 1996)
- *DLH, Inc. v. Russ*, 544 N.W.2d 326 (Minn. Ct. App. 1996)
- *DLH, Inc. v. Russ*, 566 N.W.2d 60 (Minn. 1997)
- *Plymouth Foam Products, Inc. v. City of Becker, Minnesota*, 120 F.3d 153 (8th Cir. 1997)
- *Ash v. Marquette Bank*, WL 423559 (Minn. Ct. App. 1997)
- *Hedged Inv. Partners v. Norwest Bank Minnesota, N.A.*, 578 N.W.2d 765 (Minn. Ct. App. 1998)
- *Wessin v. Archives Corp.*, 581 N.W.2d 380 (Minn. Ct. App. 1998)
- *Wessin v. Archives Corp.*, 592 N.W.2d. 460 (Minn. 1999)
- *Union Bank and Trust Co. v. SUPERVALU, Inc.*, WL 672762 (Minn. Ct. App. 1999)
- *Delta Engineering, Inc.*, 270 F.3d 584 (8th Cir. 2001)

- *Winthrop Resources Corp. v. FFP Operating Partners, L.P.*, WL 1969256 (Minn. Ct. App. 2002)
- *Sendecky*, 315 F.3d 904 (8th Cir. 2003)
- *Estate of King*, 668 N.W.2d 6 (Minn. Ct. App. 2003)
- *Bradley v. First Nat'l Bank of Walker, N.A.*, 711 N.W.2d 121 (Minn. Ct. App. 2006)
- *McCarty v. Buechler*, WL 899951 (Minn. Ct. App. 2007)
- *Augustine v. Arizant, Inc.*, 735 N.W.2d 740 (Minn. Ct. App. 2007)
- *Augustine v. Arizant, Inc.*, 751 N.W.2d 95 (Minn. 2008)
- *Becker v. Alliance Bank*, WL 2899586 (Minn. Ct. App. 2010)
- *Come Big or Stay Home, LLC v. EOG Resources, Inc.*, 2012 N.D. 91
- *Minnesota Department of Natural Resources Special Permit No. 16868 Issued to Lynn Rogers*, 867 N.W.2d 522 (Minn. Ct. App. 2015)
- *Medtronic, Inc. Shareholder Litigation*, 900 N.W.2d 401 (Minn. 2017)
- *40 Ventures LLC v. Minnesquam, LLC, et al.*, No. A19-2082, 2020 WL 5507887 (Minn. Ct. App., Sept. 14, 2020)
- *Odyssey Med. Techs., LLC v. Medtronic, Inc.*, No. A21-0567, 2022 WL 92955 (Minn. Ct. App., Jan. 10, 2022)
- *Jacobson v. AOM Holding, LLC*, No. A21-1707, 2022 WL 3022376 (Minn. Ct. App., Aug. 1, 2022)

Credentials

Education

- University of Minnesota Law School, J.D., 1987, *cum laude*
- Oberlin College, B.A., 1984

Admissions

- Minnesota
- U.S. District Court for the District of Minnesota
- U.S. District Court for the Eastern District of Wisconsin
- U.S. District Court for the Western District of Wisconsin
- U.S. District Court for the District of North Dakota
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Seventh Circuit
- U.S. Court of Appeals for the Eighth Circuit
- U.S. Supreme Court

Recognition

- *Best Lawyers in America*, Commercial Litigation 2015-2024; Litigation-Banking and Finance, 2016-2024
- *Minnesota Super Lawyers*, Business Litigation, 2001-2008, 2010-2019, 2023
- *Minnesota Lawyer's POWER 30: Business Litigation*, 2022
- Lawyer of the Year in Minneapolis for Litigation-Banking and Finance, *Best Lawyers*, 2020
- North Star Lawyer, Minnesota State Bar Association
- *Martindale-Hubbell*, AV® Peer Review Rated

Civic & Professional

Professional Activities

- Minnesota State Bar Association
- Hennepin County Bar Association

Community

- Children's Law Center of Minnesota, Past Board Member; Volunteer Attorney
- Volunteer Lawyers Network, Past Board Member; Volunteer Attorney
- Sharing and Caring Hands, Volunteer Attorney
- Scott County Referee, 2016-2020

News

Firm News | 08.17.2023

Fredrikson Attorneys Recognized in The Best Lawyers in America© 2024

Firm News | 07.17.2023

Fredrikson Attorneys Named 2023 Minnesota Super Lawyers and Rising Stars

Firm News | 10.27.2022

Terrence Fleming, David Marshall and Todd Wind Among Minnesota Lawyer's POWER 30 in Business Litigation

Article | 08.18.2022

Fredrikson & Byron Attorneys Recognized in The Best Lawyers in America© 2023

Firm News | 06.16.2022

Fredrikson & Byron Attorneys Recognized as North Star Lawyers