

Bryan M. Westhoff

SHAREHOLDER

he / him / his

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Bryan Westhoff is a business-minded litigator with substantial experience handling complex domestic and international commercial litigation, arbitrations and government investigations. He has successfully represented clients in matters of all sizes, including multiple “bet-the-company” cases involving more than \$1 billion in potential exposure.

Bryan’s practice focuses on pre- and post-closing M&A disputes, securities litigation and investigations, and other financial litigation. He regularly represents public companies and boards of directors in shareholder litigation, including proxy, disclosure and transaction-process claims, and advises private equity firms in deal-related disputes such as post-closing indemnification and fraud claims, working capital disputes and earn-out litigation. Bryan also represents individuals and companies in investigations conducted by the U.S. Securities and Exchange Commission (SEC) involving securities offerings, disclosures and accounting or audit issues.

In addition, Bryan defends clients against federal and state consumer protection, false advertising and deceptive trade practices claims. His experience includes defending matters brought by the Federal Trade Commission (FTC), investigations by state attorneys general, consumer class actions and claims under the Lanham Act.

Bryan regularly represents clients in expedited litigation, including offensive and defensive proceedings, and has successfully argued numerous motions for temporary restraining orders and preliminary injunctions. He serves as Chair of Polsinelli’s M&A Litigation group.

Education

- Washington University in St. Louis School of Law (J.D., 2002)
 - Dean’s List; Honor Scholar Award; Journal of Law and Policy; Environmental Moot Court - Team Winner and Best Oral Argument
- Truman State University (B.A., 1999)
 - Political Science

Bar Admissions

- Illinois, 2002

Capabilities

- Commercial Litigation
- Litigation
- Mergers & Acquisitions Litigation
- Class Action & Multidistrict Litigation

Court Admissions

- State of Illinois
- U.S. District Court, Northern District of Illinois
- U.S. District Court, Central District of Illinois
- U.S. Court of Appeals, Seventh Circuit
- U.S. Court of Appeals, Ninth Circuit

Recognition

- *Illinois Super Lawyers* "Rising Stars," 2011, 2016-2017

Matters

M&A, Securities, and Financial Litigation

- Represented the President and CEO of the world's largest marketplace for personalized products in a dispute over the composition of the Board of Directors in the Delaware Court of Chancery. Negotiated successful resolution through the sale of the company to a third-party private equity firm with founders retaining ownership interest.
- Successfully defeated TRO brought in Delaware Chancery Court seeking to enjoin our client's acquisition of an international precious metals company.
- Represented a clinical stage biopharmaceutical company, and its executives and directors, in a 10(b)(5) securities class action case filed in federal court in New Jersey. Litigation settled on favorable terms shortly after defendants filed their motion to dismiss.
- Represented minority shareholders bringing claims for breach of fiduciary duty and misappropriation of corporate assets against majority shareholder. Defended minority shareholders against claims threatened by city for failure start development under Illinois STAR Bonds program based on alleged breaches of fiduciary duties.
- Represented seller of flight tracking platform against post-closing IP claims brought by vendor and indemnification claims brought by buyer.
- Represented a publicly traded manufacturer of electric motors and its Board of Directors against seven shareholder lawsuits bringing disclosure and process claims related to the announced \$100 million acquisition of the company by a foreign buyer.
- Represented multiple private equity firms (Buyers and Sellers) in post-closing indemnification, fraud, and earn-out claims and working capital disputes related to sale or purchase of portfolio companies.
- Represented minority shareholder in fraud and breach of contract claims seeking more than \$30 million in damages related to sale of stock to the company and majority shareholder.
- Represented nonprofit health system in \$75 million breach of contract claims brought by quasi-governmental entity based on alleged change of control related to a merger agreement.
- Represented a publicly traded American sports apparel retail company in "busted merger" litigation related to the break-up of its announced \$1.5 billion merger with an American specialty footwear and licensed headwear retailer.
- Represented French holding company and its affiliates against fraud claims seeking damages in excess of \$1 billion arising from the company's purchase of bonds as part

of the rehabilitation of Executive Life Insurance Company.

- Represented publicly traded clinical stage biopharmaceutical company against claims brought by private placement agent and interested investors related to private placement offering.
- Represented multiple companies and individuals being investigated by the SEC, including investigations related to potential violations of the auditor independence rules, securities trading laws, rules, and regulations, and corporate disclosure obligations.

Consumer False Advertising and Deceptive Trade Practice Litigation

- Represented a proprietary educational institution in a false advertising case brought by the FTC related to advertisements broadcast over multiple years featuring the school's graduate employment rates.
- Represented proprietary educational institution in consumer class action cases and individual consumer arbitration claims resulting from FTC allegations.
- Represented a computer coding school in a false advertising investigation brought by New York state attorney general.
- Represented a pharmaceutical company in false advertising claims related to statements appearing on the label of one of the company's drugs.
- Represented an international telecommunications company in consumer false advertising and deceptive trade practice claims related to the operation its content filter.

Expedited Litigation

- Obtained temporary restraining order for client in Delaware Chancery Court to prevent its general partner from removing our client as the manager of a highly visible real estate project in Philadelphia.
- Represented a behavioral health hospital in obtaining a preliminary injunction preventing the United States Center for Medicare and Medicaid Services ("CMS") from terminating the hospital's Medicare Provider Agreement.
- Represented hedge fund in preliminary injunction hearing against subadvisor and former employee based on breaches of contract and breaches of fiduciary duty.
- Represented an international automotive parts manufacturer in obtaining a preliminary injunction requiring its Tier 2 supplier to continue providing battery cells while the parties arbitrated their dispute before the American Arbitration Association (AAA) and the International Chamber of Commerce, International Court of Arbitration (ICC).
- Represented an international energy company's savings and pension plans in expedited litigation bringing breach of fiduciary duties claims against their ERISA investment manager for losses resulting from securities lending.
- Represented multiple clients in expedited litigation involving employee non-compete agreements and trade secret claims.

Additional Matters

- Represented a global health and technology consulting company against breach of contract and other claims seeking more than \$160 million in damages for IP rights related to the development of a digital health platform. After substantial discovery and active litigation, the Polsinelli team secured a complete summary judgment for our client weeks before trial.

Publications

November 10, 2023

Should Meta Disclose Mark Zuckerberg's Cage Fighting Risk?

Quoted, Bloomberg Law

May 15, 2023

M&A Litigation: Early Dispute Resolution Successes

July 11, 2022

Are You Being Served? Court Authorizes Service of Process Via Airdrop

Co-Author, Polsinelli BitBlog

April 2018

Hidden Requirements for Calculating Graduate Employment

Career Education Review