Mark S. Fusco

Partner | Litigation

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OVERVIEW

Mark is a Partner in WH Burkley's Litigation Group. He is keenly focused on building strong client relationships. He takes the time to learn his clients' business objectives and develops litigation strategies to meet those objectives. Mark develops pre-litigation strategies that minimize the time and expense of litigation, and he has tried cases to verdict in counties throughout Ohio. He leads litigation teams, serves as first chair in jury trials, argues key pre-trial motions, takes and defends party and expert depositions, and manages commercial class action litigation.

Mark also has extensive appellate experience and has briefed and argued cases in the fifth, eighth, ninth, and 11th Ohio appellate districts and the U.S. Court of Appeals for the Sixth Circuit. Furthermore, he has expanded his practice to include representation of school boards and other educational entities in business disputes.

Mark is an appointee of the Board of the Federal Bar Association – Northern District of Ohio Chapter (FBA-NDOH).

EXPERIENCE

COMMERCIAL LITIGATION

- Represented a global manufacturer of industrial tooling in a contract dispute with one of its suppliers

- Obtained a six-figure judgment, plus attorneys' fees, for a commercial property owner in a contract dispute
- Obtained verdict for a client in a dispute over competing purchase orders by using forensic computer evidence to show that the opposing party had altered e-mails containing its acceptance of the original terms
- Represented an automobile dealer in a hearing before the Ohio Motor Vehicle Dealer Board who was seeking to acquire and relocate a new motor vehicle dealer franchise
- Obtained summary judgment for an automobile dealer in a dispute with a commercial customer who claimed lost profit due to excessive delays in the repair of its business vehicle
- Represented a local company in a dispute over a software contract with a national consulting company where the consulting company claimed $4 million in damages, but resolved for less than $100,000
- Resolved a national class action suit filed in Los Angeles against a client for a fraction of the amount claimed with significant contribution from the client's insurance carrier
- Resolved a complex commercial case on behalf of a supplier of insulation used in power generators
- Obtained summary judgment for an orthodontist on fraudulent inducement claim asserted by a national practice group
- Defeated a claim for attorneys' fees brought by a National Consumer Rights law firm by showing that the law firm failed to provide its client with an initial offer of a settlement which was greater than the settlement reached on the morning of the trial
- Defended several claims brought under the Telephone Consumer Protection Act
- Obtained the dismissal of a breach of contract claim filed by a plumbing company against the successful bidder for a public improvement contract in Lorain County
- Obtained a six-figure arbitration award against a construction company who built improvements on unstable soil
- Obtained a six-figure arbitration award on behalf of an anesthesia practice group against a gastroenterology practice

REAL ESTATE LITIGATION

- Obtained summary judgment in favor of a real estate developer by successfully arguing that the provisions of an automatic termination provision in an option contract could not be modified by contrary oral representations

- Cleared the way for a significant real estate project in downtown Cleveland in a matter of weeks through the creative use of Ohio's forcible entry and detainer statute
- Represented two automobile franchisees in the Automobile Industry Special Binding Arbitration Program

LABOR & EMPLOYMENT LITIGATION

- Obtained a judgment on behalf of a manufacturing client against two former employees to recoup the cost of specialized training

APPELLATE LITIGATION

- Obtained the reversal of a six-figure jury verdict against a physician in a Fair Credit Reporting Act claim
- Upheld a trial court's decision awarding zero damages in a Uniform Commercial Code (UCC) matter, despite the fact that the plaintiff had demonstrated liability
- Secured reversal of a trial court's judgment that an equity membership contract for an exclusive country club was unconscionable
- Obtained reversal of a trial court decision that an equity golf membership was a consumer transaction
- Upheld a trial court's decision that an option clause in a residential building contract had been waived by the consumer
- Arbitrated two cases for local auto dealers whose franchises were revoked in the Chrysler and GM bankruptcies

RECOGNITION

- *Legal 500* – Commercial Dispute (Elite Ohio) | 2026-present
- *Best Lawyers* – Appellate Practice | 2024-present
- *Best Lawyers* – Commercial Litigation | 2024-present
- *Best Lawyers* – Litigation – Labor and Employment | 2024-present
- *Best Lawyers* – Litigation – Real Estate | 2024-present
- *Super Lawyers* – Business Litigation (Ohio) | 2022-present
- *Martindale-Hubbell* – AV Rated

PRESENTATIONS

- “Legal Issues Facing the Medical Marijuana Industry,” Marijuana Policy Project’s Ohio Canna-Business Seminar, 2017
- “Contracts Have Consequences—The Nuts and Bolts of Vendor Contracts and Common Pitfalls,” Buckeye Association of School Administrators, 2016
- “What School Districts Need to Know About Insurance Policies,” Educational Service Center of Northeast Ohio, 2014 and 2015
- “Acronyms That Rule Your Sales: The ABCs of FTC, HIPAA, and CAN-SPAM,” Medtrade Annual Convention, 2013

ASSOCIATIONS

- Federal Trial Academy | Instructor
- Fieldstone Farm Therapeutic Riding Center | Board Member
- Federal Bar Association (Northern District of Ohio Chapter) | Board Member
- American Bar Association | Litigation Section | Member
- Cleveland Metropolitan Bar Association | Member

EDUCATION

- Case Western Reserve University School of Law, J.D.
- Hiram College, B.A.
    - *magna cum laude*

FOCUS

- Labor & Employment
- Litigation

NEWS

- WH Burkley Attorneys Named to Best Lawyers 2027 Edition
- Mark Fusco Appointed Adjunct Professor at Case Western Reserve University School of Law
- Mark Fusco and John Schiller Author Update in Thomson Reuters Practical Law - State Q&A Guide for Fraud: Ohio
- WH Burkley Recognized in 2026 Edition of Legal 500 US Elite - Ohio
- Super Lawyers Recognizes Walter Haverfield Attorneys in 2026 Edition
- WH Burkley Attorneys Named to Best Lawyers 2026 Edition
- Labor & Employment | Ohio Minimum Wage Increase for 2025
- Supreme Court Issues Opinions on Social Media Liability in Regards to Terrorist Content Overseas
- Ohio Super Lawyers Honors Walter Haverfield Attorneys
- Ohio Super Lawyers Honors Nearly 20 Percent of Walter | Haverfield Attorneys
- Ohio’s Revised Employment Discrimination Law Takes Effect: How Your Business Should Prepare
- Walter | Haverfield Attorney Joins Board of the Federal Bar Association – Northern District of Ohio Chapter
- New Cuyahoga County Anti-Discrimination Commission May Cause Legal Issues for Employers
- Walter | Haverfield Attorneys Admitted to New York Federal Court
- Compliance Deadline Alert: FCC Changes in Express Consent Standards to Take Effect on October 16, 2013
- If arbitration is the answer, you may have asked the wrong question
- Help avoid a lawsuit with a pre-emptive strike

LICENSED

- Ohio
- U.S. District Court, Northern District of Ohio
- U.S. Court of Appeals, Sixth Circuit

- U.S. Supreme Court
- *Pro hac vice* admission in Arkansas, Michigan, California, and Florida

OFFICE

- Cleveland