



John H. Dwyer, Jr.

Of Counsel

john.dwyer@wilsonelser.com

Louisville, KY – 502.238.7841

John Dwyer is a veteran litigator who succeeds in persuading judges, juries and arbitrators from coast to coast. Focusing his practice on construction and commercial litigation, John is familiar with complex, multiparty actions with claims made in various directions. He has tried cases to jury verdict in multiple states in state and federal courts and has argued before the Sixth Circuit and the appellate courts of Kentucky and Indiana. John has been chosen repeatedly by peers to take the lead in multiparty litigation and regularly fields calls from fellow attorneys on questions ranging from civil procedure to ethics.

Practicing for much of his career in a smaller firm he helped establish, John has done more than litigate since many of his clients are closely held businesses, some of which he has represented through multiple generations of ownership. Drafting and revising operating and shareholder agreements, real estate purchase documentation and a variety of other agreements provides John clear insights when dealing with corporate litigation.

Construction Litigation

For more than 27 years, John has handled construction litigation ranging from residential to commercial to heavy industrial and horizontal heavy construction. Claims included catastrophic structural collapses, fires and explosions to delays, extras and straightforward breaches of contract. John has learned that there is rarely a substitute for climbing to the roof or descending into a subbasement to compare what's on the plans with what was actually constructed.

Public Utilities

John has represented multiple wastewater and water utilities for four decades, typically acting as outside General Counsel. These clients have presented John with challenges involving state and federal regulatory issues, construction and design, surety bonds, employment and personal injury, eminent domain, real property and local politics. In addition to a tremendous range of legal issues, these entities have provided John with

Services

- Commercial Litigation
- Construction
- Commercial Contracts & Agreements
- Government Contracts
- Design Professionals
- Lawyers' Liability

invaluable experience working with engineering-centric leadership subject to political oversight.

Professional Liability

John has handled a variety of professional liability claims, often arising in the construction and design context. Dealing with a variety of professional standards of care, and particularly how standards of care from different professions interrelate, provides John significant experience in evaluating claims.

Business & Commercial Litigation

John has handled a wide variety business and commercial litigation, including “business divorce” cases, allegations of breaches of fiduciary duty, improper competition and all sorts of breach of contract actions.

Education

- University of Louisville, Brandeis School of Law (J.D., 1992)
 - cum laude; Supreme Court Editor, Journal of Law and Education; Member Journal of Family Law
- University of Notre Dame (B.A., 1989)

Bar Admissions

- Kentucky

Court Admissions

- U.S. Court of Appeals, Sixth Circuit
- U.S. District Court, Western District of Kentucky
- U.S. District Court, Eastern District of Kentucky
- U.S. District Court, Northern District of Indiana
- U.S. District Court, Southern District of Indiana
- U.S. District Court, Eastern District of Tennessee
- U.S. District Court, Western District of Tennessee
- U.S. Court of Federal Claims

Professional Affiliations

- American Bar Association
- Kentucky Bar Association
- Louisville Bar Association
- Board Member, Site Selection Member, Habitat for Humanity of Metro Louisville, Inc., 1993–present

Awards & Honors

- Selected for inclusion in *Kentucky Super Lawyers, 2023*
- Rated AV® Preeminent™ by Martindale-Hubbell

Client Wins

O'Brien, Dwyer, and Bokeno Obtain Total Order of Dismissal in Multi-Plaintiff, Multi-Claim, Multimillion-Dollar Lawsuit

Edward M. O'Brien (Partner-Louisville, KY), John H. Dwyer (Of Counsel-Louisville, KY), and AJ Bokeno (Associate-Louisville, KY) secured a significant victory in the U.S. District Court for the Southern District of Indiana for the firm's client, the owner of a manufactured home community, obtaining an Order of Dismissal against all claims brought by more than 30 plaintiffs seeking over \$15 million in damages. The plaintiffs, tenants in the client's community, brought individual and class action claims against the client, alleging multiple theories of liability related to payments under lease agreements and the physical property on which the community sat. The plaintiffs' allegations included breach of lease, statutory violations, negligence, and fraud. Eddie, John, and AJ responded with an extensively briefed motion to dismiss under Rule 12(b)(6), arguing that none of the claims met the required legal standards under Indiana law and Seventh Circuit precedent. The court agreed, dismissing all of the plaintiffs' claims against the client with prejudice, while adopting a majority of the legal arguments and theories advanced by the defense. The Louisville team's securing a total dismissal of the matter, disposing of more than thirty plaintiffs' multiple claims, delivered a complete defense win for the firm's client.

Dwyer Secures Affirmance in Slip-and-Fall Case

John Dwyer (Of Counsel-Louisville, KY) obtained affirmance of a case in which the plaintiff alleged that she fell in an unsecured water meter vault, leading to a leg injury that resulted in disability. She claimed a total loss of earning capacity and substantial pain and suffering. John secured summary judgment in the trial court based on lack of notice of the alleged defect in the meter vault. The Kentucky Court of Appeals affirmed.

Dwyer Secures Affirmance for Estate Administrator in Breach of Fiduciary Case

John H. Dwyer Jr. (Of Counsel-Louisville, KY) represented an estate administrator in a matter arising from allegations of breach of fiduciary duties and statutory obligations of good faith and fair dealing. The appellant, our client's former business partner, alleged that the firm's client conducted nine improper transactions, and sought compensatory and punitive damages. The trial court dismissed all nine transactions through three separate orders, two based on summary judgment and the third after a bench trial. On the appellant's appeal, John argued that all the transactions were properly recorded in the business's records, all the parties had equal access to those records, and the appellant chose not to view those records until 2014 and assumed, without proof, that those payments were improper. The Kentucky Court of Appeals addressed each order in turn and affirmed all three orders of the trial court.

Dwyer Obtains Reversal on Appeal of Easement Dispute

John H. Dwyer Jr. (Of Counsel-Louisville, KY) represented homeowners in the appeal of an easement dispute. At trial, the court terminated the homeowners' easement as it found that they violated the scope of the easement, and due to the hostility between the parties, it was impossible as a practical matter to accomplish the purpose for which the servitude was created. On appeal, John argued that the trial court erred in unilaterally terminating the easement based on the parties' inability to get along, and in failing to grant an injunction enjoining the other party from interfering with our clients' use of their easement. Further, John argued the trial court's reliance on Restatement (Third) of Property: Servitudes § 7.10 was improper. The Kentucky Court of Appeals agreed, finding that the appellee was the primary aggressor and an easement appurtenant cannot be unilaterally terminated because the parties cannot get along. Rather, the proper remedy for misuse of an easement is an injunction, instructing the violating party to refrain from continuing misuse. The Court reversed the trial court's finding that the easement was terminated, and remanded to the trial court to determine whether our clients are entitled to injunctive relief against the other party for their violation of our clients' use and enjoyment of the easement. The opposing party sought discretionary review in the Supreme Court of Kentucky, but that court declined review.