

AARON M. PHELPS



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Education

Wake Forest University School of Law
Winston-Salem, North Carolina
J.D., *magna cum laude*, 2002
Order of the Coif
Wake Forest Law Review

Ferris State University
Big Rapids, Michigan
B.S., Business Administration, *summa cum laude*, 1999

Legal Employment

Varnum
Grand Rapids, Michigan, 2002
Partner

Admitted to practice:
All Michigan state courts
United States District Court for the Western District of Michigan
United States District Court for the Eastern District of Michigan
United States Court of Appeals for the 6th Circuit

Practice Areas

Complex commercial and tort litigation
Environmental litigation
Michigan Agriculture Law and FDA enforcement actions

Professional Affiliations

Federal Bar Association, Western District of Michigan
State Bar of Michigan (Litigation Section, Environmental Law Section)
Grand Rapids Bar Association
Republican National Lawyers Association

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Community Involvement

United for Growth - Kent County (2010 – 2011)

Kent County Farm Bureau (Board of Directors, 2010)

Michigan Agri-Business Association (2009 – 2010)

Kent County Republican Party (Executive Committee, 2003 - 2004)

Cedar Springs Public Schools (Board of Education, 2003 - 2004)

Representative Matters

General Civil Litigation Cases Handled

Worth Capital, LLC v Models & Tools, Inc., et al. (Oakland County Circuit Court Case No. 10-107850-CK; Honorable Leo Bowman). Represent Models & Tools and its former board of directors in a lawsuit seeking over \$3 million in damages relating to alleged breach of contract, fraud and tortious interference with contractual/business relationships. All director liability claims were dismissed with no payment to Plaintiff.

Midwest Direct Logistics, Inc., et al. v Mason Dixon Produce Sales, Inc., et al. (Kent County Circuit Court Case No. 10-00237-CK; Honorable Paul J. Sullivan). Represented majority owners and directors of a Michigan transportation company in a shareholder dispute. The case was settled on favorable terms after the minority owner's motion for indemnity under the corporate bylaws was denied.

Irwin Seating Company v Devils Renaissance Development LLC, et al. (United States District Court for the District of New Jersey, Case No. 2:09-cv-02425). Prosecuted a complaint for Irwin Seating Company, the leading manufacturer of stadium seating in the United States, against the owner of the New Jersey Devils hockey team to recover over \$1 million in damages arising from breach of contract. The case remains pending.

In the Matter of the Estate of Deena Lee Broadbent (Third Judicial District Court for the County of Uinta, State of Wyoming Docket No. 07-10). Represented the Trustee of a family trust in an objection to the administration of an estate based upon the Personal Representative's breach of fiduciary duty and self-dealing. The case remains pending.

Imperial Design Trades, Inc., et al. v Robert Cisler and Michael Sherd (Kent County Case No. 09-13548-CK; Honorable Donald A. Johnston III). Defendants were sued by their former employer who sought to enforce a noncompetition agreement against them after they resigned and started a competing business. We were able to obtain immediate dismissal of the entire case, thereby allowing our clients to continue their business venture.

Acme Pallet, Inc. v McDonough Manufacturing Co. (Oceana County Circuit Court Case No. 08-6958-CK; Honorable Terrence R. Thomas). Represented McDonough Manufacturing Co., a Wisconsin sawmill machinery manufacturer, in an action filed against it by its former customer, Acme Pallet, alleging product defects and breach of warranty. McDonough filed a counterclaim seeking payment for costs incurred by it in investigating the claimed defects. The matter was tried by an arbitrator and Acme Pallet's complaint was rejected in its entirety, and McDonough recovered on its counterclaim.

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Albert C. Bishop v Michael Knox and Joan Knox (Kent County Circuit Court Case No. 08-05843-CZ; Honorable James R. Redford). Plaintiff brought suit against our clients seeking to enforce an express easement over defendants' property to access Reeds Lake. Defendants filed a counterclaim seeking to have the easement declared void as a result of adverse possession. Defendants prevailed on their counterclaim, and plaintiff's claim was dismissed. The trial court's ruling was upheld on appeal.

Agile Fund I, LLC v Old Orchard Brands LLC, etc., et al. (United States District Court for the Western District of Michigan, Case No. 1:09-cv-958). Currently represent owners of a major fruit juice manufacturer against claims brought by an investment fund and part owner that include breach of contract and breach of fiduciary duty arising out of fund's alleged failure to receive preemptive rights notice as part of sale of majority ownership in corporation.

Ocean Ridge Capital Advisors, LLC, etc. v Metropolitan Life Insurance Company, et al. (United States District Court for the Southern District of New York Case No.: 07-cv-3213). Represented Jack Skoog and Craig Van Ess in director and officer litigation brought by litigation trust arising from the bankruptcy of Meridian Automotive. Plaintiff was requesting approximately \$80 million in damages arising from refinancing that plaintiff claimed drove the company into bankruptcy. Case involved numerous theories of liability including insider preference actions, fraudulent conveyances, as well as standard director and officer liability theories.

In the Matter of the Arbitration Between National Union Fire Insurance Co. and Gainey Corporation. Represented defendant corporation in arbitration brought by AIG for in excess of \$20 million of additional collateral to secure deductible losses on numerous insurance policies for all of Gainey Corporation's subsidiaries.

International Paper Company v Gainey Transportation Services, Inc. (United States District Court for the Western District of Tennessee Case No.: 04-2986-M1 P). Represented defendant in two-week trial in federal court in Memphis before Judge McCalla involving International Paper's claims of breach of supply contract. Plaintiff sought in excess of \$1 million in damages at trial, but was awarded a judgment of only \$76,000.

Liberty Mutual Insurance Company, et al v Gainey Corporation (U.S. District Court, Massachusetts Case No. 03cv11306); *Gainey Corporation v Liberty Mutual Insurance Company, et al* (U.S. District Court Western District of Michigan Case No. 1:04cv0211); *Swiss Reinsure America Corporation v Gainey Corporation* (U.S. District Court Western District of Michigan Case No. 1:03cv0508). Defended trucking company in related cases involving insurance company's claims that the trucking company should post an additional \$16,000,000 letter of credit for collateral for insured years. In settlement, Gainey actually received a multi-million dollar reduction in collateral.

Gerald and Doris Pitcher v Sealtex Company, Inc., et al. and *James DeWitt v Sealtex Company, Inc., et al.* (Muskegon County Circuit Court Case Nos. 03-42586-CK and 04-43430-CK; Honorable Timothy G. Hicks). Represented Defendants in related cases asserting successor liability, fraudulent transfer, piercing the corporate veil and director liability claims. The trial court entered judgment against our clients and we appealed to the Michigan Court of Appeals, which reversed every finding of liability and vacated all judgments entered against our clients. We are now pursuing attorney fees and defense costs on behalf of our clients.

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Art Technologies, Inc. v Holland USA, Inc. (United States District Court for the Southern District of Ohio Case No. 1:06-CV-498-HJW; Honorable Timothy S. Black). Represented Holland USA, Inc. in a breach of supply contract case. Holland counter sued the plaintiff for breach of warranty and achieved a favorable settlement prior to trial.

Dubus v Anderson and Dise (United States District Court for the Western District of Michigan Case No. 1:03-CV-0351; Honorable Joseph G. Scoville). Represented Cynthia Anderson and Nathan Dise in personal injury action arising from a tractor-trailer accident. This was a clear liability case and plaintiff sought approximately \$2 million in damages at trial. The jury awarded less than 20% of plaintiff's demand.

Connie Navarro etc., et al. v Holland Hitch Company d/b/a Holland USA, Inc., etc., et al. (Lapeer County Circuit Court Case No. 01-030296 NZ (H); Honorable Nick O. Holowka). Represented Holland USA in a product liability defense case where plaintiff sought \$10 million in damages resulting from a serious tractor-trailer accident. After two years of litigation, Holland was dismissed from the case with no payment to plaintiff.

Towers Residential Condominium Association v Plaza Towers Condominium Association, et al. (Kent County Circuit Court Case No. 03-01798-CK; Honorable James R. Redford). Represented the owner of the then-tallest building in Grand Rapids in a complex condominium association dispute prosecuted on behalf of 144 condo unit owners. Following a one-week bench trial, judgment of no cause of action was entered in favor of defendant on plaintiffs' principal claim of being overcharged for utilities and services. Attorneys' fees and costs were awarded to our client.

Chapman v Titleist Club, LLC, et al. (Court of Common Pleas, Wood County, Ohio Case No. 05-CV-190; Honorable Mayberry). Represented former owner of an apartment building against personal injury claims. Court granted our client's motion for summary judgment resulting in early dismissal of the case for minimal cost.

Tower Automotive, Inc., et al. v Fuji Technica, Inc., et al. (Oakland County Circuit Court Case No. 07-081602-CK; Honorable Fred M. Mester). Represented Tower Automotive, a tier one automotive supplier, in a multi-million dollar breach of contract/warranty suit over automotive tooling involving Japanese and Korean toolmakers. The case was settled on favorable terms.

Standard Federal Bank v Gordon Hinken (Calhoun County Circuit Court Case No. 02-2888-CZ; Honorable Conrad J. Sindt). Represented Standard Federal Bank in a breach of contract suit in which the defendant disputed having executed a personal guaranty. Following a bench trial, the Court entered judgment in favor of our client.

Paul Pennington v K Force, Inc., et al. (Kent County Circuit Court; Honorable Donald A. Johnston). Represented K Force, Inc. in a sales commission case. We successfully moved for summary disposition and the Court dismissed all statutory claims making it impossible for plaintiff to get treble damages or attorneys' fees. The case settled for a nominal amount.

Robert K. Reimer v Holland USA, Inc., etc., et al. (Milwaukee County Circuit Court Case No. 06-CV-2445; Honorable Richard J. Sankovitz). Represented

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Holland USA, Inc. in a multi-party product liability defense suit. The case was favorably settled by Holland for a negligible amount following discovery.

Environmental Litigation Cases Handled

A.M. Todd Company v AEG Photoconductor Corporation, et al. (United States District Court for the Southern District of Ohio, Case No. 1:09-cv-892). Prosecuted a complaint on behalf of A.M. Todd seeking recovery of substantial damages resulting from hazardous substances released at the property by defendants. The case remains pending.

Wolverine Power Supply Cooperative, Inc. and Mid-Michigan Energy, LLC v Michigan Department of Environmental Quality (Missaukee County Circuit Court Case No.: 08-7064-CE; Honorable William M. Fageman). Represented major energy company in declaratory judgment action seeking to have a MDEQ Rule declared invalid. The Rule would have allowed special interest groups to delay our clients' construction of a coal fired power plant by initiating a lengthy and costly contested case hearing. The trial court ruled in our favor declaring the rule invalid, and this ruling was upheld on appeal.

Citizens for Environmental Inquiry, et al. v Department of Environmental Quality, et al. (Ingham County Circuit Court Case No. 08-114-AW; Honorable William E. Collette). Represented Mid-Michigan Energy as an Intervenor in a case brought by an environmental group seeking to force MDEQ to issue rules regulating emission of CO₂, which could have placed Mid-Michigan Energy's permit application to build a coal-fired power plant in jeopardy. The Court dismissed the environmental group's complaint, and that ruling was upheld on appeal.

Michigan Farm Bureau, et al. v Michigan Department of Environmental Quality (Newaygo County Circuit Court Case No. 07-19220-AA; Honorable Anthony A. Monton; Represent Michigan Farm Bureau and other agricultural plaintiffs in an action against MDEQ to have its rule requiring all concentrated animal feeding operations to obtain pollutant discharge permits declared invalid. This case is currently on appeal.

Michigan Waste Services, LLC v Michigan Department of Environmental Quality (Ingham County Appeal Case No. 08-179 AA; Honorable James R. Giddings). Represented petitioner in appeal of MDEQ's denial of two air permits to install. Argued appeal before the Ingham County Circuit Court and subsequently obtained a favorable settlement with MDEQ prior to Court's Opinion being released.

Michigan Department of Environmental Quality v Michigan Waste Services, LLC (Ingham County Circuit Court Case No. 04-528-CE; Honorable James R. Giddings). Defended a medical waste disposal company in a civil enforcement proceeding prosecuted by MDEQ that sought over \$500,000 in penalties and fines and a permanent injunction preventing the company from operating in the State of Michigan. Obtained several victories during multiple motions for summary disposition, prevented MDEQ from enjoining Michigan Waste Services' continued operations and ultimately achieved a settlement with only a \$50,000 fine.

In the Matter of Missaukee Lakes Master Homes, LLC (Department of Environmental Quality Administrative Hearing). Represent Missaukee Lakes Master Homes, LLC, as intervenor, in opposing to a dredging application requested by lake owner. Conducted contested case hearing in Lansing and received favorable ruling from the Department of Environmental Quality

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upholding the denial of the dredging permit application. The case is presently on appeal to the Ingham County Circuit Court.

David Fenske, M.D., et al. v Marc Bertorelli Builders, LLC, et al. (Van Buren County Circuit Court Case No. 06-55-104-CH; Honorable William C. Buhl). Represented Marc Bertorelli Builders, LLC and Marc Bertorelli against claims brought under Michigan statutes for alleged failure to disclose environmental contamination.

Asbestos cases -- Represent multiple defendants in personal injury and wrongful death claims brought by plaintiffs who claim to have been exposed to asbestos while working at our clients' facilities. We have successfully defended over 20 of these claims.

Appellate Cases Handled

Handled 8 intermediate appellate matters to both the Michigan Court of Appeals and the United States Court of Appeals for the Sixth Circuit, including:

Albert C. Bishop v Michael Knox and Joan Knox (Michigan Court of Appeals Docket No. 292486). Successfully defended an appeal challenging the trial court's entry of summary disposition, declaring plaintiff's express easement for ingress and egress to Reeds Lake invalid due to adverse possession.

Michigan Farm Bureau, et al. v Michigan Department of Environmental Quality (Michigan Court of Appeals Docket No. 290323). The trial court entered judgment in favor of Department of Environmental Quality upholding the state CAFO rule, that purports to regulate all Michigan CAFOs, even those that do not discharge or intend to discharge waste into the environment. The case has been argued before the Michigan Court of Appeals and we are awaiting a ruling.

Wolverine Power Supply Cooperative and Mid-Michigan Energy, LLC v Michigan Department of Environmental Quality (Michigan Court of Appeals Docket No. 287553). Successfully defended Mid-Michigan Energy in an appeal challenging the lower court's ruling which invalidated an MDEQ Administrative Rule.

Citizens for Environmental Inquiry, et al. v Department of Environmental Quality and Mid-Michigan Energy, et al. (Michigan Court of Appeals Docket No. 286773). Environmental group appealed lower court's dismissal of their complaint, which sought to force MDEQ to issue rules regulating emission of CO₂. The Michigan Court of Appeals upheld the lower court ruling.

James DeWitt v Sealtex Company, et al. and Gerald Pitcher and Doris Pitcher v Sealtex Company, et al., (Michigan Court of Appeals Docket Nos. 273387, 273390 and 274255). Obtained reversal of over \$500,000 judgments entered against our clients by the trial court on theories of successor liability, director liability, and piercing the corporate veil. The Michigan Court of Appeals reversed every finding of liability made by the trial court and established that under Michigan law, corporate directors do not owe fiduciary duties to creditors, even in the zone of insolvency.

American Autocoat, Inc. v MacDonald Industrial Products (Michigan Court of Appeals Docket No. 267036). Briefed and argued appeal before the Michigan Court of Appeals and judgment in favor of our client following bench trial was affirmed. We subsequently collected the full judgment amount, plus interest.

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Palm Beach Polo Holdings, Inc. v David R. Rynder, et al. (Michigan Court of Appeals Docket No. 259730). Successfully defended appeal challenging judgment in favor of our client related to the "Denison property," one of the largest undeveloped tracts of Lake Michigan dune land, located in Saugatuck.

William Q. Tingley, III, et al. v City of Grand Rapids, et al. (Sixth Circuit Court of Appeals Case No. 03-1887). Represented Spectrum Health Corporation, the largest hospital in West Michigan, in an appeal by Plaintiff who asserted violations of federal civil rights statutes. The trial court's dismissal of plaintiffs' claims was affirmed on appeal.