

CHICAGO

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Services

Financial Services

Commercial Lending
Enforcement, Insolvency and
Litigation

Litigation and Dispute Resolution

Commercial and Corporate
Litigation

Cybersecurity and Data Privacy

Professional Liability and
Malpractice Litigation

Real Estate and Construction
Litigation

Securities Litigation

Industries

Construction

Craft Beverage Manufacturers

Financial Institutions

Education

University of Illinois Chicago
School of Law, J.D.

Northern Illinois University, B.S.

Bar Admissions

Illinois

Court Admissions

U.S. District Court

- Northern District of Illinois
- Central District of Illinois
- Western District of Michigan
- District of Colorado



Barry P. Kaltenbach

Principal

Barry Kaltenbach is a senior principal in Miller Canfield's Litigation and Dispute Resolution practice group. He has handled commercial disputes in state and federal courts from coast to coast for the past twenty-five years, while always trying to keep his clients out of court.

His practice currently spans a wide range of civil matters. In the last few years, he has advised clients in the financial services and investment advisory industries on non-compete, non-solicit and trade secret restrictions, including litigating disputes around the country where necessary, including arbitration proceedings before the Financial Industry Regulatory Authority (FINRA). He has also represented clients seeking expungement of Central Registration Depository (CRD) occurrences and defended clients from claims of professional misconduct. He also regularly represents financial institutions in workouts and commercial loan enforcements and foreclosures.

Barry has extensive knowledge of the insurance industry and regularly advises clients on their rights under general liability, professional liability, errors and omissions, umbrella and excess insurance policies. He has also represented insurers in reinsurance disputes including arbitrating claims through ARIAS-U.S. and private arbitration. Where insurance has not been able to provide a solution, he has also litigated claims against large insurance producers for the failure to procure appropriate coverage.

Although over 95 percent of all lawsuits end in settlement, for those cases where a client faces a fight on which it cannot compromise, Barry has taken multiple cases to trial in state and federal courts. He also regularly prosecutes and defends temporary restraining orders and preliminary injunctions and has arbitrated and mediated numerous disputes.

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Representative Matters

Restrictive Covenants and Investment Advisory

- An investment advisory team resigned and began working for a competitor. We successfully defended a motion for temporary restraining order asserting that the advisors were soliciting their former clients. We also successfully defended a request for expedited discovery and a preliminary injunction hearing before the matter was successfully resolved in arbitration.
- An investment advisor moved to a competitor and was sued for soliciting his former clients, based on social media posts, and a former co-worker. We defended the request for temporary restraining order before the client moved forward with a local firm. When the matter became bogged down in discovery, we were brought back in and got the matter resolved through mediation.
- Two employees resigned, went to work for a competitor, and began soliciting their former clients in violation of their employment contracts. We obtained a temporary restraining order, and expedited discovery revealed that the employees had secretly begun assisting the competitor months before their formal resignation, resulting in a preliminary injunction. The matter settled with the competitor barred from expanding its business and the employees repaying considerable salary and bonuses.
- We were engaged by a registered representative seeking to expunge a CRD occurrence dating back twenty years. Despite the six-year limitations period, we were able to successfully expunge the occurrence, clearing the only blemish on the individual's record.
- A dissatisfied customer initiated arbitration against a client, alleging the client failed to follow customer investment directives. After mounting a vigorous defense, and helping the client navigate a CFP® Board investigation, we were able to resolve the matter through mediation without the client contributing settlement funds.

Financial Services

- A commercial lender was hesitant to foreclose its mortgage due to environmental concerns. We developed a creative solution that resulted in a monetary judgment against the borrower and the appointment of a selling agent to market the property without the need to work through the foreclosure process.
- We represented the receiver of a high-rise residential building with ongoing leasing and tenant disputes. Shortly before discharge and over the winter holidays, the building experienced a fire. We worked with the receivership team and City of Chicago officials to ensure tenant safety and effectuate emergency repairs.
- A mortgage insurance company incurred \$1 billion in net operating losses and was placed into rehabilitation. The corporate parent filed for bankruptcy protection and initiated an adversary proceeding against its own subsidiary seeking a declaration that it was entitled to take a worthless stock deduction, threatening the subsidiary's ability to apply the net operating losses to offset several hundred million dollars in projected future income. We obtained a favorable ruling in the bankruptcy court, prohibiting the parent from taking the deduction, and the parent appealed to the district court. The district court affirmed the bankruptcy court, securing the right of the subsidiary to apply its own net operating losses, saving over \$100 million in future tax liability.

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Insurance and Reinsurance

- A medical insurer paid a sizeable claim, but its reinsurer denied reimbursement arguing that the payments were extracontractual obligations. We took over the matter from prior counsel and obtained a significant arbitration award for our client.
- After the construction of a significant airport expansion, the owner filed suit against the general contractor alleging construction defects. After analyzing the client's insurance policies, potential coverage was found from an unlikely source, and the client received a complete defense.
- Another client entered into a new contract with a major railway operator, with complex insurance requirements, and wanted its insurance program analyzed to make sure it was fulfilling its contractual obligation. The analysis revealed a gap in insurance that the client's broker had missed.
- A hotel owner was sued after a tragic accident resulted in the death of one of its guests by a drunk driver. We worked with the client to secure general commercial and umbrella liability coverages and worked with the trial team to make sure the client's interests were protected. After the runaway jury returned a verdict in excess of policy limits, we worked on a successful appellate strategy that resulted in reversal and entry of judgment in the client's favor on appeal.

Construction and Property Claims

- A large general contractor partnered with an engineering firm to redesign and rebuild a highway interchange. The firm underestimated construction quantities, resulting in substantially increased construction costs for which the local department of transportation refused to pay. We implemented a strategy that maneuvered the engineering firm, two insurance brokers and two insurance companies—all from different jurisdictions—into the same lawsuit. The case settled prior to trial with the client recovering nearly all its claimed damages.
- A general contractor was building a large water purification plant when, a few days before the scheduled turnover, a series of failures resulted in a flange rupturing and the nearby reservoir draining downhill into the plant. The owner suspended payment and imposed liquidated damages to purchase potable water from the state. Litigation followed with the owners and several subcontractors and material suppliers, while related litigation was filed in multiple states by or against insurance companies. All litigation was resolved prior to trial, with the client ultimately not paying anything for its own defense or contributing to settlement.
- The sprinkler system in an occupied luxury high-rise kept rupturing, and the owner filed suit to recoup the cost to repair the damage and replace all the piping. While defending the general contractor, we discovered that a component parts supplier had made unannounced chemical changes to one of its products, resulting in a combination of incompatible materials being used. Working with our client, we settled with the owner and asserted claims against the design-build fire subcontractor, then resolved those claims and exited the litigation, which continued for years amongst the industry parties.
- A suburban church granted a license to a developer to permit the contractor to store construction materials in the church's parking lot but specifically forbidding excavation over concerns that the historic building might be damaged. The developer excavated the space regardless to save money and expedite its construction. We

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obtained a temporary restraining order shutting the project down, ultimately resolving the dispute without damage to the church, and with the developer paying a substantial settlement for its trespass.

- A complicated series of transactions resulted in a property owner losing title to several of his properties in the Chicago area. We pursued the co-conspirators, one of whom filed for bankruptcy protection, but we prevailed at trial on our adversary proceeding and obtained a judgment for fraud that was found to be non-dischargeable.

Illinois Biometric Information Privacy Act (BIPA)

- Class action defense of employers and other entities for BIPA and related claims
- Advising and counseling insureds on obtaining defense for BIPA claims
- Auditing and advising on company policies and practices to ensure BIPA compliance

International Trade

- A Japanese global electronics and robotics company sought to consolidate multiple free trade zones (FTZs) throughout North America into a new FTZ located in Dallas, Texas, pursuant to a warehousing agreement with a third-party logistics provider (3PL). Almost immediately the 3PL's operations resulted in: significant cost overruns, more than doubling the monthly budget; lost and delayed receipt and shipment of products and supply chain breakdowns; increased compliance and consulting costs, penalties and liquidated damages owed to U.S. Customs and Border Patrol; and the closure of the FTZ. We engaged a 3PL expert consultant and advised the client on its ongoing dispute, helping it navigate its way through a challenging environment.

Craft Beverage Manufacturers

- Successfully secured a landmark constitutional victory for a group of small, family-owned wineries on Michigan's Old Mission Peninsula, resulting in \$50 million in lost-profits damages being awarded to our clients after an 11-day federal bench trial challenging restrictive local zoning laws, and affirming constitutional protections for entrepreneurs everywhere, especially in the agriculture and craft beverage industries

Honors

University of Illinois Chicago School of Law, magna cum laude

University of Illinois Chicago Law Review, Editorial Board

Philip C. Jessup International Law Moot Court Competition

Professional Activities

Chicago Bar Association, Real Property Law Section, Construction Law and Mechanics Lien Subcommittee; Business Divorce and Complex Ownership Disputes Committee

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American Bar Association, Forum on the Construction Industry, Contract Documents Section; Insurance, Surety and Liens Division; Litigation and Dispute Resolution Section; Construction Litigation Committee; Tort Trial and Insurance Practice Section

Fellow, Construction Lawyers Society of America

Speeches

"Valuation 2025: Valuing Lost Profits for Litigation Purposes," Financial Poise, Webinar, March 20, 2025

"Litigation Trends," Wine, Beer & Spirits Law Annual Conference, Denver, October 9, 2024

"Proactive Risk Management," Door and Access Systems Manufacturers Association, Las Vegas, January 2023

"What Trial Lawyers Look for When Choosing an Expert," Forensic Expert Witness Association, June 2022

Product Liability Law presentation, National Association of Garage Door Manufacturers, June 2022

"Where Are We Going to Fight? Jurisdiction and Venue," Primerus Business Law Institute, Webinar, December 2014

"Navigating Through Client Liquidation or Bankruptcy," Primerus Business Law Institute, Annual Symposium, New York, New York, May 2014

"You Want Me to Agree to What?!? Negotiating Tough Construction Contracts," Primerus Business Law Institute, Webinar, November 2013

"Doing Business With Financially Troubled Companies," Association of Corporate Counsel, Annual Conference, Denver, Colorado, October 2011

"Drafting and Enforcement of Alternate Dispute Resolution and Venue-Selection Provisions in a Global Environment," Primerus Business Law Institute, Annual Symposium, Chicago, Illinois, June 2011

"Real Estate Litigation Issues," Attorneys' Title Guaranty Fund, Inc., Webinar, May 2011

"Mechanics Lien and Payment Bond Claims," Primerus Business Law Institute, Webinar, January 2011

"An Owner's Look at the Illinois Mechanics Lien Act: Old Rules and New Duties," Joseph A. Freed & Associates LLC, May 2009

Publications

"Client Portability Through the Looking Glass," contributor, Family Wealth Report, Oct. 28, 2024

"Don't Be a Cat—and Other Practical Tips for Your First (or Second) Remote Trial," co-authored with Ahmad S. Mazloum, American Bar Association, Litigation Section, Trial Practice Committee Newsletter, Dec. 30, 2021

Barry P. Kaltenbach

"Illinois Supreme Court Disallows Implied Warranty Claims by Owners Against Subcontractors," JD Supra, January 2019

"United States Supreme Court Clarifies What It Means to Be at Home," Illinois State Bar Association, The Corporate Lawyer, February 2014

"Fraudulent Transfer Claims in Bankruptcy Proceedings," Primerus Business Law Institute Annual Symposium, Chicago, Illinois, June 2012

"Stop, Look and Listen: How to Avoid Getting Hit by the Bankruptcy Train," International Society of Primerus Law Firms, January/February 2012

Articles

SEC 2025 Examination Priorities for Registered Investment Advisers

Deep in the Heart of Texas: Court Blocks FTC Non-Compete Rule

The End of Chevron: Administrative Power Shifts to the Courts

2024 Regulatory Update for Investment Advisers

Supreme Court Expands the Path to Challenge the Authority of Administrative Agencies in Federal Court

The \$17 Billion Slider? Illinois Supreme Court Decides White Castle BIPA Case

2023 Regulatory Update for Investment Advisers

Federal Trade Commission Proposes to Invalidate Non-Compete Agreements

Sixth Circuit: Reasonable Notice Required to Terminate a Successive Contract

Unconstitutional 'self-actualizing, perpetual funding mechanism' may pose new problem for Consumer Financial Protection Bureau

Government Flagpole, Government Speech? Supreme Court Decides Boston Lawsuit

Ohio Court of Appeals Affirms \$30 Million Libel Verdict Against Oberlin College

Illinois Limits Religious Objections to COVID Prevention Measures

CDC Eviction Moratorium: The Final Word

CDC Eviction Moratorium Not Quite Over: Where Do We Go From Here?

Don't Let the Signs Fool You, The Courts Are Open and Rendering Justice

COVID-19: Recouping Business Losses Through Business Insurance

Illinois Supreme Court Disallows Implied Warranty Claims by Owners Against Subcontractors