

Michael M. Conway

Partner/Retired



Michael Conway is a retired partner at Foley & Lardner LLP. He was a member of the firm's Business Litigation & Dispute Resolution and Appellate Practices.

Michael has been Peer Review Rated as AV® Preeminent™, the highest performance rating in Martindale-Hubbell's peer review rating system. He is a fellow of the American College of Trial Lawyers and is listed in *Chambers USA: America's Leading Lawyers for Business* (2008-2014). From 1991 to 2014, he has been selected for inclusion in *The Best Lawyers in America®* in the field of first amendment law* and has been selected for inclusion in the *Illinois Super Lawyers®* lists (2005, 2007-2014). Only five percent of the lawyers in the state are named by *Super Lawyers*.* For 38 years, he has focused his practice on media, commercial arbitrations, business disputes, corporate and federal tax litigation with a particular emphasis on emergency injunctive cases. More than 200 reported decisions in the federal and state court systems have involved civil cases in which he had primary litigation responsibility at the trial court or on appeal, including First Amendment, commercial, business tort, ERISA, RICO, airport environmental, and federal tax disputes:

- Michael won a 6th Circuit Court of Appeals victory for National Union Fire Insurance Company when the Court on April 9, 2014, reversed a preliminary injunction which had halted an on-going reinsurance arbitration proceeding and enjoined the Panel from issuing a final judgment. The federal appeals court held that a federal courts could only intervene prior to the commencement of the arbitration hearing or after entry of a final award by the panel. *Savers Property & Casualty Insurance Company v. National Union Fire Insurance Company*, 2014 U.S. App. LEXIS 6488 (6th Cir.2014).
- On September 4, 2013, Michael won a leading U.S. Tax Court case challenging IRS adjustments to insurance company loss reserves, *Acuity, a Mutual Insurance Company v. Commissioner*, T.C. Memo. 2013-209. Following a seven-day bench trial during which fourteen witnesses testified, the United States Tax Court (Vasquez, J.) issued a 98-page opinion determining that Acuity's carried loss reserves were fair and reasonable and represented only actual unpaid losses within the meaning of the applicable regulations and rejecting the IRS's position that Acuity had in any way inflated those reserves. In so doing, the court accorded Acuity a complete victory, finding that the company owed no additional tax. Michael served as lead trial counsel on this "test case" for the property and casualty insurance industry. The Commissioner did not appeal.

- Michael was lead trial counsel in two federal tax “test cases” for the credit union industry challenging recent IRS determinations that the sale of debt protection and financial service products by credit unions are subject to unrelated business income tax (UBIT). In *Community First Credit Union v. United States (E.D. Wis.)*, after a four-day, 15 witness trial, a unanimous federal court jury in Green Bay returned a special verdict on May 14, 2009 ruling in favor of Community First on all claims and rejecting the Government’s UBIT position. See 2009 U.S. Dist. LEXIS 60283. In the second tax refund suit, *Bellco Credit Union v. United States*, in U.S. District Court in Denver, Colorado, the district court on November 12, 2009 granted partial summary judgment that revenues received by Bellco from the sale of financial services and investment products to its members are not subject to UBIT, either. See 2009 U.S. Dist. LEXIS 106087. Following a bench trial, the district court ruled on April 2, 2010, that Bellco’s revenues from the sale on credit insurance on both direct and indirect lending were not subject to UBIT and that revenues received from a direct mail offering of accidental death and dismemberment insurance by a third party were royalties also exempt from UBIT. 735 F. Supp. 2d 1286 (D. Colo. 2010). The Department of Justice withdrew its appeal and the judgment is final.
- On September 12, 2012, the U.S. District Court in Maryland dismissed five of six counts of a putative state law class action alleging consumer fraud claims relating to the sale of single serve coffee cartridges on the basis that the plaintiff (a Maryland resident) lacked standing to assert claims for consumers in four other states. *Zaycer v. Weis Markets*, 2012 U.S. Dist. LEXIS 129791. Michael, assisted by Rebecca Hanson, defeated an argument that the standing issue should be deferred until a ruling on class certification.
- On July 5, 2012, the Illinois Appellate Court affirmed the dismissal of a defamation lawsuit against a newspaper website and its employees. Michael successfully argued that the federal Communications Decency Act provided absolute immunity to the website operator for anonymous comments submitted to the website by members of the public. *Gaines v. QC Online* (3-11-0594) (Ill. App.)
- On May 11, 2009, Michael won a 7th Circuit ruling that a Canadian corporation is not subject to ERISA liability in the U.S. courts. *GCIU Employees v. Goldfarb Corp.* (7th Cir. 2009).
- In March 2009, Michael assisted his partner, Michael Lockerby, in winning a landmark franchise law ruling in *FMS, Inc. v. Volvo Construction Co.*, 557 F.3d 758 (7th Cir. 2009), reversing a jury verdict for plaintiff and holding that Volvo properly terminated plaintiff’s Samsung dealership when Volvo bought Samsung and discontinued that line of equipment.
- In January 2009, Michael won a ruling from the Illinois Appellate Court reversing the circuit court’s interpretation of the “fiduciary shield doctrine.” *Femal v. Square D. Company*, 388 Ill.App.3d 134 (1st Dist. 2009) and remanding for hearing regarding personal jurisdiction which was held and resulted in a dismissal for lack of personal jurisdiction.

Michael has been principal trial attorney in a wide variety of civil matters. The Seventh Circuit Court of Appeals affirmed summary judgment on behalf of *The New York Times*, *New York Daily News* and *Boston Globe* which Michael represented in a \$125 million defamation lawsuit brought by Global Relief Foundation, an Islamic charity. The court of appeals ruled that the newspapers’ articles reporting on governmental investigations of Global ties to terrorists were substantially true. *Global Relief Foundation, Inc. v. The New York Times, et al.*, 390 F.3d 973 (7th Cir. 2004).

He has won libel cases for the *Chicago Tribune*, ABC, *Kankakee Journal*, Muhammad Ali, news magazines and other news organizations. In 2004, he obtained the dismissal of a suit based upon an Illinois newspaper's publication of the names on a state police list of sex offenders on the basis that an Illinois statute conferred absolute immunity against claims based upon the republication of such lists. The two appellate opinions in *Desnick Eye Center v. ABC* – both argued on appeal by Michael – provide important protections for news organizations from liability for claims related both to news gathering and news content. *Desnick Eye Services v. ABC*, 233 F.3d 514 (7th Cir. 2000) and 44 F.3d 1345 (7th Cir. 1995).

In his ERISA practice, he successfully defended a money manager against a \$10 million ERISA claim brought by a pension fund. The federal district judge granted a defense verdict. *Wsol v. FMA* (N.D. Ill. 2000). This verdict was affirmed by the Seventh Circuit Court of Appeals in an appeal argued by Michael, 266 F.3d 654 (7th Cir. 2001).

Michael was also lead trial attorney in 2005, successfully representing an LLC in a commercial arbitration relating to the dismissal of a member for cause. Michael has also represented a public company in a multimillion-dollar arbitration before a retired federal district judge. That claim was brought by the former chairman of the board of a NYSE-listed company against the client for breach of contract and related claims. The arbitrator awarded the plaintiff nothing.

Michael has successfully represented insurance companies, software companies and other employers in injunction lawsuits for breach of fiduciary duty and trade secret misappropriation.

In 2004, he successfully represented Wirtz Corporation d/b/a Judge & Dolph Ltd. in the Illinois Supreme Court, having a consumer class-action dismissed which had sought to force J&D to pay its state liquor tax under protest. *Wexler v. Wirtz*, 211 Ill.2d 18 (2004).

In his representation of airport proprietors, Michael has successfully represented airports in Chicago, Denver, Albuquerque and Cleveland in challenges to FAA approvals of airport developments.

Michael has tried bench or jury trials in the United States District Courts in Chicago, Detroit, Kalamazoo, Green Bay, Denver, Minneapolis, and New Orleans, as well as the United States Tax Court, United States Claims Court, the circuit courts of Illinois and in arbitration proceedings. Michael has also tried, on behalf of both employers and employees, preliminary injunction cases asserting claims under non-competition agreements and the Illinois Trade Secret Act.

Michael has supervised Firm associates in pro bono federal appellate work.

Michael is a graduate of Yale Law School (J.D., 1973) and Northwestern University (B.S., 1968). He is a charter member of Northwestern University's Medill School of Journalism Hall of Achievement. Aside from his service as counsel to the United States House Judiciary Committee in the Impeachment Inquiry of President Richard M. Nixon in 1974, Michael was with Hopkins & Sutter until its merger with Foley & Lardner LLP on

February 1, 2001. He was an elected delegate to the 2008 Democratic National Convention, as well as in 1996. Michael was an elected member of The Rules Committee of the 2016 Democratic National Convention.

Michael was admitted to the Bar in 1973. Michael is currently an adjunct instructor in the Medill School of Journalism at Northwestern University.

Michael's publications and media spots include:

- Co-author, "Cross-Motions for Summary Judgment: Be Careful What You Concede," *Illinois Bar Journal* (November 2015)
- Oral history interview by Richard Nixon Presidential Library broadcast on C-SPAN3 story regarding the President Nixon impeachment inquiry. Michael served as counsel to the U.S. House Judiciary Committee during the impeachment inquiry and provided his firsthand accounts of the committee's hearings, writing of the final report, and of the bipartisanship and secrecy among Judiciary Committee staffers (June 15, 2013).
- Author, *Business and Commercial Litigation in Federal Courts* (3d Ed. 2011), Ch. 120, Tax (ABA).
- Co-author, "Court Rejects Heightened Standard in Pre-Suit Petitions to Unmask Anonymous Internet Commenters," *Media Law Letter* (June 2010).
- Author of a chapter in "*The Attorney's Guide to the Seventh Circuit Court of Appeals*," State Bar of Wisconsin CLE Books (2010, updated yearly).
- Co-author, "A Win for the Team," *The Deal* (August 20, 2009).
- Co-author, "Third Party Subpoenas In Arbitration," BNA's *Corporate Counsel Weekly* (September 10, 2008).
- Co-author, "The Illinois Supreme Court and the Fair Report Privilege: A Free Press Victory," 94 *Illinois Bar Journal* 414 (August 2006).
- Co-author, "The 'Talking Point' Wars: Don't Neglect the Battle Over Public Opinion," *Midwest In-House* (January 23, 2006).
- Co-author, "*Media Law Litigation, The Effective Use of Depositions*," Juris Publishing (2004).

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Representative Experience

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Education

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 - Law
- Northwestern University (B.S., 1968)
 - Charter Member, Northwestern University’s Medill School, *Journalism Hall of Achievement*

Admissions

- United States House Judiciary Committee, Impeachment Inquiry of President Richard M. Nixon (1974)
- Hopkins & Sutter until its merger with Foley & Lardner LLP (February 1, 2001)
- Democratic National Convention (2008)
- Elected, The Rules Committee of the 2016 Democratic National Convention