

## John F. Birmingham, Jr.

### Partner

[jbirmingham@foley.com](mailto:jbirmingham@foley.com)

Detroit

313.234.7127



John Birmingham Jr. is a trial, arbitral and appellate lawyer and trusted adviser on high-level and day-to-day labor and employment issues, and develops problem prevention and resolution strategies for unionized and nonunionized companies. He represents clients in litigation, especially trade secret and noncompetition, in which he is highly skilled; performs and counsels clients through sensitive investigations; and counsels boards and executives on crisis management and disaster mitigation.

Former chair of Foley & Lardner LLP's national Labor & Employment Practice and a former member of the firm's Management Committee, John concentrates on noncompetition, trade secret matters and business torts, class actions, employment-related litigation, appellate law, investigations, and labor law. He is a member of the Privacy, Security & Information Management and Immigration, Nationality & Consular Law Practices, the Automotive Industry Team and the Manufacturing Sector.

John has successfully represented clients in several class actions, trials, and arbitrations. He has argued many appellate cases including those before the Michigan Supreme Court, Michigan Court of Appeals, New Jersey Supreme Court, Ohio Court of Appeals, and U.S. Court of Appeals for the 6th Circuit, and drafted a Writ of Certiorari to the U.S. Supreme Court. He has also represented clients on unfair labor practice charges before the National Labor Relations Board and the U.S. Court of Appeals. John represents clients at trial, administrative tribunals, arbitration, or other ADR format involving a wide variety of cases (EEO, ADA, ERISA, FMLA, common law contract and torts, and several other areas).

John has negotiated several union contracts and successfully arbitrated more than 50 union grievances including collective matters involving health care, vacations, holidays, retirement, and other high exposure subjects.

John also has expertise in fair housing counseling, and representing clients in the agency and court proceedings. He has acted as a neutral case evaluator, arbitrator, and mediator.

John is an adjunct professor at Michigan State University College of Law. His primary academic concentration is in trade secrets, restrictive covenants, and unfair competition.

## Representative Experience

### Trade Secret/Non-Compete/ Restrictive Covenant Cases

- First chair in representing many different mortgage brokers and dozens of employees in several interrelated cases in which the court held that the non-competition agreement was unenforceable.
- Served as lead lawyer in defending trade secret, breach of contract, fiduciary duty, and business tort case involving international conglomerate's business process tool, securing opinion dismissing majority of claims, leading to voluntary dismissal.
- Led corporate employee raiding case against competitor of Tier 1 auto supplier, and after securing reversal at the Michigan Supreme Court, negotiated very favorable settlement.
- Represented Fortune 50 pharmacy benefits management company in large tortious interference/corporate raiding/trade-secret/noncompete case, which was resolved favorably in 2012 after extensive litigation.
- Defeated injunctive relief request in representing propane engine manufacturer in trade secret and noncompete case involving engine control units.
- Secured injunction for automotive manufacturer in noncompete/trade secret matter involving solicitation.
- Represented information technology firm in noncompete/trade secret matter, securing court order prohibiting certain competition for one year.
- Represented medical care provider in defense of employee corporate raiding matter involving more than 25 medical professionals, negotiating a favorable outcome.
- Designed noncompete and trade secret process and audits for multiple Fortune 500 companies.
- Obtained preliminary injunction for auto supplier, precluding work for a competitor after hearing. Represented HVAC company in noncompete matter, resulting in a preliminary injunction precluding plaintiffs from working in industry.
- Represented battery manufacturer in non-solicitation case involving corporate raiding claim with favorable resolution negotiated after discovery.
- Selected and served as a case evaluator and mediator in multiple trade secret/non-solicitation cases.

### Class Actions and Other Cases

- Lead counsel defending real estate broker in a class action involving whether real estate agents are employees or independent contractors.
- Defending HVAC manufacturer and distributor in ERISA pension calculation class action. Represented Tier I automotive supplier in age discrimination and promotion class action, resulting in a denial of class certification.
- Represented Tier I automotive supplier in age discrimination and reduction in force collective action. Represented a large packaging company in wage and hour "off the clock" collective action.
- Defending automotive supplier in a class action involving ERISA pension accrual claim.

- Represented automotive supplier in 11-plaintiff harassment case.
- Represented auto supplier in WARN class action.
- Represented homebuilder in FLSA wage and hour action, resulting in a denial of class certification and dismissal.
- Represented homebuilder in union corporate campaign involving sabotage through appeal, establishing new law with respect to the violation of Computer Fraud & Abuse Act. Defending OEM in nationwide consumer fraud class action involving OnStar technology.

## Appellate Cases

- *Kennedy v Weichert*: Lead attorney representing real estate broker in New Jersey Courts, including the New Jersey Supreme Court, in class action involving whether real estate agents are employees or independent contractors. Obtained victory for Weichert and real estate industry in published decision of NJ Supreme Court establishing that the agreement between the parties was the test and that the real estate salespeople were independent contractors, resulting in dismissal of the case.  
[https://www.njcourts.gov/system/files/court-opinions/2024/a\\_48\\_49\\_22.pdf](https://www.njcourts.gov/system/files/court-opinions/2024/a_48_49_22.pdf)
- *Pulte Homes, Inc. v. Laborers' Int'l Union*, 648 F.3d 295 (6th Cir. 2011) (establishing a cause of action for email barrage under the Computer Fraud and Abuse Act).
- *Walton v. Ford Motor Company*, 424 F. 3d 481 (6th Cir. 2006) (validating call-in procedure for FMLA).
- *Nexteer v. Mando Corporation, et al.*, 314 Mich. App. 391 (2017) (secured reversal of order mandating arbitration in trade secret matter, which was sustained, after oral argument, by Michigan Supreme Court).
- *Santomauro v. Pultegroup, Inc.*, 2016 Mich. App. Lexis 2323 (2016) (court of appeals confirmed arbitrator's award dismissing matter based on spoliation of evidence).

## Awards and Recognition

- Rated as AV Preeminent®, the highest performance rating in Martindale-Hubbell® Peer Review Ratings™ system
- *The Best Lawyers in America*®
  - Employment Law – Management (2011-present)
  - Labor Law – Management (2011-present)
  - Litigation – Labor and Employment (2011-present)
- Best Lawyers® “Lawyer of the Year” in Detroit
  - Litigation – Labor and Employment (2023)
  - Labor Law – Management (2016)
- *Michigan Super Lawyers*® (2006, 2010-2021)
- *Michigan Lawyers Weekly's “Leaders in the Law”* (2014)
- Named to *DBusiness* Top Lawyers (2022 and 2025)

## Affiliations

- Member, American Bar Association

- Member, Detroit Bar Association
- Member, Oakland County Bar Association
- Member, State Bar of Michigan
- Member, Federal Bar Association
- Member, Rochester Chamber of Commerce
- Member, USDC Local Rules Advisory Committee
- Arbitrator, American Arbitration Association

## Community Involvement

- Advisory board member, New Day Foundation

## Presentations and Publications

- Co-author, "The Tools Used in Modern Business – Such As Videoconferencing – and the Social Media Culture Create Real Challenges to Protecting Trade Secrets," *Foley Insights: Labor & Employment Law Perspectives* (February 16, 2021)
- Interviewed, "Retail Workers Without Masks May Be Breaking the Law," WDET, NPR Detroit Station, *MichMash Podcast* (May 29, 2020)
- Featured, "John Birmingham – Managing Labor Law With Great Confidence," *Leading Lawyers Magazine*, Michigan Edition (June 2017)
- "The Dirty Little Secret about Trade Secrets," *Industry Week* (March 4, 2014)
- "Next-Generation Manufacturers Must Protect Secrets," *Law360* (September 24, 2013)
- "Social Media and the Workplace: Twittering Away Trade Secret and Confidential Information," *Supply Management* (March 2011)
- "Preserving the Attorney-Client Privilege in the Employment Environment," *Michigan Bar Journal* (January 2009)

## Thought Leadership

- Frequent presenter at seminars for clients, chambers of commerce, industry groups, and other organizations
- Frequent guest labor and employment "expert" on National Public Radio (NPR)
- Author of the chapter "A Strategic Approach to Achieving the Best Results in Resolving Employment Disputes" in the book *Resolving Employee Disputes & Litigation*

## Sectors

- [Automotive](#)
- [Manufacturing](#)

## Practice Areas

- [ADA & FMLA Compliance](#)
- [Antitrust & Competition](#)

- Discrimination, Harassment & Retaliation
- Immigration, Nationality & Consular Law
- Labor & Employment
- Labor & Employment Class Actions
- Litigation
- Trade Secret Noncompete Litigation
- Union/Employer Matters

## **Education**

- University of Michigan Law School (J.D., magna cum laude)
  - Order of the Coif
- Michigan State University (B.A., with honors)

## **Admissions**

- Michigan
- U.S. Court of Appeals for the 6th Circuit
- U.S. District Court
  - Eastern District of Michigan
  - Western District of Michigan