Barry P. Kaltenbach
Senior Counsel

Barry has handled commercial disputes in state and federal courts from coast-to-coast for the past twenty 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 successfully established ownership of over $1 billion in tax attributes in federal court on the east coast and defended against customer solicitation and misappropriation of trade secret claims on the west coast. He also regularly represents financial institutions in workouts and commercial foreclosures; employers and employees in non-compete and non-solicit disputes; developers and contractors in construction contract documentation and delay and defect litigation; technology companies in contract, intellectual property and software licensing disputes; and manufacturers in Uniform Commercial Code and product liability fights.

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. Where insurance has not been able to provide a solution, he has also litigated claims against large insurance brokers 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.
Representative Matters

Ownership of Tax Attributes

- 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.

Insurance Coverage

- 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 of its claimed damages.
- The same 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 of the piping. While defending the general contractor, we uncovered 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 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.

**Employment-Related Matters**

- Two employees resigned, went to work for a direct competitor, and began soliciting their former clients in violation of their employment contract. We obtained a temporary restraining order, and expedited discovery revealed that the employees had begun secretly 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.

**Honors**

- The John Marshall Law School, magna cum laude
- The John Marshall 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
- 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**

- “Navigating Through Client Liquidation or Bankruptcy,” Primerus Business Las Institute, Annual Symposium, New York, New York, May 2014
Barry P. Kaltenbach

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


“Real Estate Litigation Issues,” Attorneys’ Title Guaranty Fund, Inc., Webinar, May 2011


Publications

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


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

Articles

Illinois Supreme Court Disallows Implied Warranty Claims by Owners Against Subcontractors