

Kevin A. Fanning

Member

Kevin A. Fanning's practice focuses on complex commercial litigation matters, real estate litigation, commercial property workouts and receiverships, and securities litigation. Kevin also handles all aspects of litigation for various transportation and logistics companies involving the defense of serious accidents, freight claims, employment matters, insurance and indemnity issues, and related litigation. He also assists these companies to proactively hedge litigation risks through contractual and other means.

Kevin routinely represents CMBS trusts, portfolio lenders, special servicers, and other interested parties in complex commercial, industrial, office and retail property loan enforcement, receiverships, foreclosures, and strategic workout matters. His work on the strategic use of receiverships and associated litigation is creative and wide-ranging.

Kevin's practice includes extensive experience in the emerging area of drone law. In this area, Kevin advises a broad spectrum of businesses, educational institutions, municipalities and trade associations regarding the FAA's regulations regarding Unmanned Aerial Systems ("UAS"), including Part 107 compliance, together with policies governing protected data and other privacy concerns that may arise under both federal and state law.

As an active participant in the firm's Health Care Practice Group, Kevin also has extensive experience in healthcare-related litigation, including investigations, fraud & abuse matters, False Claims Act/Qui Tam matters, and professional licensure disputes.

Kevin also has significant experience defending clients under the Americans with Disabilities Act. He has defended regional shopping malls, retail power centers, strip malls, hotels, assisted living facilities, golf courses, national chain restaurants and other businesses in ADA accessibility lawsuits under Title II and III, including lawsuits that have sought class certification. In addition to Title II and Title III facilities accessibility matters, Kevin has defended private and governmental entities in web content accessibility cases involving web content standards such as WCAG 2.0 and has handled governmental investigations involving these matters.

Kevin has consistently been named a Michigan Super Lawyer in the Super Lawyers publication since 2009. BTI Consulting, a leading provider of strategic research to law firms and general counsel, named Mr. Fanning a "BTI Client Service All-Star" for 2016. BTI Client Service All-Stars are an elite group of attorneys nominated by clients in an objective, independent study for their exceptional client service. Mr. Fanning was one of 300 attorneys nationwide to be nominated for the "All-Star" designation that year.

Recent Matters:

- Counsel for shareholders of Car.com in securities arbitration in Phoenix, Arizona and a federal securities action in the Central District of California arising out of the acquisition of Car.com by Autobytel in a stock purchase subject to a later financial restatement by Autobytel.
- Recently conducted jury trial for five weeks as one of two principal trial attorneys on behalf of former Delphi employee in securities enforcement action brought by the SEC against Delphi and its former officers in the United States District Court (E.D. Mich.), Judge Avern Cohn presiding. The litigation was successfully resolved as to Mr. Fanning's client prior to verdict.
- Trial counsel for global food and beverage company with locations in 44 countries. Obtained summary judgment in federal district court dismissing opposing party's claims, including sanctions against the opposing lawyer. See *Dunkin' Donuts Franchised Restaurants v. Mr. Omar, Inc. et al.*, 2008 U.S. Dist. LEXIS 18001 (E.D. Mich., Mar. 10, 2008); 2008 U. S. Dist. LEXIS 39849 (E.D. Mich., May 16, 2008).
- Lead counsel for loan servicer of national bank in receivership actions in five counties involving default under \$13 million loan. Obtained the appointment of receiver to manage and operate collateral.
- Counsel for national bank in receivership and judicial foreclosure action. Obtained appointment of receiver and judgment for foreclosure of \$9 million defaulted loan. Successfully defended two interlocutory appeals contesting the appointment of receiver and foreclosure of loan.
- Lead counsel for multi-state electrical components supplier in construction lien foreclosure litigation leading to top priority of the lien in favor of Kevin's client over the mortgage of a national bank.
- Lead counsel for litigant in contentious personal protection litigation which spanned two years and ended in favor of Kevin's client in the Michigan Supreme Court. See *Evarian v. Michalski*, 2004 Mich. App. LEXIS 456



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Education

J.D., University of Detroit Mercy
School of Law, Detroit, Michigan,
1997

B.A., cum laude, Western Michigan
University, Kalamazoo, Michigan,
1994

State Bar Licenses

Michigan

Court Admissions

U.S. District Ct., E.D. of Michigan

U.S. District Ct., M.D. Florida

U.S. District Ct., N.D. of Illinois

U.S. Court of Appeals, 6th Circuit

Michigan Court of Appeals

Supreme Court of Michigan

(February 17, 2004); lv. den., 471 Mich 866; 683 NW2d 670 (2004).

- Lead defense counsel in dispute over lease of warehouse involving over \$1 million in claims. Filed motion for summary judgment leading to successful resolution of action.
- Lead defense counsel in claim against automotive dealership involving allegations of substantial injuries arising out of faulty vehicle service and failed airbag. Obtained extremely favorable settlement for client.
- Lead counsel for various retail shopping plaza owners in multiple counties. Draft leases and amendments and enforce landlord rights.

Publications and Lectures:

- Author, "Warranties and the Economic Loss Doctrine," Michigan Construction Law Manual, Chapter 9, Thomson Reuters/West Publishing (updated annually).
- "Res Judicata and Summary Proceedings: The Supreme Court Sets the Record Straight" Michigan Real Property Review, Vol. 33, No. 4, Winter 2006.
- "Ten Ways to Effectively Manage Any Tenant Dispute" 2007 Building Owners and Managers Association (BOMA) North American Commercial Real Estate Congress
- "The Arbitration Alternative" The Credit and Financial Management Review, Vol. 9, No. 4, Fourth Quarter 2003.
- "Issues During Construction" Sterling Education Services Construction Seminar, 2004.

Professional Associations:

- Member of Board of Directors, Federal Bar Association, Eastern District of Michigan Chapter
- Co-Chair of Membership Committee, Federal Bar Association, Eastern District of Michigan Chapter
- State Bar of Michigan Business Law Section, Commercial Litigation Committee
- Oakland County Bar Association American Inns of Court - Barrister

Practices, Industries & Services

Emerging Technologies
Franchise & Licensing
Healthcare
Litigation
Real Estate
Transportation & Logistics

Areas of Emphasis

Commercial Litigation
Consumer Financial Services Regulatory & Compliance
Equipment Leasing
Financial Services Litigation
Foreclosures, Loan Modifications and Lender's Remedies
Leasing
Securities Litigation

Memberships

- State Bar of Michigan, Business Law Section, Commercial Litigation Committee
- Oakland County Bar Association Chapter of the American Inns of Court, Barrister

Honors

- Named among Best Lawyers in America - Commercial Litigation Law by Best Lawyers (2021)