

# Michael J. Pattwell

## Member

**Michael J. Pattwell** is an innovative problem-solver who focuses on managing high-stakes litigation and resolving complex regulatory and transactional impasses. His practice concentrates on environmental, energy, and political law. As both a litigator and regulatory attorney, he is well-versed in the ever-changing federal and state statutes and regulations governing environmental due diligence, liability, compliance, remediation, and permitting; natural resource extraction and transportation; utility ratemaking; electric generation and transmission; campaign finance; and elections. Where these laws intersect with complicated fact patterns, Michael excels at producing plain verbal and written advocacy that decision makers can easily digest and appreciate.

He has represented a wide array of clients (including financial institutions, insurers, service stations, manufacturers, foundries, road and bridge builders, municipalities, agribusinesses, environmental contractors, real estate developers, golf courses, extractive industries, pipelines, airlines, and energy-intensive businesses) with great success before federal and state courts and administrative tribunals. He has also worked closely with state legislators, regulators, and trade associations on major policy initiatives resulting in the amendment of numerous environmental and energy laws. While the bulk of Michael's work has been for the private sector, his practice benefits from the unique perspectives gained while serving as special counsel for state legislators and as a special assistant attorney general for state agencies.

Michael presently serves as the Director of Clark Hill's Environmental Litigation Practice, heads Clark Hill's Flint Water Litigation Defense Team, and acts as Lead Counsel for the Association of Businesses Advocating Tariff Equity (ABATE), a group of large businesses associated for the purpose of promoting reasonable, competitive, and nondiscriminatory energy rates and conditions of service. He holds the highest "AV@" Preeminent peer rating from Martindale-Hubbell with the highest ethical standing, has been consistently recognized by *Super Lawyers* as a Rising Star (2013-2018) in the field of business and environmental litigation, and has been named in *Best Lawyers* for environmental litigation.

Prior to joining Clark Hill, Michael served as Law Clerk to the Honorable David A. Faber, U.S. District Court for the Southern District of West Virginia, and as Minority Counsel for the West Virginia House of Delegates. During law school, he served as a student prosecutor for the U.S. Attorney's Office for the Western District of Virginia; an extern to the Environmental Defense Section of U.S. Department of Justice's Environment & Natural Resources Division; and a judicial intern to the Honorable Gerald E. Rosen, U.S. District Court for the Eastern District of Michigan.

When off-duty, Michael enjoys spending time with his family. He is an avid outdoorsman, a proficient downhill skier, and an inconsistently average golfer.

### Services

- Environmental Assessments, Due Diligence & Audits
- Mergers & Acquisitions
- Real Estate Services
- Regulatory Advice & Counsel
- White Collar Criminal Defense

### Experience

#### Environmental Law

Michael's environmental practice is expansive and covers a wide spectrum of client needs related to strategy and planning, transactional due diligence, economic incentives, permitting, regulatory compliance, remediation, enforcement, contribution and cost recovery, administrative rulemakings, and statutory amendments.

**Environmental Litigation.** Michael has defended clients against a litany of state and federal enforcement and mass tort actions involving claims under Parts 15, 17, 31, 55, 91, 201, 211, 213, 301, and 303 of Michigan's Natural Resources and Environmental Protection Act, as well as the federal Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Clean Air Act (CAA), and Civil Rights Act. He has challenged and defended administrative air and water permit decisions including several notable cases against the Michigan Department of Environmental Quality (MDEQ), United States Environmental Protection Agency (EPA), and United States Army Corps of



### Office

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### Education

J.D., Washington and Lee University  
School of Law, Lexington, Virginia,  
2006

B.A., Michigan State University, East  
Lansing, Michigan, 2003

### State Bar Licenses

West Virginia

District of Columbia

Michigan

### Court Admissions

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

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

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

U.S. District Ct., S.D. of West Virginia

U.S. Court of Appeals, 6th Circuit

U.S. Supreme Court

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Engineers (Corps). And, he has prosecuted and defended contribution and cost recovery cases allocating responsibility for the remediation of contaminated property. Through these matters, Michael has also gained a sound grasp of Michigan law related trespass, public and private nuisance, battery, negligence, gross negligence, intentional and negligent infliction of emotional distress, groundwater interference, as well as the primary jurisdiction and pre-enforcement doctrines, statutory preemption and preclusion, permit shields, statutes of limitations and tolling exceptions, and absolute and qualified immunities and privileges.

**Environmental Transactions.** Michael regularly advises clients and their business attorneys on transactional matters relating to the transfer of both contaminated properties and legal entities with legacy environmental liabilities. His approach is one of dealmaker not deal breaker. While he possesses a wealth of experience regarding the statutory and common-law liability pitfalls that hinder such transactions, clients appreciate his knowledge and creative employment of the statutory limited liability protections and incentives, contractual tools, and other risk mitigation techniques that facilitate successful and transparent deal making. From the very beginning of a transaction, Michael's understanding of and relationships within the consulting industry add value to clients seeking to identify and engage the environmental experts best suited for the particular matter at hand. He is skilled not only at negotiating the scope, pricing, and terms of such consulting contracts but also at distilling complicated "expert speak" from lengthy environmental reports into plain terms clients and their deal teams can utilize when making decisions. He has reviewed hundreds of Phase I, II, and III Environmental Assessments, Baseline Environmental Assessments, Due Care Plans, Property Condition Assessments, Environmental Compliance Audits, Asbestos and Lead Paint Surveys, and Wetland Determinations and Delineations. He works hard to understand the business model and risk tolerance level of each client and uses his knowledge of both existing and emerging laws (such as vapor intrusion and PFAS) to scope appropriate due diligence (sometimes including non-ASTM services) and post-transaction due care and regulatory compliance plans. He has substantial experience drafting, revising, and negotiating environmental terms for ground leases; real estate, asset, stock, and membership interest purchase agreements; access and option agreements; project development agreements; and environmental release, indemnity, and liability transfer agreements. He also has significant experience assisting clients with the purchase of various forms of environmental and pollution liability insurance and negotiating retroactive dates.

**Environmental Compliance & Remediation.** Michael has overseen numerous brownfield remediation and redevelopment projects running the gamut of hazardous substances regulated under Part 201 of Michigan's Natural Resource and Environmental Protection Act as well as the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Resource Conservation and Recovery Act (RCRA); and Toxic Substances Control Act (TSCA). He regularly assists gasoline service stations and other industrial concerns with Underground Storage Tank (UST) registration, management, release reporting, insurance claim notification, and participation in Michigan's Underground Storage Tank Cleanup and Legacy Release Programs. Of note, is his experience regarding bankruptcy treatment of abandoned property as well as parent/subsidiary, successor, and individual officer liability for environmental matters. He has advised clients matters related to federal and state environmental audit policies; the EPA's Clean Power Plan, West Virginia's carbon capture and sequestration regulatory construct, Indiana's environmental rules commissions, Michigan's CWA 404 Program; and even local wetland and tree removal ordinances.

### **Energy Law**

Michael's energy practice concentrates on the representation of large industrial, commercial, and municipal users of electricity and natural gas in matters pending before the Michigan Public Service Commission, Federal Energy Regulatory Commission, and various regional transmission organizations including MISO and PJM. He has significant electric and natural gas ratemaking experience on issues related to utility revenue sufficiency/deficiency, rate design, returns on equity, equity to debt ratios, tax and depreciation expense, revenue decoupling and investment recovery mechanisms, power supply cost recovery plans and reconciliations, certificates of need, power purchase agreements, energy waste reduction plans, renewable energy plans, and tariff terms and conditions. He also has experience working with regulators and stakeholder groups in shaping the development of general rate case filing requirements, certificate of need filing requirements, integrated resource plan filing requirements, utility codes of conduct and affiliate transaction guidelines, demand response and distributed generation programs, and Michigan's unique state reliability mechanism which purports to impose capacity obligations and charges on electric providers and retail customers, respectively.

### **Business and Commercial Law**

Michael has extensive business and commercial litigation experience. He has represented clients before a variety of courts and administrative agencies spanning several states and has accumulated substantial knowledge in a diverse array of legal disciplines encompassing:

- Contract, shareholder, and corporate governance disputes with an emphasis on the construction of complex

- and/or highly technical agreements.
- Business tort cases involving fraud, misrepresentation, conversion, embezzlement, conspiracy, and RICO violations with noteworthy success related to pre-judgment asset freezes, constructive trusts, forensic discovery of electronically-stored information, and discovery sanctions for spoliation of evidence.
- Non-competition, fiduciary, tortious interference, unfair business practice, and trade secret actions with success related to temporary restraining orders, preliminary injunctions, and the blue pencil rule.
- Employment related discrimination, harassment, wrongful discharge, and retaliation claims including claims brought under the Elliot-Larsen Civil Rights Act, Whistleblowers' Protection Act, Title VII of the Civil Rights Act, Americans with Disabilities Act, Age Discrimination in Employment Act, Family and Medical Leave Act, Fair Labor Standards Act, Federal Employers Liability Act, and just-cause employment agreements.
- Collection matters ranging from simple garnishments and liens to workouts of sophisticated lending transactions and successor liability claims.
- Insurance and reinsurance coverage suits including suits brought against the Michigan Catastrophic Claims Association.
- Consumer protection litigation including complaints brought pursuant to Michigan's Social Security Number Privacy Act.
- Real property controversies involving adverse possession, acquiescence, boundary conflicts, easement use, rail trackage rights, riparian rights and the natural-flow doctrine, trespass, nuisance, and licensing requirements for the brokerage of mineral rights and stockpiles.

For several years, Michael served with distinction on Clark Hill's Public Pension Team assisting with a series of challenges to the City of Detroit's Chapter 9 bankruptcy proceedings, the Local Financial Stability and Choice Act (Act 436 of 2012), and the Local Government and School District Fiscal Accountability Act (Act 4 of 2011).

#### Political Law

Michael's political law practice primarily focuses on the formation and administration of election day and voting integrity operations. Since 2006, he has participated in such operations in Michigan, West Virginia, Tennessee, and Louisiana. Michael also has familiarity with voting rights, redistricting, recounts, and campaign finance matters. And, he regularly assists state and local candidates with routine political law compliance, strategy, and fundraising.

#### Publications

- Co-Author, "How a Michigan County Road Got Stuck in Regulation Purgatory," Wall Street Journal (2017)
- Co-Author, "Rivers, Streams and Swales, and the Jurisdictional Reach of the Clean Water Act after *Rapanos v. United States*," 28 Energy and Mineral Law Institute (2007)

### Practices, Industries & Services

Agriculture  
 Automotive & Manufacturing  
 Banking  
 Cannabis  
 Construction  
 Energy & Utilities  
 Environment, Energy & Natural Resources  
 Franchise & Licensing  
 Government & Regulatory Affairs  
 Litigation  
 Mining  
 Oil & Gas  
 Per- and Polyfluoroalkyl Substances ("PFAS") Issues  
 Political Law

### Areas of Emphasis

Appellate  
 Brownfields Redevelopment  
 Class Action Litigation  
 Environment, Energy & Natural Resources Litigation  
 Internal Investigations  
 Permits & Licenses  
 Public Utility Litigation, Regulatory Intervention & Counseling  
 Remediation & Natural Resource Restoration  
 Solid & Hazardous Waste Management  
 Toxic Torts and Hazardous Substance Litigation

### Memberships

- Board Member - Washington and Lee University Alumni Admission Program
- Board Member - West Michigan Federalist Society

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- Former President - Washington and Lee University Alumni Association, Detroit Chapter
  - Member - Mackrell International
  - Member - Republican National Lawyers Association
  - Regional Chair - Michigan Defense Trail Counsel

## Honors

- Best Lawyers in America - Litigation-Environmental
- Super Lawyers Rising Star - Michigan

## Presentations

- WEBINAR: Lead in Drinking Water