

Kevin N. Tharp

Attorney at Law

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Biography

Kevin Tharp's diverse business and litigation practice focuses on the construction industry. Kevin counsels owners, general contractors and subcontractors, and represents them in disputes involving claims for payment, delay, and design and construction defects, as well as mechanic's liens.

Kevin also counsels clients in the selection and formation of business entities, mergers and acquisitions, business selection planning, and general contractual matters.

Kevin currently serves on the Firm's Management Committee.

Representative Matters

Intellectual Property

- Prosecuted patent infringement claims on behalf of table pad manufacturer. Obtained summary judgment in favor of client, in which court found that client's patent had been infringed, and that a competitor's patent was invalid.
- Obtained preliminary injunction on behalf of distributor against its former employee and competitor, enjoining them from misappropriating trade secrets
- Defended consortium of pesticide distributors in a trademark opposition proceeding filed in the U.S. Patent and Trademark Office by a multi-national agribusiness company. Case settled favorably to client prior to trial.
- Defended internet marketing company against allegations of website content "scraping". Case settled favorably prior to trial.

Education

- Indiana University Maurer School of Law, J.D., Order of the Coif, magna cum laude (2000)
- Federal Communications Law Journal, Note Editor (1999-2000)
- Indiana University, B.S. Public Affairs—Environmental Science, with high distinction (1997)

Bar Admission

- Indiana (2000)
- U. S. District Court, Southern District of Indiana (2000)
- U.S. District Court, Northern District of Indiana (2000)
- U.S. District Court for the Eastern District of Michigan (2019)

Practice Areas

- Business & Corporate Law
- Business Litigation
- Construction
- Intellectual Property Law & Litigation
- Business Contract Disputes
- Commercial Real Estate & Leasing
- Land Use & Planning

- Defended preliminary injunction proceeding against a manufacturer of outdoor grilling equipment in a trademark, trade dress and copyright infringement action. Preliminary injunction was denied, and case settled favorably to client.
- Obtained summary judgment on behalf of internet retailer against a suppliers claims of unfair competition, defamation, and breach of contract.
- Prosecuted dozens of trademark applications on behalf of clients in the construction, media, manufacturing, Internet, non-profit, and technology industries.
- Negotiated and drafted various service and licensing agreements for provider of Internet commerce tools.
- Assisted software developer with its sale of software solutions to Microsoft, including the negotiation and drafting of sale and related technology development agreements
- Defended subcontractor against claims of misappropriation of confidential information, tortious interference with contractual relations and unfair competition asserted by larger competitor. Obtained summary judgment in favor of client.
- Prosecuted UDRP actions to recover Internet domain names on behalf of international family of hotels.

Construction

- Negotiated commercial construction subcontracts for mechanical, electrical, automation, and glass subcontractors in amounts ranging from \$1 million to \$40 million.
- Negotiated joint venture agreements among subcontractors for scopes of work ranging from \$10 million to in excess of \$100 million.
- Defended general contractor against subcontractor's claims for payment and delays in the construction of various telecommunications facilities across the Midwest. Case settled on terms favorable to client following arbitration hearing.
- Prosecuted large mechanic's lien claim against general contractor and owner, seeking payment for construction of mixed-use development. Case settled favorably to client prior to trial.
- Defended paving contractor against IOSHA citations arising out of trench collapse involving serious injury to client's employee. The citations were later withdrawn.
- Defended paving contractor against indemnity claim brought by consulting engineer. Case settled favorably to client prior to trial.
- Defended national construction management firm against claims of employment discrimination pending before the Equal Employment Opportunity Commission and in state and federal courts in multiple jurisdictions, including a defense jury verdict in federal court in Indianapolis.
- Asserted claims on behalf of subcontractors against payment bonds on various public projects across the State of Indiana.
- Defended general contractor against a subcontractors claims of breach of contract and anti-trust violations arising out of a bidding dispute. Case settled favorably to client prior to trial.
- Obtained defense verdict in favor of a contractor alleged to have negligently maintained a lift station that malfunctioned and caused damage to commercial property in excess of \$1 million.

Financial Institutions

- Represented subsidiary of Wall Street firm in foreclosing a mortgage on an apartment complex and securing a \$12 million judgment against guarantor: *Ivankovich v. PAMI Grand Lake, LLC*, 2009 WL 2044457 (Ind. Ct. App. 2009)
- Served as lead litigation counsel for lender in multi-state commercial mortgage foreclosure, and obtained favorable appellate ruling that foreclosure and other ancillary remedies were not subject to the parties' agreement to arbitrate: *Kohner Properties, Inc. v. SPCP Group VI, LLC*, 408 S.W.3d 336 (Mo.App. E.D. 2013).

Business and Transactions

- Assisted with the sale of stock in a group of staffing companies for a purchase price in excess of \$40 million.
- Assisted start-up with sale of its assets to a competitor for a purchase price in excess of \$30 million.
- Assisted technology-based startup company with acquisition of patent portfolio and related assets from a venture capital group, and with raising \$3 million in capital through private stock offering.
- Assisted family in exiting its 100-year old business through the sale of its commercial real estate, inventory and related assets, and licensure of its trademark, to a real estate developer.
- Assisted family with exiting its outdoor advertising business through the sale of its stock to a publicly-traded competitor.
- Assisted litigant with obtaining litigation financing through multi-million dollar investment in case proceeds.
- Assisted real estate developer with the acquisition of numerous low-income housing properties from community development corporations using federal grant proceeds.
- Assisted an Estate with the sale of its 50% interest in a closely-held manufacturing business to the surviving shareholder, the defense of claims totaling \$1.7 million against the Estate arising out of the decedent's operation of the business, and the prosecution of a six-figure claim for shareholder distributions withheld from the Estate.

Community Activity

- Better Business Bureau Serving Central Indiana, Board of Directors (2021 to present)
- Legal Lines, Indianapolis Bar Association
- Autumn Ridge Homeowners Association, President, Board of Directors, (2007-2018)
- Ace Mentor Program of Indiana, Board of Directors (2010-2020); Vice President (2011-2013)

Awards & Recognition

Indiana Super Lawyer (2016 – Present), Rising Star (2010, and 2012-2015)

- Each year, Super Lawyers recognizes the top lawyers in Indiana via a patented multiphase selection process involving peer nomination, independent research and peer evaluation. The Indiana lawyers who receive the highest point totals during this selection process are further recognized in Indiana Super Lawyers Top Lists.

Scribe Award for Excellence in Legal Research and Writing