



DONALD A. DAUGHERTY
Intellectual Property Litigation

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EXPERIENCE PROFILE

Donald A. Daugherty, Jr. is an attorney in the Milwaukee office of Whyte Hirschboeck Dudek S.C. practicing in the areas of business and products liability litigation. Mr. Daugherty's practice has included representation of hospital and other health care providers, IT services companies, internet retailers and other eCommerce businesses, manufacturers, insurers, and financial institutions and other lenders. He served as law clerk to the Honorable Roger J. Miner of the United States Court of Appeals for the Second Circuit from 1990 to 1991. He also served as Special Assistant District Attorney for the Milwaukee County from June to September 1993 and is a commissioner for Milwaukee County Circuit Court. Mr. Daugherty was honored by being chosen for The Business Journal's "40 Under 40" in 2000. He has obtained the highest rating – "AV" – from Martindale Hubbell.

His trial, appellate and other experience includes the following:

- Represented State of Wisconsin before United States Supreme Court in *Zelman v. Simmons-Harris*, in which the constitutionality of Ohio's school voucher program was challenged.
- Obtained complete defense verdict on behalf of regional health care system, its hospitals and clinic, which were sued by an obstetrician-gynecologist claiming inadequate financial, marketing and other support allegedly owed by the defendants. Plaintiff sought \$1.5 million in compensatory damages, contending that defendants caused her medical practice to close. After one-week trial, the court found none of the defendants liable for damages on any claims.
- Represented twenty-seven congressmen before United States Supreme Court and Court of Appeals for the Ninth Circuit in review of Attorney General's interpretation of federal Controlled Substances Act challenging Oregon physician-assisted suicide statute.
- Obtained summary judgment dismissal in federal court of claims of product disparagement, unfair competition, and violations of the Lanham Act and Wisconsin's False Advertising Act brought against manufacturer of wood preservatives by a competitor seeking seven-figure award of compensatory and punitive damages.

DONALD A. DAUGHERTY, *continued*

Experience Profile, continued

- Represented leading internet retailer of soft goods in asserting intellectual property claims in federal court against competitor, which had copied portions of catalog. Defendant/competitor agreed to the entry of consent judgment and permanent injunction, prohibiting it (and all affiliated companies and principals) from any future infringement and paying client's damages. The publicly-filed consent judgment and permanent injunction has since been used by client to ward off other potential infringers.
- Obtained summary judgment against Department of Health and Human Services for employee benefit plan seeking Medicare reimbursement for \$500,000 liver transplant received by plan beneficiary.
- Won summary dismissal and sanctions on behalf of State of Wisconsin against collateral attacks on Wisconsin Supreme Court decision upholding constitutionality of education reform statute.
- Successfully defended home health care agency in week-long trial of criminal counts brought by State DOJ Medicaid Fraud Unit.
- Represented provider of electronic funds transfer processing services and products in mediation with financial institution regarding timeliness of approval of ATM transactions requiring internet access to authorization engine through third-party middleware vendor.
- Recovered six-figure money damages award after trial in federal court of consolidated cases brought separately by construction business and subsidiary civil engineering firm against former CEO. Clients successfully claimed misrepresentations made regarding financial condition of subsidiary prior to purchase by parent and subsequent embezzlement and other misuse of corporate funds.
- Obtained breach of contract arbitration award for internet-based health services billing and financial support company against physicians group and successfully defended company against counterclaims alleging inadequate billing and computer support services.
- Obtained summary judgment dismissal of defamation and tortious interference claims brought by radiologist against hospital and former partners.

DONALD A. DAUGHERTY, *continued****Experience Profile, continued***

- Represented national bank's "back office" brokerage support services in resolving claims against competing brokerage and former IT consultant for raiding client's project management staff.
- Successfully defended internet retailer in lawsuit brought by consulting firm alleging that it had a binding, exclusive agreement to provide marketing and support services. The plaintiff sought several hundred thousand dollars in damages, and the case settled for nuisance value amount.
- Won money damages award after trial in state court for client metal fabricating business which was improperly terminated from construction project.
- Representing business and other clients in proceedings before Department of Agriculture, Trade, and Consumer Protection, Department of Public Instruction, and other administrative agencies.
- Representing clients in TRO and preliminary injunction proceedings relating to enforcement of covenants-not-to-compete, claims under Uniform Trade Secrets Act, and similar actions.
- Representing financial institutions and other creditors in adversary proceedings and other actions in federal bankruptcy and state receivership cases.

PROFESSIONAL PROFILE***Education***

- Northwestern University School of Law, J.D., 1990
- University of Virginia, B.A., 1985

Admissions

- State Bar of Wisconsin

Professional Associations

- American Bar Association
- Milwaukee Bar Association
- Defense Research Institute
- American Bankruptcy Institute
- American Health Lawyers Association
- Fellow, Litigation Counsel of America, Trial Lawyer Honorary Society (Inducted May 2008)

DONALD A. DAUGHERTY, *continued*

Professional Associations, continued

- Judicial Selection Advisory Committee, State of Wisconsin
- Thomas E. Fairchild Inn of Court

Community Involvement

- Board of Directors, River Revitalization Foundation, Inc.
- Past Chair, Board of Directors, St. Francis Hospital Foundation
- Past Chair, Board of Directors, Greater Milwaukee Chapter of the American Red Cross

Awards and Distinctions

- Named to the Wisconsin Super Lawyers list (2011)

Articles and Presentations

- *Patent Marking Litigation Continues to Move Full Steam Ahead*, co-author, DRI's The Business Suit, Volume 13, Issue 9.
- *Project Managers Help Bring Order to Complex Cases*, Quoted, Wisconsin Law Journal (November 2, 2010)
- *Which Turf Is Best for B2B Rumble?*, Corporate Counsel (February 18, 2010)
- *Judgment Calls by Daniel Farber and Suzanna Sherry*, Book Review, Engage (July 2009)
- *Federal judge orders retailer to pay RedPrairie \$290,000*, Quoted, The Milwaukee Business Journal (July 4, 2008)
- *New federal rules for e-evidence: Businesses' policies should be clear on saving, storing electronic data*, The Milwaukee Business Journal (March 30, 2007)
- *Same Day Registration and Other Issues Under Wisconsin Election Law*, RNLA Election School (August 2005 and June 2004)
- *Electronic Discovery: Managing Your Haystacks*, Corporate Practice Institute (December 2004)
- *eDiscovery In the Federal Courts*, Engage (April 2004)
- *Business Torts Update*, Milwaukee Bar Association – Litigation Section (May 14, 2003)
- *Purchasing Law in Wisconsin*, Lorman Education Seminars (October 2001, March 2003)
- *Product Liability of Component Part Manufacturers*, Twelfth Annual Product Liability Conference, University of Wisconsin Department of Engineering Professional Development (November 2000)
- *New Legal Guidelines For Design Defects and Warnings*, Eleventh Annual Product Liability Conference University of Wisconsin Department of Engineering Professional Development (November 1999)
- *Effective Ways to Protect Your Business When Selling or Purchasing Goods in Wisconsin*, Lorman Education Seminars (July 7, 1999)

DONALD A. DAUGHERTY, *continued*

Articles and Presentations, continued

- *Trial Practice*, Law Seminars, Inc. (March 1999)
- *What To Do With the Bankrupt Patient*, Wisconsin Dental Association Journal (September 1998)
- *Double Jeopardy Clause Does Not Bar Criminal and Civil Penalties*, Wisconsin Bar Association Health Law Journal (Spring 1998)
- *Enforcement of Covenants-Not-To-Compete Against Physicians*, Journal of Health and Hospital Law (Fall 1997)
- *Physician Contracting Issues*, Wisconsin Academy of Family Physicians (Summer 1997 and Winter 1998 Conventions)
- *Wisconsin Court Finds that Employee Group Medical Plan May Contest Denial of Medicare Coverage*, Health Law Digest (May 1997)
- *Co-author, Attorney General and Kenosha Hospitals Enter Into Antitrust Settlement Agreement*, Health Law Digest (January 1997)
- *Quoted, Judges Who Support the Right to Die*, U. S. News & World Report (January 13, 1997)
- *Protecting Your Company From the “Drive By” Headhunter*, Milwaukee Journal Sentinel, Business Section (September 16, 1996)
- *Enforcement of Covenants-Not-To-Compete Against Physicians: Sale of Medical Practices vs. Employment Contracts vs. Hybrids*, DePaul Journal of Health Care Law (Fall 1996)
- *Co-author, Community Impact Study of Milwaukee County War Memorial Center, Inc.*, (Spring 1995)
- *The New Garnishment Statute*, Bankruptcy, Insolvency and Creditors’ Rights Section Program (1994 State Bar of Wisconsin Annual Convention)
- *Co-author, Getting Paid Early in Bankruptcy Cases*, Business Credit (October 1994)
- *The Abuse of Prosecutorial Discretion Under the Ethics in Government Act*, Journal of Criminal Law & Criminology (Spring 1989)