



Commercial Litigation

Business involves risk. With risk comes reward. But not always. Things can, and do, go wrong. And when they do, you must be ready. Litigation is almost never the preferred path, but sometimes is the necessary one. When other options are exhausted, vigorous advocacy is required to enforce rights and defend interests.

Foster Swift's commercial litigation team helps clients navigate business disputes to successful outcomes. While litigation distracts from objectives and drains resources, our litigators draw on their experience and knowledge to execute strategies that make the best of difficult situations.

Proactive Approach

While most transactions don't lead to disputes, litigation lurks on the edges of many business interactions. We help our clients reduce risks by helping them avoid litigation in the first place. From proactively incorporating risk shifting and litigation alternative provisions into a client's business and contractual instruments, to rapidly reacting to - and resolving - potentially threatening developments in their earliest stages, there are many techniques, methods and processes we employ to avoid costly disputes.

Ready from the Start

Not every case goes to trial. But we're ready if it does. From the outset, we prepare and strategize as if a case will go the distance. Preparation enables us to achieve the best results at trial, and also the best settlements from opposing parties who understand that we are not afraid to try cases. By being ready from the start, we're poised to win.

Agile and Aggressive

From fast moving injunction proceedings to fact intensive UCC disputes, Foster Swift's Commercial Litigation team handles a wide range of matters for clients across Michigan. Our lawyers are regarded as agile and aggressive advocates who try and win cases in state and federal courts, as well as in alternative dispute resolution forums.

Technologically Sophisticated

We use technology to increase effectiveness, productivity and to keep costs down. Technology is harnessed for both trial preparation and

PRACTICE CONTACT(s)

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ATTORNEYS

Shareholder

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Associate

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Benjamin C. Dilley
Reed K. Powers
Brandon M. H. Schumacher

Paralegal



presentation, including for discovery, case management and graphics. Technology also enables us to stay in 24/7 contact with our clients – wherever they may be.

Business Focused

We make it our priority to understand and protect our clients' most important business interests. Sometimes this means negotiating a resolution. Other times it means pushing forward to trial. Always it means aligning our litigation strategy with our client's business strategy.

On the Cutting Edge

Several of our attorneys are credentialed in alternative dispute methods, including one who is an approved commercial neutral by the American Arbitration Association and certified mediator for international business conflicts by the International Mediation Institute.

Areas of Focus

While our Commercial Litigation attorneys represent businesses across industries and in connection with a broad range of claims and disputes, we have significant experience in the following areas:

Construction Law

With complex contracts at issue, considerable money at stake, and many parties at the table, construction projects often result in some form of litigation. We represent clients in state and federal courts, as well as arbitration and mediation proceedings, in connection with:

- State and federal bond claims
- Construction liens and foreclosures
- Builder's trust fund matters
- Claims for extras, delay claims, claims for acceleration, claims for loss of efficiency, differing site conditions and bid protests
- Breach of contract
- Collateral damage from construction projects

Transportation Law

Moving freight can often make or break a project. Doing it well enhances profitability while doing it poorly can spell disaster. We represent clients in a wide range of transportation law actions, including:

- Accident defense

Kendra Dixie, MLS, CP

Lorri A. Rosier

RELATED PRACTICES

Construction Law

Employment Litigation

Environmental Law

Transportation Law



- Freight claim disputes, employment and personnel leasing issues, liability-negligence actions and insurance coverage issues
- Actions claiming violations of local and state highway regulations, including truck weight issues

Environmental Law

Foster Swift is one of the first firms in Michigan to develop an Environmental practice, and has advised clients and litigated a wide range of federal and state environmental matters, including:

- Government and citizen enforcement suits
- Private cost recovery actions
- Environmental insurance coverage cases
- Toxic tort claims
- Groundwater contamination
- Fracking suits
- CERCLA contribution claims

Employment and Corporate Contracts

Our team is skilled and experienced in representing businesses and individuals in disputes arising out of employment and business contracts, including:

- Covenants not to compete
- Sales commission claims
- Shareholder or member disputes

SUCCESSFUL REPRESENTATIONS

Our clients have prevailed in all sorts of claims, including many difficult, high-stakes cases. These cases, many of which resulted in bench or jury trials in state and federal courts across Michigan, include:

- The Foster Swift litigation team of Jim Doezema, Josh Richardson, and Brandon Schumacher successfully defended the County of Muskegon in a multi-million dollar breach of contract case filed against the County by a former IT vendor. At trial, the vendor sought damages for all outstanding payments under two previously-terminated IT services contracts (approximately \$4 million), as well as lost business value and lost profits on related sales (approximately \$12.2 million). The County retained Foster Swift just months before the damages-only trial. The team's hard work significantly limited vendor's judgment, and no damages were awarded for lost business value or lost sales.
- A major national trust and private banking institution needed counsel in federal litigation. We aided the client in addressing claims involving securities and investment management issues.
- A national paper products manufacturer had a problem with an application of the Whistleblowers' Protection Act to illegal employee activity. In a case of first impression, our attorneys obtained favorable federal district and appellate court judgments.



- An internationally recognized manufacturer of custom ice hockey goalie equipment engaged us to protect its business and product. Our team won a ten-day jury trial – and hundreds of thousands of dollars in damages for our client – in federal court against two of our client’s former employees and the businesses they formed which manufactured and marketed confusingly similar goalie products.
- A Michigan-based farm equipment dealer hired us to bring claims against another party under the Michigan Farm and Utility Equipment Act and the Michigan Antitrust Reform Act. Our trial team won a \$5.15 million jury verdict for our client, which was upheld following an extensive 15 months of post-judgment motions.
- A rock & roll band retained us to defend against a former band manager’s breach of contract and conversion suit for non-payment of royalties. We obtained summary dismissal of the claims as the Court ruled that the band manager’s non-attorney contingent fee litigation broker/middleman contract violated public policy and was void and unenforceable.
- A coalition of forest and paper products industry members and trade associations hired our team to lead a challenge under the Federal Clean Air Act. We were successful.
- General liability insurers were looking at major environmental coverage litigation. Our attorneys successfully defended claims involving historic contamination at a rubber products manufacturing facility.
- Various transportation entities, such as brokers, freight forwarders, motor carriers and railroads, engaged us to defend defense cargo claims against them. We did so successfully.
- An out-of-state auto financing company needed Michigan counsel to defend a claim under the Fair Credit Reporting Act. We drafted, argued and won a motion to dismiss for lack of personal jurisdiction.
- An individual who was sued by his former employer engaged us to defend against a claim that he breached a covenant not to compete. We won dismissal of the claim.

Foster Swift has been named a Tier 1 firm in **Commercial Litigation** in Lansing by *U.S. News – Best Lawyers®* "Best Law Firms" in 2020-2021 and 2024.

PUBLICATIONS & ALERTS

Are There Any Liability Defenses to Premises Liability Claims, OR Should Possessors of Land Simply Prepare to Write Settlement Checks?, *Foster Swift Litigation News*, March 7, 2024

Litigation 101 - What Happens in a Lawsuit?, *Foster Swift Business & Tax Law News*, June 3, 2022

House Bill to Lower Prescription Drug Costs, *Foster Swift Health Care Law E-blast*, February 24, 2022

Bio-Digesters: A New solution for a New Era, *Foster Swift Agricultural Law News*, September 17, 2021

Michigan Agricultural Law Updates, *Foster Swift Agricultural Law News*, May 13, 2021

Michigan Updates to Industrial Hemp Growers Act, *Foster Swift Agricultural Law News*

No Justice for Unclean Hands, *Foster Swift Business & Tax Law News*, February 1, 2021

MDHHS Director Updates and Expands Emergency Order, *Foster Swift Legal Update E-blast*, October 9, 2020



Judge Upholds MDHHS Order Requiring COVID-19 Testing of Migrant Workers, *Foster Swift Agricultural Law News*, September 28, 2020

Resuming Construction Under Executive Order 2020-70, *Foster Swift Legal Update E-blast*, May 6, 2020

Back to Work Planning for the Construction Industry, *Foster Swift Legal Update E-blast*, April 30, 2020

Recent Updates to Michigan No-Fault Act Changes, *Foster Swift Litigation News Update E-blast*, June 20, 2019

How to Avoid Bankruptcy and Build a Strong, Successful Business, *Foster Swift Finance Real Estate & Bankruptcy News*, March 1, 2018

Frost Law: Are you complying with Spring Weight Restrictions?, *Foster Swift Commercial Litigation News*, February 27, 2018

Banks Beware: Lawsuits Challenging Website Accessibility are Gaining Steam, *Lexology*, January 3, 2018

Get it in Writing: The Importance of Written Agreements in Business, *Foster Swift Commercial Litigation News*, October 13, 2015

Public Private Partnerships: A Win-Win Model, *Foster Swift Commercial Litigation News*, October 13, 2015

Michigan Court of Appeals Clarifies the Difference Between Statutes of Limitations and Repose, and Allows Minority Shareholder Oppression Lawsuit to Proceed, *Foster Swift Commercial Litigation News*, July 14, 2015

Title Through Adverse Possession, *Foster Swift Commercial Litigation News*, July 14, 2015

Legislature Passes Significant Changes to Environmental Remediation Statute, *Foster Swift Commercial Litigation News*, February 16, 2015

A Good LLC Operating Agreement Can Avoid a Really Bad Court Case, *Foster Swift Commercial Litigation News*, November 13, 2014

Recent Opinions Interpreting Contract Terms Highlight the Importance of Carefully Drafted Agreements, *Foster Swift Commercial Litigation News*, October 16, 2014

Michigan Court of Appeals holds owner and operator of an underground storage tank liable, *Foster Swift Commercial Litigation News*, September 10, 2014

Drafting and Issuing Subpoenas: Michigan, *Practical Law Litigation*, July 2014

The Beginning of the End of the Open and Obvious Defense for Retail Stores?, June 4, 2014

Michigan Legislature Introduces Beneficial Use Reforms, *Foster Swift Commercial Litigation News*, April 25, 2014

The Michigan Sales Representative Act: Have You Reviewed Your Commission Agreements Recently?, *Foster Swift Commercial Litigation News*, December 18, 2013

Court Limits Road Commission Authority to Resolve Inter-Township Roadway Disputes, *Foster Swift Municipal Law News*, August 30, 2013

To Arbitrate or Litigate? That is the Question., *Foster Swift Commercial Litigation News*, July 11, 2013

A Motion for Directed Verdict, *Michigan Bar Journal*, July 2013

Michigan Overhauls Arbitration Rules, *Foster Swift Construction Law News*, March 27, 2013



The Seller Breached the Contract but the Purchaser Saved Money as a Result, *Foster Swift Automotive Management News*, March 20, 2013

Updates to Michigan's Clean Corporate Citizen Program, *Foster Swift Environmental Law Update*, February 7, 2013

Small Claims Limit Increased – Good News for Businesses, *Foster Swift Commercial Litigation News*, July 10, 2012

Priority of Construction Liens, *Foster Swift Commercial Litigation News*, March 6, 2012

No Liability for Owners and General Contractors When Alleged Danger Does Not Pose a Risk to a Significant Number of Workers, *Foster Swift Commercial Litigation News*, Fall 2011

Under the Construction Lien Act, Claims of Lien Must be Filed on Individual Units to Which Labor and Materials are Provided, *Foster Swift Commercial Litigation News*, Fall 2011

When Family Opens for Business, *Foster Swift Commercial Litigation E-News*, July 1, 2010

NEWS

Dora Brantley Receives "Excellence in Defense" Award, *Michigan Defense Trial Counsel*, March 21, 2024

Preparing Women Business Leaders for 2024 Legal Challenges, *Meltwater Newswire*, February 20, 2024

Foster Swift Listed in "Best Law Firms" 2024, *Best Lawyers in America*, November 2, 2023

Litigation Attorney Romano Joins Foster Swift in Southfield, November 2, 2023

David & Vredenburg Named to Best Lawyers in America, *Best Lawyers in America*, August 17, 2023

Foster Swift Attorneys Named 2024 Best Lawyers in America, *Best Lawyers in America*, August 17, 2023

Foster Swift Best Lawyers® 2024 "Ones to Watch", *Best Lawyers in America*, August 17, 2023

Four Lansing Attorneys Named Best Lawyers® 2024 "Lawyer of the Year", *Best Lawyers in America*, August 17, 2023

Real Estate Attorney Roragen Joins Lansing Firm, *Ingham County Legal News*, July 10, 2023

Fortune 500 Defense Litigator Joins Foster Swift, *Detroit Legal News*, June 1, 2023

Litigator Joins Foster Swift Law Firm in Southfield, *Detroit Legal News*, April 12, 2023

Foster Swift Listed in "Best Law Firms" 2023, *Best Lawyers "Best Law Firms"*, November 3, 2022

Millenbach Named to 2022 Class of "Leaders in the Law", October 27, 2022

Meagher Receives 2022 Theodore W. Swift Civility Award, October 26, 2022

Genovich Featured in Interview on Mentorship, Automation, and Teaching Legal Writing, *Clearbrief*, October 17, 2022

MBN Introduces New Senior Attorney Alexander Rusek, *Michigan Business Network*, October 12, 2022

What You Need to Know About Trauma-Informed Lawyering, *State Bar of Michigan - On Balance Podcast*, September 26, 2022

Fershtman Elected Vice-President of the Michigan State Bar Foundation, *Michigan State Bar Foundation*, September 15, 2022



Name Partner Retires After 60 Years With Firm, *Ingham County Legal News*, September 1, 2022

Foster Swift Best Lawyers® 2023 "Ones to Watch", *Best Lawyers in America*, August 18, 2022

Schumacher to Receive MDTC Volunteer Award, *Michigan Defense Trial Counsel (MDTC)*, April 14, 2022

Firm Continues to See Steady Growth Entering 2022, January 11, 2022

Forbush "Comes Home" to Foster Swift, *Ingham County Legal News*, December 15, 2021

Russell Discusses Implications of Massive Marijuana Recall Lawsuit, *CBS News*, November 29, 2021

Fedor and Genovich join Michigan State Bar Foundation Fellows, *Michigan State Bar Foundation*, November 11, 2021

Meagher Elected to American Board of Trial Advocates, November 8, 2021

Foster Swift Listed in "Best Law Firms" 2022, *Best Lawyers in America*, November 5, 2021

Storey Receives 2021 Theodore W. Swift Civility Award, October 1, 2021

Foster Swift to Participate in Mansfield Rule Program Focused on Diversity in Leadership, September 14, 2021

Best Lawyers® 2022 "Lawyer of the Year", August 19, 2021

Foster Swift Attorneys Named to 2022 Best Lawyers in America®, August 19, 2021

Foster Swift Best Lawyers® 2022 "Ones to Watch", August 19, 2021

16 Attorneys Selected to 2021 Michigan Super Lawyers and "Rising Stars", *Michigan Super Lawyers*, August 13, 2021

Firm Welcomes New Chief Operating Officer, *Grand Rapids Business Journal*, July 29, 2021

Attorney Joins 2021 Dapper Dads for Good Cause, July 15, 2021

Foster Swift Attorneys Offer Advice for Those Interested in Law School, *Detroit Legal News*, April 29, 2021

Firm Elects EC Members and Practice Leaders in 2021, February 17, 2021

Foster Swift Ushers in Three New Associates, December 17, 2020

Foster Swift in dbusiness 2021 Top Lawyers, *dbusiness*, November 12, 2020

Foster Swift Listed in "Best Law Firms" 2021, *Best Lawyers*, November 5, 2020

18 Attorneys Selected to 2020 Michigan Super Lawyers and "Rising Stars", September 18, 2020

Fadly and Littleton Named Michigan Bar Fellows, *Michigan Business Network*, August 26, 2020

Foster Swift Attorneys Named Best Lawyers® 2021 "Ones to Watch", August 20, 2020

Foster Swift Attorneys Named to 2021 Best Lawyers in America®, August 20, 2020

Smith to Receive SBM Outstanding Achievement Award, July 20, 2020

Foster Swift Adds Sydney Steele to Firm, May 18, 2020

Foster Swift Listed in Best Lawyers® "Best Law Firms" 2020, November 1, 2019

Julie Fershtman is an Advocate for Women in Law, *Detroit Jewish News*, October 9, 2019



23 Attorneys Selected to 2019 Michigan Super Lawyers and "Rising Stars", *Automation Alley*, September 3, 2019

42 Foster Swift Attorneys Listed as Best Lawyers® 2020, August 15, 2019

Smith Inducted in Michigan Lawyer's Weekly Hall of Fame, May 13, 2019

Patricia Scott Named to 2019 Leaders in the Law, February 13, 2019

Webinar: What Employers Need to Know about Marijuana in the Workplace, *Ingham County Legal News*, January 29, 2019

Scott Appointed to the FBA Bankruptcy Steering Committee, January 23, 2019

Foster Swift Rated Tier 1 in 27 Practice Areas in Best Lawyers® "Best Law Firms", November 1, 2018

Fershtman Earns Highest Honor from State Bar of Michigan, *Lansing Regional Chamber*, September 25, 2018

31 Foster Swift Attorneys Selected to 2018 Michigan Super Lawyers and "Rising Stars" Lists, September 10, 2018

Richardson Elevated to MDTC President, July 5, 2018

Meagher Inducted as an ABF Fellow, *Detroit Legal News*, April 24, 2018

WLAM to Present Fershtman with the 2018 Jean King Leadership Award, April 10, 2018

Law Firm Elects Practice Group Leaders, February 22, 2018

Attorney Russell Appointed as Litigation Practice Group Co-Leader, January 29, 2018

Crain's Detroit Names Julie Fershtman in 2017 Notable Women Lawyers, *Crain's Detroit*, December 14, 2017

Five Foster Swift Attorneys Named to dbusiness 2018 Top Lawyers, November 9, 2017

30 Foster Swift Attorneys Selected to 2017 Michigan Super Lawyers and Rising Stars Lists, September 8, 2017

Julie Fershtman Selected for Two Additional Michigan Super Lawyers Honors, September 8, 2015

44 Foster Swift Attorneys Named to 2016 Best Lawyers in America® Roster, August 21, 2015

Foster Swift Attorney Julie Fershtman Selected for Michigan's State Bar 21st Century Task Force, July 17, 2015

Moore Receives Golden Gavel Award, May 20, 2015

Attorney Josh Richardson elected Boys & Girls Club of Lansing Chair, January 26, 2015

Attorney Richard Kraus elected to American Bar Association Council of Appellate Lawyers Executive Committee, November 20, 2014

Foster Swift wins Federal Court Jury Verdict for Internationally Recognized Manufacturer of Custom Hockey Equipment, November 14, 2014

\$5.15 Million Verdict for Farm Equipment Dealer Upheld, September 25, 2014

Foster Swift Wins \$5.15 Million Verdict for Farm Equipment Dealer, June 25, 2013

21 Foster Swift Attorneys named to 2011 Michigan Super Lawyers; 4 named Michigan Rising Stars, September 12, 2011

Attorney Alexander A. Ayar elected President of the Chaldean-American Bar Association, August 8, 2011



State Bar President-Elect Julie I. Fershtman Joins Foster Swift, October 25, 2010

Foster Swift's 2011 Best Lawyers, August 17, 2010

Foster Swift Welcomes David R. Russell, April 21, 2010

Patricia J. Scott Announced as Foster Swift's Newest Associate, April 14, 2010

Foster Swift Announces 2009 Best Lawyers, August 18, 2009

Foster Swift Announces 2008 Best Lawyers In America, September 18, 2008

Foster Swift Announces 2008 Super Lawyers, July 28, 2008

EVENTS

Combatting Incivility with Civility, *Oakland County Bar Association*, November 9, 2023

What Happens if My Business Gets Sued?, *Legal Strategies for Women Leaders*, October 18, 2023

The Evolution and Transformation of Black Entrepreneurship, *National BMLS Leadership Summit*, August 17, 2023

Transforming Law Firms: DE&I Intent Into Real Progress, *Michigan Diversity Council Legal Diversity Summit*, October 18, 2022

Litigation Series: What To Do If You Are Being Sued, *Foster Swift Second Wednesday Morning Break*, August 10, 2022

Concerns and Obligations for Businesses Under the Corporate Transparency Act, *Foster Swift Second Wednesday Morning Break*, May 11, 2022

Who is Liable When No One is Behind the Wheel?, *Foster Swift 2nd Wednesday Morning Break*, February 9, 2022

New Lawyers, You Have the Floor, *61st Annual Probate and Estate Planning Institute, State Bar of Michigan, Probate and Estate Planning Section*, May 21, 2021

Diversity: From Adversity to Unity, *Michigan Lawyers Weekly*, March 30, 2021

A Primer on Civil Litigation - How to Avoid Getting Sued and What to do if you do!, *Foster Swift Going Forward Webinar Series*, June 25, 2020

A Michigan Condemnation Law Primer for Commercial Property Owners, *International Council of Shopping Centers (ICSC)*, February 13, 2020

ICLE Niche Practices Seminar, *Institute of Continuing Legal Education (ICLE)*, August 8, 2018

Employment and labor laws that can affect the dairy industry, *Great Lakes Regional Dairy Conference (GLRDC)*, February 8, 2018

Trigger Point to Avoid Financial Ruin: Perspectives from a Bankruptcy Lawyer, *Great Lakes Crop Summit*, January 31, 2018

How to Discipline and Terminate Employees, June 9, 2015