



Business & Commercial Litigation

Foster Swift's business and commercial litigation attorneys help clients navigate business disputes with the aim of achieving successful results at a reasonable cost. From fast-moving injunction proceedings to fact-intensive UCC disputes, Foster Swift's business & commercial litigation attorneys handle a wide range of matters. Our attorneys handle and try cases in state and federal courts throughout Michigan, and some are hand-picked to work on unique and high-stakes cases around the country. Within the firm, several of our attorneys have "niche" expertise that not only allows them to deeply understand our clients' business industries but also allows them to provide an even better level of service.

While we work hard on our clients' behalf, we also recognize that litigation is not always the best means of resolving legal disputes. Where appropriate, and with the approval of our clients, we also help resolve disputes through alternatives to litigation that include mediation, facilitation, or arbitration. We represent our clients' interests, but we're sometimes called upon to make the decisions on other high-stakes matters. For example, some of our attorneys, respected by their peers to mediate others' disputes, are approved commercial arbitrators by the American Arbitration Association or certified mediators for international business conflicts by the International Mediation Institute.

Foster Swift attorneys work within budget, deliver results for our clients, and keep costs within reason. To help manage cases, we utilize technology for pre-trial discovery, trial preparation, and trial. In addition, to the unique perspective that litigators provide, we are often able to help our clients control their risks through carefully drafted contracts and other means of risk management.

We take pride in the good reputations our litigators have earned within the profession and work steadfastly to maintain our reputation, one matter at a time, through a high degree of preparation, advocacy, client communication, and attention to ethics. That may explain why, firm-wide, 33 Foster Swift attorneys are listed in *The Best Lawyers in America 2023*®, including some selected for categories of Bet the Company Litigation, Commercial Litigation, Class Actions, and more. Our attorneys are results-focused, but they consistently earn the respect of the bench and bar through civility and professionalism.

PRACTICE CONTACT(s)

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ATTORNEYS

Shareholder

Dora A. Brantley
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RELATED PRACTICES

Construction Law
Employment Litigation
Environmental Law
Transportation Law



Foster Swift has also been named a Tier 1 firm in **Commercial Litigation** in Lansing by *U.S. News – Best Lawyers®* "Best Law Firms" in 2016, 2017, 2018, 2019 and 2023. The firm was also named a Tier 1 firm in **Bet-the Company Litigation** in 2023. Foster Swift attorneys include past recipients of prestigious awards such as the "Ted Swift Civility Award" from the Ingham County Bar Association and the "Professionalism Award" from the Oakland County Bar Association. Three of our attorneys have been named Fellows of the prestigious American College of Trial Lawyers and 5 are Fellows of Litigation Counsel of America, an invitation-only trial lawyer honorary society and ABOTA.

Areas of Practice

Our Business & Commercial Litigation attorneys serve a wide range of industries on legal disputes, representing Fortune 500 corporations to individuals. We handle trials, arbitrations, and appeals, including, as examples:

Contract Disputes

Often times, even sophisticated business entities might not view the same contract in the same manner. Sometimes parties to an agreement neglect to reduce it to writing, creating settings ripe for disputes. Foster Swift attorneys are highly experienced in litigating disputes involving contracts. These disputes sometimes call for creative approaches and decisive action.

Employment Litigation

Our attorneys are 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

Construction Law

Construction-related disputes can generate argumentative, multi-party litigation because projects involve complex contracts, considerable investments, and numerous parties. 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
- 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

Bankruptcy/Creditor Rights Law

Foster Swift attorneys represent Creditors, Debtors, Trustees and other interested parties in actions pending in Bankruptcy Courts. The Foster Swift bankruptcy team has extensive experience in Chapter 11, Chapter 13 and less frequent filings such as Chapter 12. This includes advising its clients on such issues as lien priority, claims handling and adjudication, preferences, avoidance actions, lift of stay proceedings, and fraudulent conveyances.

In the area of Creditor Rights, Foster Swift attorneys represent individuals, businesses, and financial institutions in negotiation, litigation, the appointment of receivers, and pre and post-judgment activities to obtain and collect judgments, delinquent accounts, and contractual obligations (such as the sale of goods). We are efficient in obtaining judgments, conducting research regarding borrower's or debtor's assets, negotiating payment structures, and issuing Garnishments and Writs of Seizure. Additionally, we have significant experience in seeking the appointment of receivers over the borrower's assets, and working with receivers to reach a positive result for the creditor.

Insurance

Foster Swift's clients include some of the world's largest insurance companies as well as state-based mutual insurance companies. Foster Swift attorneys cover a wide variety of legal matters that include:

- coverage disputes involving all types of policies



- defense of claims through trials and appeals
- claim investigation such as examinations under oath, subrogation, and more
- Our attorneys are sometimes called upon to help draft or review insurance policy language

Trademark and Copyright

Our litigation attorneys vigorously seek to protect our clients' information and enforce their rights. From requests for injunctive relief to protect trade secrets, to trials on the merits of seeking damages resulting from wrongdoing, Foster Swift litigators take decisive and determined action.

Governmental Litigation

State-wide, many municipalities turn to our firm for representation on an on-going basis. In addition to land use and zoning litigation, Foster Swift attorneys frequently defend municipalities in cases involving municipal liability, workers' compensation and negligence. A considerable portion of our litigation practice involves the representation of municipal governments in litigation involving civil rights claims, constitutional claims and governmental immunity. Foster Swift attorneys have successfully represented many municipalities against lawsuits alleging improper or defective public works construction. We currently serve as approved counsel for the Michigan Participating Plan, which is a plan that provides a stable insurance market for governmental entities.

SUCCESSFUL REPRESENTATION

Although no attorney can guarantee results, we are proud to share numerous examples of cases where we met or surpassed our clients' expectations, including complex, high-stakes cases. Representative examples include:

- 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.

PUBLICATIONS & ALERTS

Could Michigan Highschoolers Soon Benefit from NIL Deals?, *Foster Swift Business & Tax Law News*, October 27, 2023

Notable Shift in Contract Law Regarding Release Contracts Could Affect Automotive Suppliers and Others, *Business & Tax Law News*, August 3, 2023

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

Implications of the Forthcoming Corporate Transparency Act, *Foster Swift Business & Tax Law News*, May 10, 2022

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

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

Firing a Sales Representative? Make Sure to Read Your Commission Agreement First, *Foster Swift Business & Corporate Law News*, April 6, 2016

Get it in Writing: The Importance of Written Agreements in Business, *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

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



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

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

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

NEWS

17 Attorneys Selected to 2023 Michigan Super Lawyers and "Rising Stars", *Michigan Super Lawyers*, August 11, 2023

Schumacher Listed as New "Rising Star" in Super Lawyers 2023, *Michigan Super Lawyers*, August 11, 2023

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

Attorney Dirk Beckwith Awarded the Transportation Lawyers Association's Lifetime Achievement Award, May 8, 2023

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

Litigation Series Focuses on the Ins & Outs of Lawsuits, August 10, 2022

What Is The Corporate Transparency Act?, *Michigan Business Network*, July 29, 2022

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

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

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

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

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

Fershtman Awarded Additional Super Lawyers Honors in 2020, September 18, 2020



Vredenburg Named Litigation Practice Group Co-Leader, March 26, 2020

Foster Swift Welcomes Joseph B. Gale to Firm, February 17, 2020

Dilley and Fershtman Awarded Additional Super Lawyers Honors, September 10, 2019

Scott Mandel Admitted to American College of Trial Lawyers, October 3, 2018

Michigan Court of Appeals Reiterates That Worker's Compensation Claims Are the Exclusive Remedy for Injured Employees, *Detroit Legal News*, May 1, 2018

Foster Swift Attorney Granted ABOTA Membership, February 5, 2018

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

Richardson Named VP of MDTC, July 28, 2017

The National Council for Public-Private Partnerships Presents: P3Connect 2016, June 21, 2016

Michigan Court of Appeals affirmed jury decision in favor of McCormick, February 4, 2016

Ray Littleton Appointed as Chair of the Rules and Calendar Committee for the Representative Assembly for the State Bar of Michigan, November 9, 2015

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



EVENTS

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

Litigation Series: What To Know If You Are Planning To Sue, *Foster Swift Second Wednesday Morning Break*, July 13, 2022

The Act of God Defense under the Carmack Amendment, the Devil is in the Details, *Trucking Industry Defense Association (TIDA)*, March 30, 2022

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

Between a Rock and a Hard Place: Broker Liability and Ability to Recover for Cargo Loss and Damage Claims, *Transportation and Logistics Council*, March 21, 2017

Adjunct Professor - Pre-Trial Skills, *Western Michigan University Thomas M. Cooley Law School*, 2016

How to Discipline and Terminate Employees, June 9, 2015
