



## MICHAEL C. MCCARTHY

Partner  
Chair of Firm Governance Committee

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### OVERVIEW

Mike McCarthy is a partner in the Litigation Group and chair of Maslon's Governance Committee, which manages the firm. He represents clients in complex litigation and appeals.

Mike has represented clients in the federal and state appellate courts in Minnesota and North Dakota. That work has included not only representing the parties to those appeals but also consulting on appeals and filing amicus curiae briefs in appeals to which his client is not a party.

Mike has defended putative class actions involving securities and consumer fraud, environmental claims, and antitrust and other alleged statutory violations. In addition, he has experience with and expertise in corporate trust matters, technology-related litigation (including intellectual property disputes), and medical-device liability.

Before joining Maslon, Mike served as a law clerk to Judge Gerald W. Heaney of the U.S. Court of Appeals for the Eighth Circuit and Judge Louis H. Pollak of the U.S. District Court for the Eastern District of Pennsylvania.

### SELECTED EXPERIENCE

#### *Representative Appeals*

- *Marks v. Commissioner of Revenue*, 875 N.W.2d 321 (Minn. 2016). Challenge to taxation of part-year resident.
- *EOG Resources, Inc. v. Soo Line R.R. Co.*, 867 N.W.2d 308 (N.D. 2015). Amicus brief on behalf of BNSF Railway Company in dispute involving interpretation of deeds and scope of property interests conveyed to railroad.
- *Marshall v. NFL*, 797 F.3d 502 (8th Cir. 2015). Challenge to class-action settlement of claims related to retired players' publicity rights.
- *Medical Staff v. Avera Marshall*, 857 N.W.2d 695 (Minn. 2014). Amicus brief on behalf of Minnesota Hospital Association in dispute involving medical staff bylaws.
- *State of Minnesota v. 3M Co.*, 845 N.W.2d 808 (Minn. 2014). Challenge to disqualification of opposing counsel.

### AREAS OF PRACTICE

Litigation

- Appeals
- Business Litigation
- Corporate Trust Litigation
- Intellectual Property Litigation
- Tort & Product Liability

### BAR ADMISSIONS

Minnesota

New York

U.S. District Court

- Minnesota
- Colorado
- E.D. Michigan
- S.D. New York
- North Dakota
- S.D. Texas

U.S. Court of Appeals

- Fifth Circuit
- Sixth Circuit
- Seventh Circuit
- Eighth Circuit
- Eleventh Circuit
- Federal Circuit

U.S. Supreme Court

### EDUCATION

Cornell Law School  
J.D., *magna cum laude*  
Honors: Order of the Coif

St. John's University  
B.A.

- *Triple Five of Minnesota, Inc. v. Simon*, 404 F.3d 1088 (8th Cir. 2005). Reversal of order transferring ownership of substantial interest in Mall of America as remedy for fiduciary duty breach in partnership dispute between owners.
- *Bruggeman v. Jerry's Enterprises, Inc.*, 591 N.W.2d 705 (Minn. 1999). Reversal of summary judgment because merger doctrine inapplicable to option to repurchase land.
- *Narum v. Faxx Foods, Inc.*, 590 N.W.2d 454 (N.D. 1999). Affirming dismissal of securities fraud claims as barred by statute of limitations.
- *Minnesota Mining and Manufacturing Co. v. Nishika Ltd.*, 565 N.W.2d 16 (Minn. 1997). Obtained ruling resulting in reversal of \$30 million award under UCC warranty.
- *In re Minnesota Asbestos Litigation*, 552 N.W.2d 242 (Minn. 1996). Dismissal of claims against Australian asbestos supplier for lack of personal jurisdiction.

### **Representative Cases in District Courts**

- *In re MASTR Asset Backed Securities Trusts 2006-HE3 & 2007-WMC1*, No. 62-TR-CV-14-59 (Ramsey Cty. Dist. Ct.). Obtained trust instruction for corporate trustee after trial on investors' objections to requested instruction.
- *U.S. Hotel & Resort Mgmt. v. Onity, Inc.*, No. 13-1499 (D. Minn. 2014). Dismissal of putative class action alleging design defect in hotel door locks due to lack of injury and therefore no Article III standing.
- *Hennepin Cty. v. Fannie Mae*, 933 F. Supp. 2d 1173 (D. Minn. 2013), *aff'd*, 742 F.3d 818 (8th Cir. 2014). Dismissal of putative class action alleging failure to pay state deed tax in connection with acquisition and sale of mortgages.
- *State of Minnesota v. 3M Co.*, No. 27-CV-10-28862 (Hennepin Cty. Dist. Ct.). Defense of claims for natural resource damages (2011 to 2016).
- *Braswell v. Polaris Indus., Inc.*, No. 09-2919 (D. Col. 2009). Defense of putative nationwide class action alleging warranty and consumer fraud claims related to snowmobile engines.
- *Williams v. Geithner*, No. 09-1959 (D. Minn. 2009). Dismissal of putative class action alleging due process violations related to implementation of mortgage modification program.
- *Paulson et al. v. 3M Company*, No. C2-04-6309 (Washington Cty. Dist. Ct.). Defeated motion seeking class certification of a 67,000 member putative class claiming chemical exposure via drinking water contamination (2007) and obtained a defense verdict on the merits after a seven-week jury trial (2009).
- *In re Canadian Import Antitrust Litig.*, 385 F. Supp. 2d 930 (D. Minn. 2005), *aff'd*, 470 F.3d 785 (8th Cir. 2006). Dismissal of putative class action alleging antitrust liability in connection with restrictions on importation of prescription pharmaceuticals purchased from Canadian pharmacies.

### **Pro Bono**

- *Ex parte Armstrong* (Tex. Crim. App. 2017). Member of team of Maslon lawyers serving as pro bono counsel for Douglas Tyrone Armstrong, a Texas death row inmate convicted of capital murder in 2006. The team successfully secured the vacation of Armstrong's death sentence by the Texas Court of Criminal Appeals.

### **LEADERSHIP & COMMUNITY**

- Maslon LLP: Governance Committee Member 2014-present, Chair 2016-present; General Counsel 2014-present
- Hennepin County Law Library: Board of Trustees since 2008, Vice Chair 2017-present
- American Bar Association: Litigation Section
- Minnesota State Bar Association: Publications Committee 2004-2013, Chair 2007-2010; Rules of Professional Conduct Committee since 2004, Chair 2014-2017
- Hennepin County Bar Association
- Fourth Judicial District Ethics Committee: Investigator 2008-2014
- ABA Death Penalty Representation Project: Pro Bono Attorney Volunteer

### **SELECTED HONORS**

- **Attorney of the Year**, *Minnesota Lawyer*, 2018
- **Light of Justice Award**, Texas Defender Service, 2018

- Selected for inclusion in the *Minnesota 500*, 2018
- Local Litigation Star, *Benchmark Litigation*, 2018-2019
- Recognized on Minnesota Super Lawyers® list, 2003-2005, 2018-2019 (*Minnesota Super Lawyers® is a designation given to only 5 percent of Minnesota attorneys each year, based on a selection process that includes the recommendation of peers in the legal profession.*)
- Selected for inclusion in *The Best Lawyers in America®*, 2014, 2017-2020
- North Star Lawyer, Minnesota State Bar Association, 2014, 2017 (*North Star Lawyer is a designation that recognizes members who provide 50 hours or more of pro bono legal services in a calendar year.*)
- AV Preeminent, Martindale-Hubbell®

## SELECTED PRESENTATIONS

- "Professional Ethics & the Multi-Jurisdictional Client," 2018
- "Trends in Data Privacy Litigation," Data Breach Preparedness and Response, Minnesota CLE, 2015
- "8th Circuit and U.S. Supreme Court Case Law Update," 38th Annual Federal Practice Seminar, Minnesota Chapter of the Federal Bar Association, 2012
- "Federal Appeals," IP Webcast Series, Minnesota CLE, December 2011
- Adjunct Professor, William Mitchell College of Law, "Recent Supreme Court Decisions," 2006-2008; "Remedies," 1998-2000; "Legal Writing," 1997-1998
- CLE presentations on appeals, class actions, electronic discovery, and developments in the law related to arbitration

## SELECTED PUBLICATIONS

- Maslon's Appellate Attorneys Contribute Chapters to Minnesota CLE's *Eighth Circuit Appellate Practice Manual*
- Chapter 3 "Appellate Court Jurisdiction," *Eighth Circuit Appellate Practice Manual*, Minnesota CLE (6th ed. 2013, 7th ed. 2015)
- "The Rise of Credit Card Data Breaches: The Thieves Among Us," 2014 Cyber Security Summit, 2014
- "The Rise of Credit Card Data Breaches: The Thieves Among Us," co-author, *Minnesota Lawyer*, June 1, 2012; *ON Litigation*, Vol. 3, Summer 2011
- "Disposition of Appeal," *Eighth Circuit Appellate Practice Manual*, Minnesota CLE, 4th ed. 2007; 5th ed. 2010
- "Manage Your Electronic Data or Risk Litigation Disaster," *ON Litigation*, Vol. 2, Winter 2009
- "The Class Action Fairness Act of 2005 – Congress Again Wades into Complex Litigation Matters," co-author, 228 F.R.D. 673 (2005)
- "Thinking Outside the Box: Recent Developments in Electronic Discovery," *Bench and Bar of Minnesota*, Vol. 61, No. 11 (2004)
- "Amici Curiae: Not Just Friends of the Court Anymore," co-author, *The Practical Litigator*, Vol. 9, No. 3 (1998)
- "Medtronic, Inc. v. Lohr: A Work In Progress," *Mealey's Emerging Drugs & Devices*, Vol. 1:14 (1996)