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Wayne Turner is a founding partner of Hoover Hull Turner LLP. His practice for more than thirty years has been business litigation in federal and state trial and appellate courts. Wayne's practice includes securities and corporate governance disputes, defending large law firms and accounting firms against professional liability claims, government and regulated utility litigation, class action defense, supply chain matters, and a variety of business tort and contract disputes. Wayne served for several years as the Chair of the Litigation Practice Group of a regional law firm.

EDUCATION

- J.D., *magna cum laude*, Indiana University Robert H. McKinney School of Law
- B.S., Economics, *with highest distinction*, Purdue University; G.A. Ross Award for Outstanding Graduate

RECOGNITIONS

- Fellow, American College of Trial Lawyers
- AV Preeminent®, *Martindale–Hubbell*
- *The Best Lawyers in America*® (since 2005) – Appellate Practice, Bet-the-Company Litigation (2016 and 2018 Lawyer of the Year), Commercial Litigation, Legal Malpractice Law – Defendants, Litigation – Banking and Finance (2014 and 2022 Lawyer of the Year), Litigation – Municipal (2012, 2015 and 2020 Lawyer of the Year), Litigation – Securities (2012, 2015 and 2019 Lawyer of the Year)

- *Indiana Super Lawyers*® (since 2004, Top 10 since 2012, Top 50 since 2004)
- Ranked by *Chambers USA* in Band 1 of Indiana lawyers listed in “Litigation: General Commercial” (since 2003)
- Ranked as a “Local Litigation Star” by *Benchmark Litigation* (since 2008)

PROFESSIONAL ASSOCIATIONS & CIVIC INVOLVEMENT

- Member, Indiana Commercial Courts Committee (2019-present)
- Life Fellow, American Bar Foundation
- President, Indianapolis Law Club (2008-11)
- Master, McKinney-Shepard Indianapolis Inn of Court (2013-present)
- Faculty, National Institute for Trial Advocacy (2000-present)
- Distinguished Fellow and Distinguished Life Fellow, *Indianapolis Bar Foundation*
- St. Paul’s Episcopal Church, Indianapolis: Co-Chair of Rector Search Committee (2010); Chair of Transition Committee for \$14 million structural renovation (2006-07); Sr. Warden (2004); Vestry (2001-04 and 2017-20)
- Washington Township Schools: Parent Support (2007-14)
- Governor-Appointed Trustee, Center for Agricultural Science & Heritage (2000-05)
- Purdue FarmHouse Fraternity: Alumni Foundation President (1996-2004); Alumni Association President (1988-94)
- Sycamore School, Indianapolis, Active Supporter (1995-2014)

EXPERIENCE

Though all cases vary and none is predictive, Wayne’s experience includes:

Business Litigation

- *Zotec Partners LP v. CBIZ, Inc. et al.*, Marion County Commercial Court (represented seller of subsidiary engaged in revenue cycle management business; defended against purchaser’s claims based on the subsidiary’s CEO’s undisclosed interest in a claimed competitor; two-week jury

trial resulting in a defense verdict rejecting plaintiff Zotec's claims of fraud, statutory fraud and deception, breach of contract and its damages theories exceeding \$200M); won ensuing bench trial on Zotec's claim of securities fraud and for rescission, and on CBIZ's counterclaim to recover its attorneys' fees under indemnification terms of SPA)

- *Abercrombie & Fitch Stores, Inc. v. Simon Property Group, L.P.*, Court of Appeals of Indiana Case No. 20A-CT-1092 (affirming entry of preliminary injunction by Commercial Court in favor of client Simon Property Group; injunction prohibited national retail tenant from permanently closing 54 store locations in violation of existing lease agreements; tenant's stated basis for the threatened closures was the Covid-19 pandemic)
- *Hartman v. BigInch Fabricators & Construction Holding Co.*, Supreme Court of Indiana Case No. 20S-PL-00618 (unanimous opinion vacating Court of Appeals decision and ruling for client company on issue of first impression concerning shareholders' freedom to contract for fair market valuation of stock, including discounts for lack of control or marketability, in the context of a forced sale upon agreed criteria under a stock purchase agreement)
- *Pittman et al. v. Pittman et al.*, Marion County Commercial Court (represented two minority members/shareholders as plaintiffs in multiple actions seeking declaratory and injunctive relief and damages for breaches of fiduciary duties by majority members/shareholders; parties reached a confidential settlement after opening statements and initial witnesses were called at a jury trial)
- *SSI Services, LLC, et al. adv. Frederick C. Treadway*, Marion Superior Court (two-week trial resulting in jury verdict and equitable judgment rejecting claims against clients for alleged fraud, conspiracy, deception, conversion, conspiracy and rescission, and rejecting claims for exemplary damages, with respect to dispute among closely-held entity owners)
- *Smith, et al., on behalf of Deep Vein Coal Co., Inc., et al. v. Smith, Lowery, et al.*, Vigo Superior Court consolidated actions (resolution of complex competing claims arising from control and operation of \$120M holding and operating companies)
- Represented Simon Property Group in series of actions against prominent national retail chains, in injunction proceedings over threatened closings of stores at malls across the United States (relating to continuous operation covenants and prohibitions against closing sales)
- Represented shareholder in family of central Indiana businesses, and resolved litigation with co-shareholder by

pursuing and completing in 2017 a \$70 million sale of the businesses to a third party facilitated by an investment banking firm

- Horizon League v. Butler University (represented League and worked with Commissioner and Board of Directors to negotiate agreed terms of withdrawal of member institution from athletic conference)
- Fred W. Meyer, et al. v. Robert Nelms and Ansure Mortuaries of Indiana, LLC, et al., Johnson Circuit Court (clients, former owners of cemetery and funeral home businesses in three states, successfully imposed a receivership over operating companies whose trust and escrow funds had been depleted of more than \$25 million)
- Franklin College of Indiana v. Franklin University, Inc., U.S. District Court, S.D. Ind. Case No. 1:09-cv-00830-WTL-TAB, July 2009 (agreed judgment in trademark infringement action entered in favor of 175-year-old client Franklin College, requiring defendant university to refer to itself in advertising as Franklin University “of Ohio”)
- Polinsky and Sutker v. Violi, 803 N.E.2d 684 (Ind. Ct. App. 2004) (addressing issue of first impression concerning mandatory arbitration for claim against controlling shareholders in privity with corporation that entered agreement to arbitrate)

Class Action Litigation

- Cowden et al. v. D-Patrick, Inc., et al., Marion Superior Court, Commercial Court docket, Cause No. 49D01-1905-PL-020767 (represented defendants in resolution of putative class claims concerning document fees charged in automobile dealer transactions and compliance with state consumer statutes; agreed settlement class approved by Commercial Court)
- Golars, LLC, et al. v. Indiana Dep’t of Environmental Management, et al., S.D. Ind. Case No. 1:20-cv-01625-JPH-TAB (represented defendant agency in resolution of alleged class claims concerning reimbursement from the Excess Liability Trust Fund for underground petroleum storage tanks)
- Plummer, et al. v. Nicor Energy Services Company, S.D. Ind. Case No. 1:17-CV-02177-WTL-MPB (represented defendant in resolution of class claims concerning maintenance services incidental to the supply of natural gas by non-party regulated utility)
- Gold Seal Termite and Pest Control Co., et al. v. PrimeTV, LLC and DIRECTV, Inc., Marion Superior Court (counsel for

DIRECTV in nationwide settlement of \$3 billion claim alleging violation of Telephone Consumer Protection Act by unsolicited fax advertisements)

- Barnett, et al. v. Liberty Corporation and Fortis, S.D. Ind. Case No. IP98-0113C-Y/G (defended purported \$200 million class action commercial fraud claim; ruling decertifying class upheld by 7th Circuit under Fed.R.Civ.P. 23)(e))
- AAMA v. Kendrick, 244 F.3d 572 (7th Cir. 2001), cert. denied, 534 U.S. 994 (2001) (represented plaintiffs in obtaining entry of injunction prohibiting enforcement of Indianapolis ordinance restricting display of “violent” video games as prior restraint of speech prohibited by First Amendment)
- Adams v. Indiana Bell Telephone Co., Inc. and Ameritech Services, Inc., 2 F.Supp. 2d 1077 (S.D. Ind. 1998) (granting summary judgment for client Ameritech Services against class and individual claims of age and pension discrimination in downsizing; affirmed as to pension claims and reversed as to age claims, 231 F.3d 414 (7th Cir. 2000))

Lawyer Liability and Licensing

- Represented attorney in nationally reported disciplinary action involving Rule 1.7 charge arising from relationship with client’s spouse; hearing officer’s report of no misconduct affirmed by unanimous Indiana Supreme Court
- Represented attorney in highly publicized disciplinary action involving the reporting of suspected child abuse in a school setting, handling of contraband as evidence, the tension between Rule 1.6 confidentiality duties and providing information to law enforcement, as well as public policy concerning the use of confidentiality agreements.
- Representation of AmLaw 100 Law Firm in defense of claim arising from family settlement agreement in context of an estate of Indianapolis owner of multiple auto and motorcycle dealerships (claims resolved one day before jury selection)
- Representation of AmLaw 100 Law Firm in litigation over the reopening of a Bankruptcy estate of a substantial business, for purposes of suing the court-appointed Trustee and Law Firm over the settlement of \$100 million claims against former managers of the bankrupt company; resolved claims against Law Firm after favorable ruling by federal district court, for no payment by the Law Firm
- Representation of AmLaw 100 Law Firm in 2014 three-week jury trial in Indiana state court (verdict of no liability on a \$30 million claim of malpractice and breach of fiduciary duty

asserted by former clients of the law firm, and a verdict requiring the former clients to pay the law firm more than \$750,000 in unpaid attorneys' fees)

- Representation of AmLaw 200 Law Firm in Kentucky state court (\$14 million claim by former client – business owner settled in 2014 after discovery and expert reports demonstrated that plaintiff entered transactions with sophistication and knowledge, and that the law firm acted without conflicts of interest)
- Regular representation of law firm clients in litigation in state and federal courts in the region

Corporate Governance

- Simon Property Group, Inc. and Simon Property Group, L.P. v. Successor Trustee of the Melvin Simon Family Enterprises Trust, Hamilton Superior Court (resolution of competing claims concerning the conversion of limited partnership units to publicly traded securities)
- Represented group of investors in federal court action addressing issues of first impression under the Indiana Business Corporation Act with respect to a public corporation's right to direct the vote of its own shares, through derivative transactions or employee benefit plans
- Bren Simon, as Trustee of the Melvin Simon Family Enterprises Trust v. Deborah J. Simon, Simon Property Group, Inc., et al., 957 N.E. 2d 980 (Ind. Ct. App. 2011) (affirming trial court's order in favor of client Simon Property Group, Inc., and rejecting attempt by removed trustee to challenge pre-removal ruling due to lack of legal standing)

Manufacturing and Supply Chain

- Lawler Mfg. Co. v. Bradley Corporation, Fed. Circuit Appeal No. 2007-1533, May 27, 2008 (reversing and directing entry of judgment in favor of client Lawler on Bradley's breaches of License Agreement that had allowed Bradley to sell thermostatic mixing valves using patented Lawler technology)
- Madison Tool and Die, Inc. v. ZF Sachs Automotive of America, Inc., U.S. District Court, S.D. Ind. Case No. 4:06-cv-00074-JDT, March 20, 2008 (defense verdict for client manufacturer of shock absorbers after trial on \$2 million contract and promissory estoppel claim by proposed supplier of component part)

- Represented flatbed trailer manufacturer Wabash National Corporation against claims in Georgia and Indiana, including summary judgment rulings of no liability for Wabash
- Represented substantial defense contractor in contract dispute resulting in 2014 bench trial in federal court, including issues of first impression as to the method for filling an open price term under UCC Section 2-305

Government and Utilities

- End Game Holdings, LLC, et al. v. Indiana Gaming Commission, Marion County Superior Court (defended client Indiana Gaming Commission in an action by several minority owners of a casino licensee seeking to enjoin emergency rules requiring such individuals to disclose information and obtain individual licensure to hold a direct or indirect ownership interest in the casino entity; trial court denied preliminary injunction after an evidentiary hearing and the case was dismissed without appeal)
- Vectren Energy Delivery of Indiana, Inc. v. Indiana Office of Utility Counselor, Ind. Ct. App. Case No. 93A02-1604-EX-914 (March 7, 2017) (Opinion reversing Indiana Utility Regulatory Commission's imposition of a four-year cap on recovery of substantial lost revenues from efficiency measures implemented by Vectren subsidiaries, under Indiana's Demand Side Management statute)
- Indiana Ass'n of Residential Child Care Agencies v. Indiana Dep't of Child Services, S.D. Ind. Case No. 1:09-cv-1574-SEB-MJD (defense of client Dep't of Child Services against claim for injunction seeking to preclude implementation of \$200 million rate structure and procedures pursuant to promulgated agency rules)
- Indiana Michigan Power Co. v. City of Fort Wayne, Indiana, Allen Superior Court Cause No. 02D01-0910-PL-400 (recover of \$39 million for client City of Ft. Wayne arising from dispute over City's lease of its electric utility to I&M in 1974)
- Represented sitting U.S. Senator before Indiana Election Board and successfully defended residency challenges under Indiana Constitution and statutes
- City of Greenwood v. Town of Bargersville, 930 N.E.2d 58 (Ind. Ct. App. 2010), trans. denied (addressing issue of first impression as to the landowner "consent" requirement under Ind. Code 36-4-3-9)
- Brockman Enterprises LLC v. City of New Haven, 861 N.E.2d 725 (Ind. Ct. App.) (retained by City of New Haven after Court of Appeals opinion invalidated full year of City's

water utility rates for flaw in approval procedure; achieved reversal under *de minimis* doctrine on petition for rehearing), trans. denied (Ind. 2007)

- Flynn & Zinkan Realty Co. v. Town of Westfield, et al., Hamilton Superior Court (2005 judgment for client developer entered after trial on merits, mandating approval of proposed development plan under “vested rights” doctrine)
- M-Plan, Inc., et al. v. Indiana Comprehensive Health Insurance Association and Sally McCarty, 809 N.E.2d 834 (Ind. 2004) (requiring exhaustion of administrative remedies for claims against Indiana Insurance Commissioner and involuntary association created by statute)
- United States Gypsum, Inc. v. Indiana Gas Co., Inc., Proliance Energy, Inc., et al., 735 N.E.2d 790 (Ind. 2000) (affirming ruling by the Indiana Utility Regulatory Commission that ProLiance Energy was not a state-regulated public utility)
- Midwest Gas Services, Inc., et al. v. Indiana Gas Co., Inc. and ProLiance Energy LLC, 317 F.3d 703 (7th Cir. 2003) (affirming dismissal of multiple Sherman Act claims by competitors against client ProLiance Energy LLC)

Competition and Trade Secrets

- Hilliard Lyons v. Merrill Lynch Pierce Fenner & Smith, National Ass’n of Securities Dealers (obtained temporary and permanent injunctive relief on behalf of client Hilliard Lyons against group of registrant brokers for breaches of fiduciary duties and violations of the Indiana Trade Secrets Act)
- Merrill Lynch Pierce Fenner & Smith, Inc. v. William Craig Dobbs, et al., Hamilton Superior Court Case No. 29D01-0209-PL-661 (defended then fourth-largest production team in Merrill Lynch system from claims based on alleged breaches of covenants not to compete and request for temporary restraining order to move to Smith Barney)

Healthcare

- Represented owner and manager of ambulatory surgery centers in month-long arbitration in Michigan, resulting in award to client of substantial damages for fiduciary duty breaches by co-owners
- Represented manager of multiple Indiana surgery centers in the resolution of disputes over ownership succession and operational issues

- *Indiana Comprehensive Health Insurance Association v. Avemco Insurance Co., et al.*, 812 N.E.2d 108 (Ind. Ct. App. 2004) (affirming injunction forcing approximately \$8 million in funding for Indiana's high risk health pool, by companies claiming not to meet the statutory criteria for assessment)

PRESENTATIONS & PUBLICATIONS

- Presenter, *Business Litigation (Daubert challenges to expert testimony in business cases)*, Indianapolis Bar Association, September 2018
- Panelist, *Effective Negotiation Strategies*, Indianapolis Bar Association, March 2019
- Presenter, *Business Litigation*, Indiana Continuing Legal Education Forum, 2017
- Presenter, *Indiana Judges on Indiana Evidence*, Indiana Continuing Legal Education Forum, October 2015
- Faculty, Midwest Regional Deposition Skills Program, National Institute for Trial Advocacy, 2005–Present
- Faculty, National Trial Academy, National Institute for Trial Advocacy, 2016–Present