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DALE R. BURMEISTER

- AREAS OF PRACTICE:** Asbestos Property and Personal Injury Litigation
Civil Litigation
Commercial Litigation
Employment Litigation
Toxic Tort Litigation
Insurance Coverage
Premises Liability
Products Liability
- EDUCATION:** Western Michigan University (B.B.A., *magna cum laude*, 1975)
University of Detroit School of Law (J.D., *magna cum laude*, 1978)
Executive Editor and Member, University of Detroit School of Law, *Journal of Urban Law* (1976-78)
- BAR ADMISSIONS:** State Bar of Michigan (1978)
U.S. District Court for the Eastern District of Mich. (1978)
U.S. District Court for the Western District of Mich. (1981)
U.S. Court of Appeals for the Sixth Circuit (1983)
United States Supreme Court (2008)
- EMPLOYMENT:** Board of Directors at Harvey Kruse, P.C. 1996-Present
Shareholder at Harvey Kruse, P.C. 1987-Present
Associate Attorney at Harvey Kruse, P.C. 1980-1987
Teaching Fellow in Legal Research at the Detroit College of Law (1979-1980)
Law Clerk for then-United States District, now Sixth Circuit Court of Appeals, Judge Ralph B. Guy, Jr. (1978-80)
- ACKNOWLEDGEMENTS:** **Martindale Hubbell Rating:** AV® Preeminent Rating -- 20 years

Martindale Hubbell Rating: AV® Preeminent Judicial Edition
2016, 2017, 2018, 2019 & 2020

“Super Lawyer” 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017,
2018, 2019 & 2020

Who’s Who in American Law

dbusiness “Top Lawyer” 2013, 2014, 2015, 2016, 2017, 2018,
2019 & 2020

“Best Lawyers in America” 2012, 2013, 2014, 2015, 2016, 2017,
2018, 2019 & 2020

Two-time recipient of the **Dean’s Scholarship for Academic
Excellence**

American Jurisprudence Award for Secured Transactions

Justice Frank Murphy Honor Society – top 10% of class

Freshman Moot Court Competition Winner

Presidential Scholar – full tuition waiver

Executive Editor, Journal of Urban Law (1976-1978)

Clarence M. Burton Scholarship – awarded to top three editors
of the law review

Delegate, 1977 National Conference of Law Reviews

EXPERIENCE:

Upon joining Harvey, Kruse, Westen & Milan, P.C. in 1980, he began working primarily on toxic tort cases, in particular the defense of thousands of personal injury and property damage asbestos cases. He was Lead Trial Counsel for a consortium that originally included 36 former manufacturers of asbestos products and sixteen insurance carriers in case pending throughout Michigan. Dale has tried asbestos cases to verdict from Marquette, Michigan to El Paso, Texas. He also started the Medical Counsel Program in Michigan and was responsible for hiring all defense medical experts and taking the lead in deposing and cross-examining plaintiffs' experts.

In addition, Dale has extensive product liability experience including personal injury cases involving mismatch and multi-piece wheel explosion lawsuits, seat belt injury and death cases, vehicle rollovers claims, automotive seating system files, flex fan injury and death suits, automatic transmission "park-to-reverse" cases, environmental claims, machinery accidents and fire extinguisher litigation.

Commercial and employment litigation is also a specialty. He has tried manufacture rep cases, wage and hour overtime lawsuits, and a broad variety of business to business cases such as breach of contract disputes, tortious interference with contractual relations

matters, shareholder oppression disputes, and fraud claims. He has also successfully tried adversary actions in bankruptcy court. In addition, he appears before the Michigan Civil Rights Commission and the EEOC. Class and collective action litigation is also a regular part of his practice.

He regularly sits as a Mediator or Case Evaluator in Wayne County Circuit Court as both a defense mediator and as a commercial mediator. In addition, he frequently serves as a Special Mediator and as an Arbitrator in commercial, toxic tort, malpractice, and wrongful discharge cases.

REPRESENTATIVE CLIENTS: Apogent Technologies
Arkema Inc.
BASF
CertainTeed Corporation
Crane Co.
Emerson Electric
Exxon Mobil
Foseco
Honeywell International Inc.
I.U. North America
Industrial Insulation Inc.
J & L America Inc.
Kennametal Inc.
Manitowoc
Taylor Instruments
Thermo Fisher Scientific Inc.

MEMBERSHIPS: President of Association of Defense Trial Counsel 2012-2013
Board of Directors of the ADTC 2006 to 2014
Labor Law Section of the State Bar of Michigan
Negligence Section of the State Bar of Michigan
Environmental Law Section of the State Bar of Michigan
Computer Law Section of the State Bar of Michigan
Greens Committee at Country Club of Detroit 2010 to present

REPRESENTATIVE TRIAL & APPELLATE RESULTS:

- **Summary Disposition granted in breach of contract case seeking over \$1 million, and Court limits damages to no more than \$39,000 --** Our client was sued for over \$1 million in unpaid fees and interest by an engineering firm that was hired to manage a \$26 million project to bury approximately 400 miles of fiber optical cable in mid-Michigan. It was a “time and expense” contract, but there was a provision limiting increases in fees and expenses by 20% or more without a written amendment. A total of 5 different briefs

were filed before and after the Court heard oral arguments via Zoom before granting Dale's Motion for Summary Disposition and limiting any recovery to no more than \$38,992.19.

- **32nd Largest Settlement in Michigan Lawyers Weekly** compilation of settlements in 2014 (\$1.3 million) in a class and collective action for overtime before Chief Judge Gerald Rosen.
- **Kain v Union Carbide** -- Motion for Summary Disposition based on the sophisticated user defense granted in part and denied in part in a 58 year living mesothelioma case.
- **Wittman v Huron Clinton Metropolitan Authority** -- Plaintiff claimed to have been sexually harassed, assaulted and discriminated against on the basis of sex. Scores of depositions were taken by plaintiff, but summary disposition was granted because there was a lack of an adverse employment action, the single actor doctrine, and any inference of discrimination was refuted. The decision was affirmed by the Michigan Court of Appeals.
- **Various Plaintiffs** -- This case was tried to conclusion in the United States District Court for the Western District of Michigan and involved the issue whether roadies were independent contractors entitled to overtime.
- **Chojnowski v Huron Clinton Metropolitan Authority** -- Plaintiff claimed gender discrimination, harassment, and retaliation arising out a meeting held with her regarding a uniform infraction. Summary disposition was granted following scores of depositions taken by plaintiff's attorney predicated on the single actor doctrine, the lack of an adverse employment action, and any inference of discrimination was refuted.
- **Kain v Honeywell** -- 18 Motions in Limine were argued prior to trial and 11 were granted, 4 were denied, and 3 were denied without prejudice in a 58-year-old living mesothelioma case that subsequently started trial but resolved before a verdict.
- **Valvoline v Various Oil Change Stores** -- Suits for trademark infringement against former franchisees and other oil change stores and motions for preliminary and ultimately permanent injunctions are regularly filed. The motions are almost always granted and have become so common place that most operators voluntarily comply on the eve of the hearings in most cases.
- **Duross v Union Carbide** -- The issue before the court was whether there was sufficient evidence to support a jury instruction on gross negligence, which may be enough to break the caps on non-economic damages. The court ruled that there was insufficient evidence to support such a charge and granted partial summary disposition on the claim.
- **Nicholas v Honeywell International** -- The Calhoun County Circuit Court granted our motion for summary disposition based on the so-called "Sophisticated User" defense, finding the United States Air Force was a knowledgeable user of asbestos-containing

products as a matter of law. The case involved a jet mechanic that died at the age of 51 of a rare form of cancer that was allegedly caused by exposure to various materials and equipment that contained asbestos.

- ***Various Plaintiffs*** -- This collective action for unpaid overtime benefits was settled for \$260,000.
- ***Binkowski v Union Carbide*** -- The issue before the court was whether there was sufficient evidence to support a claim for exemplary damages against based on various memos, statements, studies and the like. Just before trial the court dismissed all claims for exemplary damages.
- ***Several Plaintiffs*** -- This collective action for unpaid overtime benefits was settled for over \$750,000.
- ***Letter Perfect Mailings, Inc. v. Letter Perfect Mailings*** – Adversary proceeding tried to Chief Judge Steven Rhodes in U.S. Bankruptcy Court in Detroit in December 2010 in which the Court awarded our client \$283,274 and declared the judgment non-dischargeable because it arose out of the breach of fiduciary responsibilities.
- ***Tatro v Forbes*** – Our client was recovering from knee replacement surgery and was knocked down by a handicap automatic door while exiting a mall. Suit was filed under the Americans with Disabilities Act and state premises liability law. Following a six day trial, the jury returned a verdict in our favor of \$36,400 and found that the ADA had been violated. The trial court subsequently awarded costs and attorney fees under the federal statute bringing the total about of the judgment up to \$109,000.
- ***Heydon v MediaOne*** -- The United States Court of Appeals for the Sixth Circuit affirmed for lack of subject matter jurisdiction the dismissal of a declaratory judgment action filed under the Cable Communications Policy Act where plaintiff sought a determination that the statute does not permit a cable company to "piggyback" on utility easements.
- ***Krafft v Amchem*** – In this living mesothelioma case, a motion for summary disposition based on a statute in Michigan that provides that a product manufacturer has no duty to warn or instruct “sophisticated users” of its products was granted. MCL 600.2947(4). A “sophisticated user” is defined by the statute as "a person or entity that, by virtue of training, experience, a profession, or legal obligations, **is or is generally expected** to be knowledgeable about a product's properties, including a potential for hazard or adverse effect." MCL 600.2945(j). And, although employees not having actual knowledge of a product’s dangers are expressly excluded from this class of sophisticated users under the statute, in situations involving intermediate purchasers of a product, it is the knowledge of the purchaser or employer that must be examined – from either an actual knowledge or an objective point of view -- to determine whether a manufacturer had a duty to warn or instruct. In this case, the court held that all of plaintiff’s employers could be ‘generally expected’ to be knowledgeable about the potential hazards posed by asbestos containing products and granted our motion for summary disposition the week before trial.

- ***Fenbert v Letter Perfect*** -- This case arose out of a dispute between the owners of a mailing company. Plaintiff owned 51% of the company and claimed that the equipment, customers, and the name of the entity were misappropriated by the Vice President while Plaintiff was recovering from cancer.
- Prior to filing suit, the parties tried to resolve the case with the help of a former Judge. A settlement of \$130,000, payable over four years in monthly installments, was reached, but Plaintiff claimed that Defendant reneged on the deal and filed suit for conversion, fraud and misrepresentation, tortious interference with business relations, breach of fiduciary duty, and breach of the settlement agreement. On the morning of trial, the Court bifurcated the settlement agreement count from the other claims and proceeded to trial. Following a five day trial, the jury returned a verdict of \$138,915 and the Court subsequently awarded costs and attorney fees of \$26,162.
- ***Thon & Associates v AWI*** -- Following a week-long trial before a three-member American Arbitration Association commercial panel, our client was awarded \$831,000 for past due commissions, a \$100,000 statutory penalty under Michigan's Sales Representatives Act, and attorney fees in a case involving the non-payment of commissions for wheel sales to General Motors. That award has now been paid and Phase II of the litigation involving interference with contractual relations and other business torts is now underway.
- ***Beta Foundry Equipment v Die Temp*** -- A federal court jury in Grand Rapids returned a verdict 58% higher than we asked for in his closing argument. A unanimous jury answered all the questions on the five page jury verdict form in favor of our client, Beta Die Casting Equipment, a Toronto based corporation that is one of the largest sellers of new and used industrial equipment in North America. The case involved breach of contract, tortious interference with contractual relations, and tortious interference with perspective advantage counts in a dispute over the sale of industrial equipment. We suggested that the jury return a verdict of between \$36,000 and \$43,000 on the contract claim and a similar amount on the tort claims and it awarded \$36,000 for breach of contract and \$100,000 for tortious interference for a total of \$136,000.
- ***Gerth v R.H. Taylor Corporation*** -- Following a two day evidentiary hearing featuring some of the leading experts the United States in the fields of neurology and neuropsychology, Judge Cherry ruled that qEEG testimony should be excluded under Daubert in a case involving four plaintiffs allegedly suffering brain damage from exposure to toxic fumes.
- ***Baker v Honeywell International, Inc.*** -- Judge Nelson in Jackson County Circuit Court granted summary disposition in six cases and partial dismissal in 27 others based on the sophisticated user defense.
- ***Colonial Mold v Mancon*** -- A \$14 million computer data corruption case was dismissed by Judge Swartz in Macomb County Circuit Court due to spoliation of evidence and discovery abuses following a five day evidentiary hearing.

- No cause jury verdict on behalf of a major wheel manufacturer in a wrongful death product liability case tried in Ohio. The plaintiff sustained substantial injuries from which he later died as a result of mismatching a tire and wheel. *Case name withheld at request of client.*
- ***County of Wayne v United States Mineral Products*** -- Leave to appeal was denied by the Michigan Supreme Court in a case in which summary disposition was granted in favor of our client, U. S. Mineral, with respect to asbestos abatement claims covering all public buildings in Wayne County, Michigan.
- ***Montney v. AlliedSignal Canada, Inc.*** -- The Michigan Supreme Court refused to review a decision of the Michigan Court of Appeals affirming summary disposition in favor of our client, AlliedSignal of Canada, in a flex fan case. Summary disposition was granted based upon admissions by plaintiffs' expert at his deposition that he had failed to develop an alternative design for the product, as required by applicable Michigan precedents. Plaintiff had demanded \$7.6 million at mediation.
- ***Dow Corning v. Wausau Insurance Company*** -- Participated in an insurance coverage trial involving breast implants in which approximately \$2 billion in coverage was at stake.
- ***Warren Consolidated School District v. United States Mineral Products*** -- Leave to appeal was denied by the Michigan Supreme Court in this case in which summary disposition was granted in favor of our client by the trial court and affirmed by the Court of Appeals on plaintiff's claim seeking costs for the removal of asbestos-containing materials from all school buildings in the Warren, Michigan school system.
- ***City of Detroit v. United States Mineral Products*** -- Tried a class action involving 330 school districts in the State of Michigan for several weeks and, when the client settled, he was hired by National Counsel for Pfizer to try the case for that company as well. At the conclusion of plaintiffs' proofs, Pfizer reached a favorable resolution of the matter.
- ***Hendrix v. Eichley Corporation and Great Lakes Steel.*** -- No cause jury verdict on behalf of a major construction company and the owner of a steel mill in a construction accident case tried in the United States District Court for the Eastern District of Michigan. Plaintiff had fallen from a building in the process of attempting to land a large section of pipe and sustained serious injuries, including brain damage.
- ***Davison v. Keene Corporation*** -- Won a jury trial in a case seeking damages for removal and replacement of two million square feet of insulation from a school. At the time, it was the highest exposure case his client had ever faced in the United States.
- ***Weed v. Owens Illinois*** and ***Kish v. Keene Corp.*** -- Throughout the 1980s and 1990s, he has tried numerous asbestos personal injury cases in State and Federal courts around Michigan against nationally known plaintiffs' counsel. Among his more significant

victories are those against Tom Henderson of Pittsburgh, Pennsylvania in a state court trial and against Robert Sweeney from Cleveland in a federal court trial. Both are regarded as pioneers in the field of asbestos litigation in this country.

- ***Anjeski v. Keene Corporation*** -- The Sixth Circuit held that it is necessary to demonstrate by direct evidence that a plaintiff worked with or in close proximity to a defendant's asbestos-containing products and affirmed summary judgment in favor of our client, Keene Corp. The Court also ruled that it was impermissible to rely upon circumstantial evidence requiring several inferences to be drawn.
- ***Brisboy v. Fibreboard*** -- The Michigan Supreme Court ruled in favor of our client and held for the first time that the risk of developing lung cancer is within the scope of the risk assumed by a smoker, and that such evidence is admissible in a wrongful death, asbestos exposure case.
- ***Cousineau v. Ford Motor Company***, 140 Mich. App. 19 (1985): The Michigan Supreme Court ruled in favor of our client, Ford Motor Company, and established an extremely difficult burden for plaintiffs to prevail on a concert of action claim.
- ***Spencer v. Ford Motor Company*** -- The Court of Appeals ruled in favor of our client, Ford Motor Company, and held that a vehicle manufacturer may not be held liable for damages caused by a defective component part added to a vehicle subsequent to its initial distribution.

PUBLICATIONS AND SPEECHES:

- 2020 Overtime Overview -- What Employers and Employees Need To Know About Overtime Regulations
- “Reclassification, Please? Amnesty for those Labeled Independent Contractors Set to Expire” article published in Nov. 26, 2012 edition of Michigan Lawyers Weekly.
- “IRS v. FLSA” in Michigan Lawyers Weekly Oct. 21, 2011 interview.
- “U.S. High Court Says ‘Too Darn Bad’ to Class Actions in July 1, 2013 Michigan Lawyers Weekly interview.
- Legal Workshop Breakfast Series: Year 2000 Business Risk Assessment, Insurance Coverage and Litigation Seminars, Lecturer (1998-1999).
- Burmeister, Dale, "Lead Paint Litigation," Lorman Education Services Lecture and Publication (Fall 1996
- Burmeister, Dale, “A Michigan Environmental Update,” Lecture and written materials (1994).

- Burmeister, Dale, "Underground Storage Tank Litigation Update," Lecture and written materials (Fall 1994).
- Burmeister, Dale, "Who's the Junkyard Gatekeeper in Michigan -- Daubert One Year Later," Michigan Defense Quarterly (Summer 1994).
- Burmeister, Dale, Comment, "Campaign Reform in Michigan: Removing the Tarnish and the Taint, 54 U. Det. J. Urb. L. 513-52 (1977).
- Burmeister, Dale, "OVERTIME OVERVIEW -- WHAT EMPLOYERS AND EMPLOYEES NEED TO KNOW ABOUT OVERTIME REGULATIONS" (2010).