David B. Roth

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Mr. Roth is a Shareholder Attorney at Harvey Kruse, P.C. who litigates matters in Michigan state and federal courts and has received favorable results for his clients, including successfully arguing motions for summary disposition, winning on appeal, winning at trial, and obtaining favorable settlements.

Mr. Roth's primary practice area is employment litigation defense. He has experience defending various civil matters, including employment claims brought under the Elliott-Larsen Civil Rights Act, Title VII, the FMLA, the PWDCRA and ADA, and Whistleblower Protection Act.

Mr. Roth also handles claims involving governmental entities and their employees, including constitutional rights violations claims, 1983 claims of police excessive force, and unlawful arrest.

In addition to the above, Mr. Roth takes on claims of auto negligence claims, underinsured/uninsured motorist claims, ownership liability, no-fault claims, insurance coverage disputes, premises liability claims, and other general bodily and property injury claims.

As an attorney at Collins & Blaha P.C., Mr. Roth represented Michigan school districts before the Teacher's Tenure Commission and in labor arbitrations before the American Arbitration Association. He also conducted investigations of employee misconduct, including complaints of harassment and hostile work environment.

As an Assistant City Attorney, Mr. Roth represented the City of Flint in various employment matters including defense of claims brought in State Court for discrimination under the Elliot-Larsen Civil Rights Act, Constructive Discharge, the Whistleblower Protection Act, and administrative hearings before the Michigan Department of Civil Rights and the Equal Employment Opportunity Commission.

Dave grew up in Northville, Michigan. After attending college and law school in East Lansing, he moved to Grand Blanc. In his spare time, Dave enjoys reading about history, weightlifting, and spending time with his wife and three young sons.

Areas of Practice

- Civil Litigation, Trial & Appellate Practice
- Employment Law
- Civil Rights, Excessive Force, and Constitutional Claims
- Municipal/Governmental Liability
- Insurance Defense
- Automobile Negligence, No-Fault PIP/UM/UIM
- Premises Liability

Education

- Michigan State University College of Law, Juris Doctor, 2013
- Michigan State University, B.A., 2010

Bar Admissions

- State Bar of Michigan (2013)
- U.S. District Court for the Eastern District of Michigan (2014)
- U.S. Court of Appeals for the Sixth Circuit (2019)

Employment

- Shareholder Attorney at Harvey Kruse, P.C. (2023—Present)
- Associate Attorney at Harvey Kruse, P.C. (2018—2023)
- Associate Attorney at Collins & Blaha, P.C. (2016—2018)
- Assistant City Attorney, City of Flint (2013—2016)

Organizations

- Michigan Defense Trial Counsel (MDTC)

Honors & Awards

- **Best Lawyers "Ones to Watch," 2024**

Representative Matters

- ***Dwayne Harris vs. Therese December, et al,* Wayne County Circuit Court Case No. 23-000221-NF (March 21, 2024)**. In this automobile negligence action, Plaintiff was involved in a motor vehicle accident on January 29, 2022, and sued the defendant driver, who our office represented. Plaintiff claimed the existence of pain in his neck, back, left knee, and headaches following the accident. Our office filed a motion for summary disposition, arguing Plaintiff had not sustained a "threshold injury" as required by MCL 500.3135. First, we aggressively argued Plaintiff could not show an objectively manifested impairment. At the hearing on summary disposition, David Roth argued that diagnostic imaging from after the accident showed only degenerative changes in plaintiff's neck and back, and a CT scan of Plaintiff's head was entirely normal, lacking any acute traumatic findings. As to Plaintiff's knee, he had sought no treatment whatsoever and testified during his deposition that his knee was without pain shortly after the accident. The above findings were consistent with Plaintiff's longstanding history of chronic pain that existed before the accident. Additionally, our office argued Plaintiff could not show that the motor vehicle accident affected his general ability to lead his normal life, where he was already on SSDI before the accident, and his life was not measurably different when compared to his life before the accident. The Court agreed with our arguments and dismissed Plaintiff's claims in their entirety with prejudice.
- ***Arrington v Boose, et al*; USDC No. 2:21-cv-12433-TGB-DRG (October 27, 2023)** In this matter, Plaintiff was a prisoner in the Genesee County Jail ("GCJ"), who claimed his Eighth Amendment rights were violated and he was subjected to alleged "cruel and unusual punishment." The plaintiff claimed jail staff had tampered with his food (lacing it with battery acid and an STI.) Through discovery, our office obtained the plaintiff's medical records, which demonstrated objectively he had not been infected with an STI. Our office also obtained Plaintiff's prior record from the Michigan Department of Corrections, which showed he made similar allegations of poisoning against prison officials and corrections officers, even prior to his incarceration at the GCJ. After discovery, the Federal District Court granted Defendants Motion for Summary Judgment, agreeing with our arguments that there was no genuine issue of material fact and the defendant deputy was entitled to summary judgment.
- ***Jones v Collins Motor Sales*, Wayne County Circuit Court Case No. 19-010154-NO, Judge Edward Joseph (August 28, 2023)** In this premises liability case, Plaintiff claimed Defendant, Collins Motor Sales, negligently maintained a garage door, which allegedly had to be held in its open position by a 2×4. Plaintiff, a regular worker at the business, alleged that a broken spring on the garage door next to the subject garage door broke, swung across the room, struck him and lacerated his arm. He further alleged that after striking him, the spring ricocheted and grabbed the alleged 2×4, removing it from the track and causing the door to allegedly collapse on Plaintiff's neck and head, pinning him to the ground.

  Defendant argued that Plaintiff's version of events was a fabrication. The door that allegedly fell on Plaintiff was in good working condition and did not have to be held up with a 2×4 or any other extraneous support. The garage door closer to the building's offices had been damaged during a break in the days leading up to the incident, causing bending and bowing of the track, bracket, and spring mechanisms of the door. After inspection the morning of the incident, Defendant contacted a door company to assess the damage. Plaintiff was warned of the condition of the door, and was directed not to manipulate it. However, Plaintiff climbed a ladder and attempted to manipulate or repair the damaged garage door, causing the spring to break and the bracket attached to it to come loose, cutting Plaintiff on his arm and requiring stitches.

  The evidence supported Defendant's version of events, where Plaintiff posted on Facebook the same day that he was cut by a garage door spring and mentioned nothing about a door falling on his head or neck. Emergency room notes from the day of the incident similarly recorded the incident. Thereafter, Plaintiff did not complain of any neck or head related issues until after being sent to a neurosurgeon to be treated for unrelated back complaints. Only after Plaintiff was diagnosed by his treating doctor as having potential neck problems did Plaintiff allege a door collapsed upon him.

  At trial, the treating neurosurgeon admitted that he could not state, with a reasonable degree of medical certainty, that Plaintiff's neck condition was the result of a traumatic injury, opining only that it "could" have been related

to a traumatic injury. Defendant's medical expert testified that Plaintiff had a degenerative condition within his neck that was unrelated to any alleged traumatic event. Defendant also presented Plaintiff's prior medical history which showed pain and limitation symptoms for nearly ten years prior to the complained-of incident. With the above in mind, Defendant argued the medical evidence did not support Plaintiff's claims.

Plaintiff presented the testimony of his mother and girlfriend that they were nearby and either heard the incident or observed the door being lifted off Plaintiff. However, Plaintiff and these two individuals gave differing versions of events, and their testimony was inconsistent. Moreover, Defendant presented an employee witness who testified the Plaintiff coached him to lie to support Plaintiff's version of events. Throughout his Complaint, discovery, and two depositions, Plaintiff had insisted that this employee was present at the scene of the incident and pulled the door off him. Yet, the evidence demonstrated this employee did not even work for the company at the time of the incident.

Defendant also presented the testimony of the owner of the business and his wife, who testified consistently that all that occurred was that Plaintiff cut his arm on the garage door that was broken into, that the other door functioned properly, and that it never collapsed on Plaintiff's neck.

Following closing arguments, Plaintiff requested the jury award a verdict in Plaintiff's favor and damages in excess of $7.75 million. After 45 minutes of deliberations, the jury returned with a defense verdict, finding that Collins Motor Sales did not negligently maintain a condition on their premises.

- ***Arrington v Ashley and DePalma*; USDC No. 1:21-cv-13057-TLL-CI (July 6, 2023)** The plaintiff was a prisoner in the Genesee County Jail ("GCJ"), who claimed his Eighth Amendment rights were violated and he was subjected to alleged "cruel and unusual punishment." The plaintiff claimed Deputy DePalma "poisoned" him and conspired with nursing staff to tamper with his prescription medications. Through discovery, our office obtained the plaintiff's medical records, which demonstrated objectively he had not suffered any injuries and his allegations were apparently due to mental illness. After discovery, the Federal District Court granted Defendants Motion for Summary Judgment, agreeing with our arguments that there was no genuine issue of material fact and the defendant deputy was entitled to summary judgment.
- ***Darren Beilby v. Hurley Medical Center* Genesee County Circuit Court (Dismissed February 2023)** In this matter, on February 8, 2023, Mr. David Roth obtained summary disposition for Hurley Medical Center against an employee claiming disability and age discrimination in violation of the PWDCRA and ELCRA. The employee claimed he was discriminatorily discharged from his employment because of a neurocognitive disorder and because of his age. After extensive discovery, Mr. Roth was able to successfully argue on summary disposition that the employer had a legitimate non-discriminatory rationale for plaintiff's discharge, i.e. that he failed to maintain necessary certifications despite numerous chances to do so, and that the employee who was retained had the required certifications. Moreover, HMC was required to have certified personnel or would lose funding from its electronic medical records vendor. Mr. Roth argued Plaintiff could not demonstrate that HMC's rationale was pre-textual, and the Circuit Court agreed, dismissing Plaintiff's claims in their entirety.
- ***Wyntis Hall v Hurley Medical Center and Dr. Michael Roebuck* (Dismissal Obtained October 2022).** In this matter, Mr. David Roth obtained summary disposition of Plaintiff's claims for retaliation, breach of contract, and promissory estoppel. Plaintiff, who was the manager of Defendant's medical records department, claimed discrimination when during the COVID 19 pandemic she was placed on part-time status by her employer, and was not returned to full time work, while a Caucasian male union supervisor was returned to full time status. Plaintiff also claimed breach of contract and promissory estoppel because her position's title was changed from "interim director" to "manager" after a market study performed by human resources determined her role aligned more with the manager title. Plaintiff then complained she was retaliated against after she complained about the alleged discrimination. After discovery, Harvey Kruse attorneys moved for summary disposition as to her contractual claims, because there was no contract placing her in a "director" level position. We also argued her retaliation claim must fail, where she failed to assert any retaliatory act took place, where primarily she alleged retaliation because Defendant continued to keep her on part-time status, which we argued was simply maintain the status quo. The Court agreed, dismissing the retaliation and 2 contractual claims with prejudice.
- ***Earick v Brock*, USDC No. 2:21-cv-10184-DPH-KGA (September 9, 2022):** In this matter, the plaintiff was an inmate at the Genesee County Jail ("GCJ"). Our office was able to obtain dismissal of each of Plaintiff's claims prior to discovery.

The plaintiff claimed he was denied meaningful access to the courts, because he was allegedly denied postage for legal mail, copies of legal documents, and was not provided access to a law library to appeal his criminal case. Our office argued the plaintiff had "meaningful access" to the Courts as demonstrated by his filing multiple lawsuits and the fact he had counsel for his criminal appeal. Additionally, the plaintiff failed to plead any actual injury occurred as a result of the defendant's alleged conduct.

Plaintiff also claimed his rights were violated under the Fifth and Eighth Amendments of the U.S. Constitution and various criminal statutes. We argued the plaintiff had failed to state a claim under any of those amendments or statutes. The Court agreed with our arguments and dismissed the plaintiff's lawsuit.

- ***Thomas Watson v. Home-Owners Insurance Company, et. al.*, Lapeer County Circuit Court Case No. 21-054361-NI. (July 22, 2021)** In this case, the plaintiff was operating his motorcycle on Lake Nepessing Road in Lapeer when he was involved in a motor vehicle accident, which he claims was caused by the other driver having turned in front of him. The plaintiff sustained serious injuries and fractures to his left wrist, right leg and right ankle, which required multiple surgeries. The plaintiff then sued defendant for uninsured/underinsured motorist coverage, claiming the policy of insurance provided him such coverage when operating his motorcycle. The policy listed as an insured vehicle a Ford Taurus, but not his motorcycle. The plaintiff argued coverage applied, even though the motorcycle was not listed as an insured vehicle, because the policy allegedly provided UM/UIM coverage for vehicles other than the insured vehicle listed on the policy. We filed a motion for summary disposition, arguing that a policy exclusion excluded coverage for the insured's operation of an owned "automobile" that was not insured under the policy. We argued that plaintiff's motorcycle fit within the policy definition of "automobile" because the policy broadly defined "automobile" as "a private passenger automobile, a truck, truck tractor, trailer, farm implement or other land motor vehicle." We argued that the phrase "other land motor vehicle" included a "motorcycle". The Court agreed with our argument and found that because of the policy's definition, the exclusion applied to a motorcycle. The Court granted our motion for summary disposition and dismissed the claims against Defendant Home-Owners Insurance Company in their entirety with prejudice.
- ***Butler v B. Brock, et al*; USDC No. 4:21-cv-10936-SDK-DRG (May 25, 2022)** In this matter, the plaintiff was an inmate at the Genesee County Jail ("GCJ"). Our office was able to obtain dismissal of each of Plaintiff's claims prior to discovery. Plaintiff claimed after filing prior lawsuits against the sheriff's department, he was retaliated against when a corrections deputy transferred him to an isolation cell. We argued Plaintiff had failed to state a claim of retaliation, where he failed to show he engaged in a "protected activity" under the First Amendment, because only non-frivolous lawsuits are protected activity, and plaintiff's prior suits were already previously determined meritless by a Federal District Court.

  After filing a motion to dismiss under FRCP 12(b)(6), the Plaintiff moved to amend his complaint to add new claims entirely unrelated to his suit, including a claim for denial of access to the courts. Our office responded that amendment of plaintiff's complaint would be futile as he had failed to state a claim for relief, where he was provided his legal papers, and had access to his criminal attorney, and thus had had "meaningful access" to the courts. The plaintiff did not timely respond to the defendant's motion to dismiss. The Court issued a show cause order, directing plaintiff to respond. Ultimately, when the plaintiff did not respond, the court dismissed plaintiff's lawsuit.
- ***Cate, et al v City of Flint*, Genesee County Circuit Court Case No. 19-11343-CD (October 2019 to Present)** From October 19, 2023 to the present, David Roth has defended the former Chief of Police and former Director of Human Resources and Labor Relations against allegations of 17 current and former employees claiming discrimination based on race and sex, failure to promote, hostile work environment, and retaliation in violation of the ELCRA.

Many of the cases have been resolved for cost of defense/nominal settlements. In addition, Mr. Roth has obtained summary disposition as to the following Plaintiff's claims:

- ***Joan Ketzler*: (Dismissed October 2022)** In this case, Plaintiff was a secretary within the Flint Police Department who claimed a FPD Captain created a hostile work environment based on race and that after she complained about it, she was retaliated against by human resources staff because she was allegedly not selected for promotional opportunities. After discovery, Mr. Roth argued Plaintiff could not demonstrate that she was subjected to a hostile work environment, based on her alleging she was spoken to in an unprofessional manner by her Captain but there was no evidence she was

subjected to a racially hostile work environment. The Court found a question of fact as to whether Plaintiff was retaliated against, but on a motion for reconsideration Defendants were able to show that it was impossible to have retaliated against Plaintiff where they were no longer employed at the City of Flint by the time Plaintiff claims she was retaliated against. Ultimately, Plaintiff's claims were dismissed in their entirety with prejudice.

- ***Rodney McGaha*: (Dismissed June 2022)** In this case, Plaintiff claimed he was discriminated against, in that he was passed over for the position of Transportation Director, in favor of an African American female candidate. After discovery, Mr. Roth filed a Motion for Summary Disposition, arguing that Mr. McGaha cannot prove a prima facie case for discrimination under McDonnell Douglas. Further, Mr. Roth argued Defendant had a legitimate non-discriminatory rationale for selecting the African American female candidate, i.e., she was qualified for the position and had been serving in it on an interim basis for two and a half years prior to her permanent appointment. The Circuit Court agreed with our position and dismissed Plaintiff's claims in their entirety with prejudice.
- ***Matthew Baker*: (Partial Dismissal June 2022)** In this case, Plaintiff claimed he was discriminatorily passed over for a promotional opportunity in the finance department, because an African American female was selected for the position instead of Plaintiff. He also claimed he was retaliated against in the form of harassment because he complained about race discrimination. After discovery, we filed a motion for summary disposition. The Court agreed with Defendant's position that Plaintiff could not demonstrate a prima facie case of retaliation, because he never engaged in protected activity under the ELCRA. Even though he filed an e-mail contesting the results of the promotional process, he did not complain of discrimination. The Court agreed with our position, and dismissed Plaintiff's retaliation claim with prejudice.
- ***Michael Ross*: (Partial Dismissal April 2022)** In this case, Plaintiff claimed he was discriminated against based on race because the former Chief of Police did not promote him to a provisional Sergeant position and because he was allegedly discriminatorily denied a shaving wavier by Human Resources. After discovery, Mr. Roth filed a motion for partial summary disposition on the claim against the HR director, showing there was not disparate treatment against plaintiff based on race. Other employees followed human resources policy for applying for an ADA accommodation, while Plaintiff did not. The Circuit Court agreed and dismissed the claim with prejudice.
- ***Brian Corlew*: (Dismissed March 2022)** In this case, Plaintiff was an employee of Defendant and alleged a failure to promote claim, allegedly due to race, in violation of the ELCRA. After discovery, Mr. Roth argued plaintiff could not show disparate treatment under the McDonnell Douglas burden shifting test, where other Caucasian individuals were given an opportunity to apply for and interview for a supervisor position that Plaintiff desired. Mr. Roth further argued that Plaintiff failed to appear for his interview, thus, was not considered for the position. Ultimately, the Court agreed with our arguments and dismissed Plaintiff's claims in their entirety with prejudice.
- ***Amy Croteau, as PR/EO Richard Croteau v Peninsular Fiber Network, LLC et. al.*, Genesee County Circuit Court, Case No. 20-114514-NO. (August 2021)** In this case, the plaintiff argued that defendant was liable for allegedly improperly routing a 911 call from the plaintiff's home in Clayton Township, Michigan (Genesee County) to a 911 dispatch center in Clayton, Michigan (Lenawee County). Plaintiff alleged this resulted in a delay in the dispatching of emergency services to plaintiff's home, and the death of plaintiff's decedent. Plaintiff alleged wrongful death resulting from the above, where there was an alleged 45 minute delay in getting services to the decedent, and plaintiff relied on an opinion by Dr. Werner U. Spitz finding causation. We filed a motion for summary disposition on the basis that plaintiff had failed to state a claim, and because of immunity granted by law. We argued that plaintiff's complaint stated claims for mere negligence, for which defendant was immune under Michigan statutory law. Plaintiff argued that she had stated claims for gross negligence, but we argued that plaintiff's mere labeling of claims as gross negligence was insufficient, where plaintiff had pled conclusory statements and had no factual allegations that would support a claim for gross negligence, wanton and willful misconduct, or criminal conduct. The trial court agreed with our above arguments, and dismissed plaintiff's claims in their entirety. The trial court's decision was upheld by the Michigan Court of Appeals, and the Michigan Supreme Court denied the Plaintiff's application for leave to appeal.
- ***James Spitz v Occidental Development LLC.*, unpublished decision of the Michigan Court of Appeals, Case No. 351082 (November 24, 2020).** In this case, plaintiff alleged claims in premises liability and the landlord tenant act, arguing a depression in the sidewalk caused him to fall and injury his fracture his foot. Our office filed a motion for summary disposition, which was granted by the District Court, because the depression in the sidewalk was open and obvious and

without special aspect. The depression was located such that the majority of the sidewalk was available for pedestrian use, and the Court found the sidewalk was "fit for its intended use." The Court of Appeals affirmed summary disposition on November 24, 2020 after briefing and oral argument by Mr. Roth.

- ***Canan Ruddick v Roese Pipeline Company, Inc.*, Macomb County Circuit Court Case No. 19-001458-NO (October 2020).** In this matter, the plaintiff claimed she slipped and fell on mud located on a sidewalk in within an apartment complex. Allegedly, the mud was left by our client, who was excavating in the area. Mr. Roth filed a motion for summary disposition, arguing the alleged condition of the sidewalk was open and obvious, and devoid of any special aspect. The Court granted our motion and dismissed Plaintiff's claims in their entirety against this Defendant.
- ***Relief Physical Therapy & Rehab, Inc. (Alfonso Waller) v Amerisure Insurance Company*, Washtenaw County Circuit Court Case No. 19-1029-NF. (July 2020)** In this matter, Plaintiff, a provider of Alfonso Waller (See below), allegedly provided the underlying plaintiff physical therapy services. Mr. Roth filed a motion for summary disposition arguing that Defendant was not provided notice of the alleged accident within one year of its occurrence, as required by the No-Fault Act, and so dismissal was mandated. After filing the motion for summary disposition, Plaintiff voluntarily dismissed the case with prejudice, when the prior demand was $28,000.00.
- **L*aura Joseph vs. Edward Rose Assoc., LLC*, Genesee County Circuit Court, Case No.19-113526-NO. (May 2020)** Mr. Roth obtained summary disposition for Defendant where Plaintiff had asserted claims of premises liability, failure to keep a common are fit for its intended use, failure to keep premises in reasonable repair, and breach of contract. Defendant argued that Plaintiff tripped and fell when she was attempting to walk across a landscaping timber, which was located between an exterior sidewalk and a private patio. We further argued this timber was open and obvious, and was not meant for pedestrian travel but was fit for its use as a landscaping timber, and there was no breach of the lease agreement. The Court agreed with our arguments, finding that the timber was open and obvious, fit for its intended use as landscaping, and that there was no breach of the lease agreement, and dismissed Plaintiff's claims in their entirety.
- ***Bryan Burke v Home-Owners Insurance Company and Auto-Owners Insurance Company*, District Court Case No 19-002817-GC (January 2020).** Mr. Roth obtained summary disposition for Defendants where Plaintiff had brought a claim for no-fault benefits. Plaintiff failed to provide responses to written discovery, or otherwise participate in the prosecution of his case, after being compelled by Court order to do so. Mr. Roth argued the above was cause for dismissal and the Court agreed and dismissed Plaintiff's claims in their entirety.
- ***True Scan, LLC, D/B/A Scan True, LLC, Assignee of Alfonso Waller vs. Amerisure Insurance Company*, District Court 52-4, Case No. 19-CO-0806-GC, (October 2019)** In this matter, plaintiff, a medical provider of Alfonso Waller (See below) filed a suit for PIP benefits related to MRI diagnostic testing it had rendered to Mr. Waller. Following the grant of summary disposition in Waller v. Amerisure, Mr. Roth argued the No-Fault Act's statute of limitations also barred Plaintiff's claims, where it was as an assignee of the underlying PIP plaintiff, and the case was voluntarily dismissed in its entirety with prejudice.
- ***Alfonso Waller vs. Amerisure Insurance Company*, Macomb County Circuit Court, Case No. 19—0008—NF, Hon. Michael E. Servitto. (September 2019).** Mr. Roth obtained summary disposition, where the plaintiff filed suit on March 1, 2019, alleging nonpayment of No-Fault Benefits arising out of an accident allegedly occurring on February 7, 2018. Receipt of the lawsuit was the first notice Defendant received of Plaintiff's alleged injuries and claim for PIP benefits. Defendant's argued on their motion for summary disposition that plaintiff's suit was barred by MCL 500.3145 of the No-Fault Act, which precludes an action for recovery of PIP benefits commenced more than one year after the date of the accident causing injuries, unless written notice of the injury was provided within one year of the accident. The Court, after oral argument granted summary disposition on Defendant's motion and dismissed Plaintiff's suit in its entirety.
- ***Sherri M. Stawick v Charles A. Bobay, and Sheplers Inc.*, Cheboygan County Circuit Court, Case No. 18-008716-NI (June 2019).** Mr. Roth obtained summary disposition for Defendants, arguing that Plaintiff did not sustain a threshold injury after receiving a facial scar in a bicyclist vs. automobile accident. The Court agreed with Defendant's arguments and dismissed Plaintiff's claims in their entirety, where the settlement demand was $65,000.00.