

## David L. Mortensen

### Partner

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David L. Mortensen is a trial lawyer at the law firm of Foley & Lardner LLP, specializing in complex business litigation, including IP litigation. He is a member of the firm's Management Committee. David began his career clerking for the Honorable Stephen S. Trott on the U.S. Court of Appeals for the Ninth Circuit. In the more than two decades since, he has represented clients across the United States in complex business litigation involving a broad range of issues, including breach of contract, business torts, fraud, negligence, regulatory compliance, government investigations, and defamation. David also has extensive experience representing clients in IP litigation involving patents, trademarks, trade secrets, copyrights, and trade dress.

David is regularly retained by some of the largest cities in Utah to represent them in cases involving civil rights, government contracting, and emergency medical licensing. He also has represented clients in other substantive areas, including real estate, natural resources, water rights, environmental contamination, education law, Native American law, bankruptcy, and securities and antitrust disputes involving the transfer of restricted stock, stock price manipulation, regulatory investigations and violations of the Sherman and Clayton Acts.

David strives to assist in resolving legal disputes by providing sound business advice, pre-litigation guidance, and vigorous advocacy. He has been recognized as one of "America's Leading Lawyers for Business" (Utah) by Chambers USA (Litigation: General Commercial). Mountain States Super Lawyer® (Business and Intellectual Property Litigation) and Utah's Legal Elite member.

When not vigorously representing his clients, David enjoys spending time with his wife and four children, playing sports (mostly golf, baseball, and basketball), running, hiking, biking through Utah's great outdoors, and cheering on his beloved Dodgers, Cowboys, and Cougars.

### Representative Experience\*

- *N8 Medical, Inc. v. Colgate-Palmolive Company* (D. Utah and 10th Cir.) – Defended one of the world’s largest consumer products companies in a lawsuit alleging claims for breach of contract, trade secret misappropriation, and various business torts, with billions of dollars in alleged damages. Obtained summary judgment against one plaintiff and defended that decision on appeal. See *N8 Medical, Inc. v. Colgate-Palmolive Company*, 727 Fed. Appx. 482 (10th Cir. 2018). Reached a favorable settlement with the remaining plaintiffs following successful completion of discovery and extensive motion practice.
- *Global Fitness Holdings, LLC v. Federal Recovery Acceptance, Inc.* (D. Utah) – Represented the former owner of a chain of gyms in business tort litigation asserting claims for tortious interference, conversion, and breach of contract. Represented the client throughout discovery and in a jury trial. Obtained a favorable verdict and defended that verdict in post-trial motions.
- *Dao Trang Phap Hoa v. Vietnamese Unified Buddhist Ass’n of Utah* (3rd D. Utah and Ut. Ct. App.) – Represented a national Vietnamese Buddhist organization in a dispute with a local chapter over ownership of the Vietnamese Buddhist temple in Salt Lake City. Obtained summary judgment before the district court and defended that decision on appeal before the Utah Court of Appeals. See *Dao Trang Phap Hoa v. Vietnamese Unified Buddhist Ass’n of Utah*, 351 P.3d 106 (Ut. Ct. App. 2015).
- *Hogan v. West Valley City* (D. Utah and 10th Cir.) – Defended the second largest city in Utah in a civil rights case filed under 42 U.S.C. §§ 1983 and 1985. Obtained dismissal of the claims before the district court and defended that decision before the U.S. Court of Appeals for the Tenth Circuit. See *Hogan v. Winder*, 762 F.3d 1096 (2014).
- *ClearPlay v. Abecassis* (S.D. Fla. and Fed. Cir. 2010) – Represented a company providing content filter services in patent litigation. Obtained a preliminary injunction, preventing the defendant from breaching a license agreement, and defended that decision before the U.S. Court of Appeals for the Federal Circuit. See *ClearPlay, Inc. v. Abecassis*, 602 F.3d 1364 (Fed. Cir. 2010).
- *Cord Blood America, Inc. v. Tonaquint, Inc.* (D. Utah) – Represented a publicly traded company in a business tort case involving claims of fraud and breach of contract arising from millions of dollars in convertible promissory note transactions. The case settled on favorable terms following the successful completion of depositions and a lengthy mediation.
- *Hayase v. Canyon Transportation, Inc.* (3rd D. Utah) – Represented a Japanese family against the largest travel agency in Japan and its U.S. subcontractors, asserting claims for wrongful death and personal injury and seeking to recover for damages suffered when their tour driver fell asleep while driving the tour bus. Successfully defeated jurisdiction motions, completed depositions in Japan, and settled the case on favorable terms.
- *SunCrest, L.L.C. v. Micron Technology, Inc.* (3rd D. Utah) – Represented one of the world’s largest semiconductor companies in breach of contract and business tort litigation seeking hundreds of millions of dollars in damages. The case settled on extremely favorable terms following successful completion of discovery and extensive motion practice.
- *Gold Cross Ambulance Services, Inc. v. West Valley City* (3rd D. Utah) – Represented the second largest city in Utah in constitutional challenge to amendments to the Utah Emergency Medical Services System Act brought by private ambulance provider. Obtained a directed verdict in favor of client after a

nine-day trial.

- *GE Capital Financial Inc. v. Sky King, Inc.* (D. Utah and AAA Arbitration) – Represented a commercial lender in litigation with a charter airline company, which counterclaimed for business interruption. Following a lengthy hearing, obtained summary judgment in federal court and an arbitration award for the full amount of client’s claims plus attorneys’ fees.
- *SliceX, Inc. v. Aeroflex Colorado Springs, Inc.* (D. Utah) – Represented a worldwide provider of microelectronic test and measurement products in a breach of contract and business tort case. Obtained summary judgment on three of the plaintiff’s five claims before trial and obtained a judgment in favor of the client on the remaining claims after trial.
- *PacifiCorp v. Mobil Oil Corporation* (D. Utah and Navajo Sup. Ct.) – Represented a public utility in litigation involving breach of contract. Obtained a decision in favor of client from the Navajo District Court and the Navajo Supreme Court. Thereafter, the case settled on favorable terms.
- *Overstock.com, Inc. v. SmartBargains, Inc.* (3rd D. Utah and Utah Sup. Ct.) – Defended an internet retailer in litigation involving statutory and common law business tort claims. Obtained summary judgment in favor of client and successfully defended the decision on appeal. See *Overstock.com, Inc. v. SmartBargains, Inc.*, 2008 UT 55
- *In the Matter of the Proposed Termination of Beehive Science & Technology Academy’s Charter* (Utah Charter School Board) – Defended a charter school in an administrative hearing before the Utah Charter School Board seeking to close the school. Obtained a decision in favor of client following a two-day hearing.
- *Bird v. Pier 49 Pizza, Inc.* (In re H.R. Enterprises) (Bankr. Utah) – Represented a pizza franchising company in fraudulent transfer bankruptcy litigation. Obtained a favorable verdict after a seven-day trial.
- *SUWA v. Wasatch Oil & Gas, LLC* (D. Utah) – Defended a natural gas company in litigation brought to enjoin redrilling of a natural gas well on public lands. Case was resolved after successfully obtaining decisions denying motions for temporary restraining order and preliminary injunction.
- *First Mirage, Inc. v. Health Sciences Group, Inc.* (D. Oregon) – Represented an investment firm in an action involving contested transfer of restricted stock and claims for stock price manipulation. Case settled on favorable terms after obtaining favorable summary judgment rulings.
- *EnviroTech v. Thomas Pump & Machinery, Inc.* (D. Utah) – Represented an industrial pump manufacturer and distributor in patent litigation. Obtained favorable settlement after successful pretrial motions.
- *Fieldstone Mortgage Company v. Attorneys’ Title Guaranty Fund* (3rd D. Utah) – Represented a residential lender in cases involving breach of contract, fraud and other business tort claims. Obtained successful settlement including recovery of amounts owed to lender.
- *Iomed, Inc. v. Cermatec, Inc.* (3rd D. Utah) – Represented a research and development company in defense of business tort claims including misappropriation of trade secrets relating to a medical device. Obtained a favorable settlement.

- *Sierra Stone v. Commercial Lending Group* (D. Texas) – Represented a stone engraving company in defense of business tort claims including misappropriation of trade secrets. Obtained a favorable settlement.
- Represented, *Sport Court International, Inc. v. Swiss Flex North America, L.L.C.* (D. Utah) – Represented a sport court manufacturer in a trademark dispute. Obtained a favorable settlement.

*\*Certain of these matters were handled prior to joining Foley.*

## Awards and Recognition

- Selected by *Utah Business Magazine* as Legal Elite, 2024
- Selected as one of “America’s Leading Lawyers for Business” (Utah) by *Chambers USA* (Litigation: General Commercial) (2017–2024)
- Included in *The Best Lawyers in America*® (currently: Commercial Litigation) (2022-2024)
- Listed in Mountain States *Super Lawyers*® (Business Litigation, Intellectual Property Litigation) (2012–2021)
- Listed among Rising Stars, Mountain States *Super Lawyers*® (2011)
- Listed in Utah Business Legal Elite (Civil Litigation) (2006, 2010–2018)
- A.H. Christensen Award for Excellence in Advocacy
- Government Law Section, Utah State Bar, Chair (2008–2012); Secretary (2006–2007)
- J. Reuben Clark Law Society, Chair, Young Lawyers Committee (2002–2004); Chair, Membership Committee (2005-2009); Liaison to the University of Utah Student Chapter (2009–2010)
- Young Lawyers Division, Utah State Bar, Vice Chair, Bar Journal Committee (2002–2003)

## Affiliations

- Federal Bar Association, Utah Chapter Board of Trustees, Immediate Past President 2021, President 2020, President-Elect, 2019; Treasurer, 2018; Member 2012–present
- Alumni Board, Brigham Young University J. Reuben Clark Law School, President, 2014–15; President-Elect, 2013; Chair of Events Committee, 2010–2011; Chair of CLE Committee, 2009–2010; Member, 2002–present; Advisory Committee Member 2016 – present

## Presentations and Publications

- Presenter, “New Year, New Rules: Making Sense of Utah’s New Rules of Civil Procedure,” Salt Lake City, Utah (February 2, 2012)
- Presenter, “Legal Trends for Charter Schools,” Salt Lake City, Utah (November 4, 2010)
- Author, “In re Young: A Correct but Unnecessary Constitutional Decision,” *BYU Law Review* 647 (1998)

## Languages

- Japanese

## Practice Areas

- [Business Litigation & Dispute Resolution](#)
- [IP Litigation](#)
- [Litigation](#)
- [State Attorneys General](#)

## Education

- Brigham Young University J. Reuben Clark Law School (J.D., magna cum laude, 1998)
- Order of the Coif; Managing Editor, *Brigham Young University Law Review*
  
- Brigham Young University (B.A., 1995)

## Admissions

- **Utah**
- U.S. Supreme Court
- U.S. Courts of Appeals for the Ninth, Tenth, Eleventh and Federal Circuits
- U.S. District Courts for the District of Utah, Southern District of California, District of Colorado, and Southern District of Florida