




**Brian R. Smigelski**

Partner

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**Brookfield, Wisconsin**

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**Service Areas:**

- Construction
- Insurance Coverage
- Labor & Employment Relations
- Litigation
- Real Estate, Land Use & Construction

**Education:**

- J.D., Marquette University Law School
- B.A., Lawrence University

**Admissions:**

- Wisconsin
- U.S. Court of Appeals for the 7th Circuit
- U.S. District Court for the Eastern and Western Districts of Wisconsin

Anyone who has been involved in complex litigation understands that it can be contentious, lengthy and demanding. Brian focuses his practice on meeting these challenges and achieving his clients' goals in the areas of business, construction and employment litigation.

His substantial litigation experience ranges from basic breach of contract actions in state or federal court, to complex construction arbitrations, to multi-million dollar class action cases in state court.

**Affiliations**

- Milwaukee Bar Association – Member and Former Chair of Litigation Section and Speaker's Bureau
- State Bar of Wisconsin – Member of Construction and Public Contract Law Section

## Articles & Presentations

- “Quantifying Equitable Adjustment and Construction Damage Claims – Methods and Court Preferences” – State Bar of Wisconsin 2021 Annual Meeting & Conference, June 17, 2021
- “The Impact of COVID-19 on a Party’s Duty to Perform Its Contract” – State Bar of Wisconsin’s Trending Topics in Business Litigation Program, Virtual Seminar, December 3, 2020
- “The Unsettled Waters of a Limited Liability Member Bringing a Breach of Fiduciary Duty Claim Against Another Member” – State Bar of Wisconsin’s Trending Topics in Business Litigation Program, Brookfield, WI, December 5, 2019
- “Are There Any Limits to ‘The Blob?’” – The Scope of and Exceptions to the Economic Loss Doctrine” – Marquette University Law School CLE Program, New Orleans, LA, May 3, 2019
- “Are There Any Limits to ‘The Blob?’” – The Scope of and Exceptions to the Economic Loss Doctrine” – Marquette University Law School CLE Program, Phoenix, AZ, March 13, 2015
- “The Applicability and Impact of the Economic Loss Doctrine on a Construction Dispute” – State Bar of Wisconsin Annual Meeting and Conference, Lake Geneva, WI, June 26, 2014
- “The Rights of an AIDS Victim in Wisconsin” – 70 Marquette Law Review 55 (Fall 1986)

## Awards & Recognitions

- Fellow of the Wisconsin Law Foundation
- Super Lawyers® in Wisconsin – Business Litigation since 2009
- Top 50 Super Lawyers in Wisconsin 2010 – 2018, 2020
- Top 25 Milwaukee Super Lawyers 2012 – 2017, 2020
- Best Lawyers® “Lawyer of the Year 2017 and 2020 – Construction Law – Milwaukee”
- Best Lawyers – Best Lawyers in America – Construction Law since 2013
- Top Rated Lawyer in Litigation and Labor & Employment – The American Lawyer magazine
- Martindale Hubbell AV Rated Peer Review Rated
- Managing Editor of the Marquette University Law Review

## Client Recommendations

“I have worked with Brian for almost 20 years and still consider Brian to be my “go to” source for all legal matters. Brian is an experienced attorney who is client focused and always looking out for my interests. Not only do I consider Brian my legal advisor but also turn to him for sound business advice and help in making certain decisions. I consider Brian to be a valuable member of my management team.” – Robert Henderson, President of Henderson Group, Inc.

## Clients

Brian works with a wide range of clients including individuals, corporations, shareholders in closely held businesses, owners, contractors and design professionals. His clients include: Hunzinger Construction Company, Catalyst Construction, Louis Hoffmann Co., Duwe Metal Products, Inc., Zizzo Group Engagement Marketing, and Wantable, Inc.

## Notable Representations

- Represented construction manager in obtaining \$5,000,000 judgment against owner who wrongfully terminated construction management agreement on \$70,000,000 mid-rise condominium construction project
- Represented class in obtaining \$82,000,000 settlement against manufacturer of smokeless tobacco products in anti-trust litigation
- Resolved malpractice claim against national architectural/engineering firm related to the \$125,000,000 criminal justice facility in Illinois for a fraction of the claim amount
- Successfully defended fire protection manufacturer/contractor against claim involving false evacuation alarm problem occurring at major Milwaukee office building
- Prevailed at trial and on appeal in professional malpractice action against accounting firm that failed to detect and report embezzlement of Tribal Planner from Native American Indian casino
- Obtained summary judgment in arbitration proceeding dismissing claim for breach of restrictive covenant against president of publicly traded company by his former employer
- Achieved \$1,200,000 judgment for Wisconsin manufacturer against its former national sales manager who secretly competed against his employer
- Represented former executive/minority shareholder in a company in obtaining a court ruling invalidating his restrictive covenant as a matter of law and then successfully negotiated a buyout of client's minority interest in the company
- Represented physicians in obtaining \$1,700,000 judgment against employer for failure to pay bonuses pursuant to terms of employment agreements
- Obtained summary judgment in AAA arbitration proceeding dismissing \$1,400,000 claim for mold remediation costs against masonry subcontractor
- Prevailed in defending general contractor against challenge to successful bid for construction of municipal public works facility
- Successfully avoided litigation and negotiated separation of name partner in mid-sized law firm after former firm asserted numerous claims against the former partner
- Successfully resolved multi-year litigation against a limited liability company member involving five separate companies and cross-claims by members exceeding \$10 million
- Achieved six-figure arbitration award for metal fabricator against contractor based upon schedule acceleration and disruption claims
- Obtained dismissal of subcontractor's \$420,000 damages claim and an award of costs and attorney's fees as a sanction in an arbitration proceeding for subcontractor attempting to bribe material witness and suborn perjury