

A business litigator with the firm for nearly two decades, John Horn also has served as the Partner in Charge of the firm's Buffalo office since January 2009. John has litigated complex business, construction, Indian law and environmental disputes in state, federal and tribal courts, as well as in mediation and arbitration. His experience also includes appeals in the New York State Appellate Division, the Second Circuit Court of Appeals and the New York Court of Appeals.

Representative Experience

The following snapshot illustrates John's diverse business litigation practice and breadth of experience:

- In 2015, following an eight-day bench trial, obtained a seven-figure judgment in a complicated business divorce involving a like-kind real property exchange and a web of foreign and domestic operating companies consolidated into a New York holding company.
- In 2015, negotiated Assurances of Discontinuance on behalf of two clients being targeted by the New York State Attorney General as part of his statewide investigation of fitness facilities under New York's Health Club Services Law.
- In 2015, in the New York State Supreme Court Appellate Division, Fourth Department, co-led a team that successfully defended the plaintiff's appeal from the 2013 design professional malpractice no-cause verdict described below.
- In 2015, co-led a team that negotiated the settlement of a intellectual property-based shareholder dispute between an Italy-based entrepreneur and his erstwhile business partner located in Western New York.
- In 2014, successfully vacated a temporary restraining order granted by the District Court of Denton County, Texas, in a shareholder dispute between owners of a national fitness facility franchise located in Lewisville, Texas.
- In 2014, obtained the reversal by the Second Circuit Court of Appeals of a U.S. District Court ruling in a cost-recovery action brought under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The result, involving an issue of first impression, was a judgment in favor of the property owner and the dismissal of the lawsuit.
- In 2014, settled a multi-million real property dispute between a tribal gaming corporation and a Niagara Falls-based real estate developer.



JOHN G. HORN

PARTNER

jhorn@hselaw.com

tel: 716.844.3728

fax: 716.853.1617

Admissions

Illinois

New York

Illinois State courts

New York State courts

U.S. Court of Appeals for the Second Circuit

U.S. District Court for the Eastern, Western, Northern, and Southern Districts of New York

U.S. District Court for the Western District of Wisconsin

U.S. Bankruptcy Court for the Western District of New York

Clerkship

Senior U.S. District Court Judge John T. Elfvin in the Western District of New York, 1998-2000

Education

Loyola University Chicago School of Law, J.D., *cum laude*

Northwestern University, M.A.

University of Rochester, B.A.

- In 2013, following a reversal by the New York State Supreme Court Appellate Division, First Department, of the arbitration award vacatur described below, co-led a team that convinced the First Department to reverse itself and affirm the vacatur.
- In 2013, co-led an arbitration team in a nine-figure dispute with the State of New York on behalf of a sovereign Indian Nation. The dispute, which involved issues of gaming revenues and contract interpretation, was settled following a four-day arbitration hearing.
- In 2013, following a three-week jury trial, obtained a no-cause verdict on behalf of a New York-based architectural firm in a seven-figure professional malpractice action.
- In 2013, obtained a declaratory judgment in New Hampshire State Court in a non-compete contract dispute between rival national fitness facility companies.
- In 2013, represented the special committee of a publicly-traded company in a lawsuit brought by minority shareholders seeking to enjoin a multi-million dollar going-private transaction. After expedited discovery and motion practice, the suit was settled and the deal closed.
- In 2012, obtained the reversal of a lower court ruling at the New York State Supreme Court Appellate Division, Fourth Department, in favor of tribal officials who had asserted sovereign immunity in a complex commercial dispute.
- In 2012, obtained the vacatur of a commercial arbitration award in New York State Supreme Court, New York County, on grounds that the arbitrator had exceeded his powers and violated the rules of the American Arbitration Association.
- In 2012, settled a six-year breach-of-contract class action lawsuit against a New York public authority. The case involved novel issues of contract interpretation in a commercial development context.
- In 2012, obtained the dismissal on sovereign immunity grounds of a tribally chartered corporation defendant in a New York Labor Law action.
- In 2012, settled a seven-figure lawsuit following jury selection in New York State Supreme Court, Oswego County, on behalf of the architect of a multi-school renovation project.
- In 2011, defended an upstate public housing authority against a challenge brought by the low bidder on a seven figure capital improvement project. The court's decision upholding the housing authority's rejection of the low bidder turned on a rarely invoked provision of New York Public Housing Law.
- In 2011, obtained the dissolution of a non-compete agreement on behalf of a former executive and shareholder of a privately held high tech manufacturing firm on the grounds that the restrictive covenant at issue was broader and more burdensome than necessary to protect the former employer's legitimate business interests.
- In 2010, successfully represented a national healthcare software provider in a federal court-ordered mediation against claims of breach of contract and breach of warranty, ultimately obtaining attorneys' fees for this \$1.2 billion client.
- In 2010, led a litigation team that obtained a \$3.8 million arbitration award on behalf of a tribal hotel and casino in a complicated construction dispute involving thousands of failed welds, hundreds of defective pre-cast members and multiple design defects in the client's parking garage. The arbitrator's award represented the entire sum sought by our client to repair its parking garage.
- In 2009, obtained a successful result at the New York State Court of Appeals on behalf of a local limestone quarry whose rights to use its 280-acre property for mining were being challenged by the

Western New York municipality in which the quarry was located. The Court of Appeals held that our client was entitled to nonconforming use status for the entirety of its property. The decision clarified a number of important land use issues left unanswered by a 30-year-old Court of Appeals decision and cleared the way for our client to continue its quarrying operations for decades to come.

- In 2008, litigated the enforceability of the attorney approval contingency clause in a form residential real estate contract utilized throughout upstate New York. In a decision hailed by real estate brokers and attorneys throughout the state, the New York Court of Appeals agreed that the attorney approval contingency clause could be exercised for any reason the attorney deemed appropriate and that no justification for that decision need be given.
- In 2006 and 2007, worked with a team that obtained summary judgment on behalf of a Fortune 500 company in two different lawsuits pending in state and federal court in New York City. The plaintiffs in each of these cases sought millions of dollars in damages in lost stock photo images.
- In 2003, obtained a jury verdict for compensatory and punitive damages in a federal court-appointed prisoner civil rights case.

Professional and Civic Affiliations

- Board Chair, Hauptman-Woodward Medical Research Institute
- Board Member, Buffalo Niagara Medical Campus
- Chair Emeritus, National Federation for Just Communities of Western New York
- Member, Bar Association of Erie County
- Member, New York State Bar Association
- Life Fellow, American Bar Foundation
- Trustee, Buffalo Philharmonic Orchestra, 2004-2012
- Member, Leadership Buffalo Class of 2006
- Elder, Clerk of Session, Deacon and Lay Reader, Westminster Presbyterian Church
- Trombonist, 12/8 Path Band

Honors and Awards

- Recognized by *Chambers USA* from 2015-2019 in the field of Litigation
- Named as *Best Lawyers*® 2020 Professional Malpractice Law - Defendants “Lawyer of the Year” in Buffalo, NY
- Fellow, Litigation Counsel of America-Trial Lawyer Honorary Society
- Legal Elite of Western New York, *Buffalo Business First/Buffalo Law Journal*, 2013-2015
- New York State Bar Association Empire State Counsel® 2015 Pro Bono Honoree
- Selected by his peers for inclusion in *The Best Lawyers in America*® in the field of Appellate Practice, Commercial Litigation, Construction Law, and Professional Malpractice Law - Defendants
- Selected to the Upstate New York Super Lawyers list, 2010-2019
- Who’s Who in Law, *Business First of Buffalo/Buffalo Law Journal*, 2010-2012

- Recipient, New York State Bar Association's Outstanding Young Lawyer of the Year Award, 2004
- Recipient, "Pathfinders Award," *Buffalo Business First*, 2004
- Recipient, "Up & Coming Attorneys" Award in Western New York, *The Daily Record*, 2003
- Recipient, U.S. District Court, Western District of New York's Pro Bono Special Service Award, 2002
- Loyola University Chicago School of Law
 - Inductee, Alpha Sigma Nu Jesuit Honor Society, 1998
 - Recipient, Loyola University School of Law Leadership and Service Award, 1998

Publications

- Co-Author, "Civil Appeals in New York: Oral Argument, Disposition, and Motions for Reargument in the Fourth Department," *Thomson Reuters Practical Law*, April 4, 2016
- Co-Author, "Civil Appeals in New York: Taking an Appeal to the Fourth Department," *Thomson Reuters Practical Law*, March 30, 2016
- Co-Author, "Tips for Collection, Production of ESI," *Buffalo Law Journal*, April 27, 2015
- Lead Author, "To Whom Does Tribal Sovereign Immunity Apply?" *Aspatore Inside the Minds: Emerging Issues in Tribal-State Relations*, June 2014
- Co-Author, "Wrapping Your Arms Around E-Discovery," *DFI News Digital Forensic Investigator*, Summer 2012

News

- "This Horn's a trombonist: Music is a passion for attorney," *Buffalo Law Journal*, February 4, 2019
- "BLJ: The business side of litigation," *Buffalo Law Journal*, March 12, 2018
- "Niagara County land owners sue over high radiation levels," *The Buffalo News*, October 23, 2017
- "Property owners file suit over radioactive waste," *Niagara Gazette*, October 19, 2017
- "What keeps local cybersecurity experts up at night?" *Buffalo Business First*, October 5, 2017
- "Financial institutions learn about new cybersecurity regulations," *WXXI News*, May 16, 2017
- "Merger litigation tax 'racket' challenged," *Buffalo Business First*, March 15, 2017
- "Radioactive slag poses lingering concern for Niagara region," *Niagara Gazette*, February 9, 2017
- "Employees play key role in cyber safety," *Buffalo Business First*, January 13, 2017
- "Tips for businesses to avoid scams this tax season," *Time Warner Cable News Buffalo*, March 23, 2016

Presentations

- Over the past two decades, John has been a presenter at more than two dozen legal education and business seminars throughout Western New York on a variety of topics, including protecting the attorney/client privilege, electronic discovery, data security, deposition techniques and strategies, trial practice techniques, legal ethics, multi-jurisdictional practice, effective use of expert evidence, and protecting trade secrets and confidential information.

- Presenter, "Top 10 Legal Pitfalls to Avoid in Relation to a Data Breach," Harter Secrest & Emery's Labor and Employment Law Conference, April 26, 2018

